



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

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)

In Case C-215/24 [Fira],ⁱ

REQUEST for a preliminary ruling under Article 267 TFEU 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), made by decision of 19 March 2024, received at
the Court on 20 March 2024, in the proceedings relating to the execution of the European arrest
warrant issued against

YX,

intervening party:

Ministério Público,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, N. Jääskinen, A. Arabadjiev (Rapporteur),
M. Condinanzi and R. Frendo, Judges,

Advocate General: T. Ćapeta,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 19 March 2025,

* Language of the case: Portuguese.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

after considering the observations submitted on behalf of:

- the Portuguese Government, by P. Barros da Costa, L. Ferro da Costa and J. Ramos, acting as Agents,
- the Spanish Government, by A. Gavela Llopis and A. Torró Molés, acting as Agents,
- the European Commission, by H. Leupold, B. Rechená and J. Vondung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 June 2025,

makes the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 8, 12, 13 and 17 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (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').
- 2 The request has been made in proceedings relating to the execution, in Spain, of a European arrest warrant issued by the Portuguese authorities in respect of YX, with a view to enforcing a custodial sentence.

Legal framework

European Union law

Framework Decision 2002/584/JHA

- 3 Article 4 of 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), entitled 'Grounds for optional non-execution of the European arrest warrant', provides in point 6:

'The executing judicial authority may refuse to execute the European arrest warrant:

...

- (6) if the European arrest warrant 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'.

Framework Decision 2008/909

4 Recitals 5, 9 and 12 of Framework Decision 2008/909 state:

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

...

(9) Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person’s attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.

...

(12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under [Article 4(6)] of [Framework Decision 2002/584]. This means, inter alia, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision [2002/584].’

5 Article 3 of Framework Decision 2008/909, entitled ‘Purpose and scope’, provides, in paragraph 1:

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

6 Article 4 of that framework decision, entitled ‘Criteria for forwarding a judgment and a certificate to another Member State’, provides:

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

- (a) the Member State of nationality of the sentenced person in which he or she lives; or
- (b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or
- (c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

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

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

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

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

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

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether

or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

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

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

...'

- 7 Article 5 of that framework decision, entitled 'Forwarding of the judgment and the certificate', provides:

'1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

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

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

4. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA [of 29 June 1998 (OJ 1998 L 191, p. 4)], in order to obtain the information from the executing State.

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

- 8 Article 8 of that framework decision, entitled 'Recognition of the judgment and enforcement of the sentence', provides:

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

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.
3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.
4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.’
- 9 Article 12 of Framework Decision 2008/909, entitled ‘Decision on the enforcement of the sentence and time limits’, provides in paragraph 1:
- ‘The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8(2) and (3).’
- 10 Article 13 of that framework decision, entitled ‘Withdrawal of the certificate’, provides:
- ‘As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.’
- 11 Article 17 of that framework decision, entitled ‘Law governing enforcement’, provides in paragraphs 1, 3 and 4:
- ‘1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.
- ...
3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.
4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.’

12 Under Article 21(c) to (i) of that framework decision:

‘The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

...

- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (e) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person’s escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.’

Framework Decision 2008/947/JHA

13 Article 1 of 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), entitled ‘Objectives and scope’, provides in paragraphs 1 to 3:

‘1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.

2. This Framework Decision shall apply only 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);
as described and provided for in this Framework Decision.

3. This Framework Decision shall not apply to:

(a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA;

...'

14 Article 2(1), (2) and (5) of Framework Decision 2008/947 provides:

'For the purposes of this Framework Decision:

(1) "judgment" shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and 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;
- (b) a suspended sentence;
- (c) a conditional sentence;
- (d) an alternative sanction;

(2) "suspended sentence" shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

...

(5) "probation decision" shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:

- (a) granting a conditional release; or
- (b) imposing probation measures'.

Portuguese law

15 Article 45 of the Código Penal (Criminal Code), entitled 'Substitution of a custodial sentence with a fine', provides in paragraphs 1 and 2:

'1. A custodial sentence of up to one year shall be replaced by a fine or another applicable non-custodial sentence, unless the need to prevent future offences being committed requires that the custodial sentence be served.

2. If the fine is not paid, the convicted person shall serve the custodial sentence imposed in the sentence. The provisions of Article 49(3) shall apply by analogy.'

- 16 Article 49 of that code, entitled ‘Conversion of an unpaid fine into a custodial sentence’, provides in paragraph 3:

‘If the convicted person is able to show that the fine was not paid for reasons that cannot be attributed to him or her, the enforcement of the alternative custodial sentence may be suspended for a period of one to three years, provided that the suspension is contingent upon the fulfilment of obligations or rules of conduct that are not of an economic or financial nature. If the obligations or rules of conduct are not complied with, the alternative custodial sentence shall be served; if they are, the sentence shall be declared extinguished.’

Spanish law

- 17 Article 80 of the Código Penal (Criminal Code; ‘the Spanish Criminal Code’) provides the following:

‘1. The courts or tribunals may, by means of a reasoned decision, suspend the enforcement of custodial sentences of no more than two years when it is reasonable to expect that the enforcement of the sentence will not be necessary to prevent the convicted person from committing new crimes in the future.

In making that decision, the court or tribunal shall assess the circumstances of the crime committed, the personal circumstances of the convicted person, his or her criminal record, his or her conduct after the crime, in particular his or her efforts to make good the damage caused, his or her family and social circumstances, and the anticipated impact of the suspension of the enforcement and the compliance with the measures imposed.

2. The following conditions shall be necessary for suspending the enforcement of the sentence:

- (1) The fact that this is the convicted person’s first offence. To that end, no account shall be taken of previous convictions for offences committed through carelessness or minor offences, or criminal records that have been expunged or should have been expunged in accordance with the provisions of Article 136. Nor shall any account be taken of criminal records for offences which, due to their nature or circumstances, are irrelevant to assessing the likelihood of future offences being committed.
- (2) The sentence or the sum of the sentences imposed shall not exceed two years; that calculation shall not include the amount resulting from non-payment of the fine.
- (3) Any civil liabilities that may have arisen have been satisfied, and any confiscation ordered in a judgment by virtue of Article 127 has been implemented.

The present requirement shall be deemed fulfilled when the convicted person undertakes to satisfy the civil liabilities according to his or her financial capacity and to facilitate the confiscation ordered, and it is reasonable to expect that this will be done within a reasonable period of time as determined by the court or tribunal. The court or tribunal may, taking into consideration the extent of the civil liability and the social impact of the offence, request any guarantees it deems appropriate in order to ensure compliance.

3. Exceptionally, even if the conditions laid down in points 1 and 2 of the previous paragraph have not been satisfied, and provided that the offender is not a habitual offender, the suspension

of prison sentences which individually do not exceed two years may be ordered where the personal circumstances of the offender, the nature of the offence, his or her conduct and, in particular, the effort made to make good the damage caused so justify.

In such cases, the suspension shall always be conditional on the fact that the damage has actually been repaired or the harm caused has been compensated in accordance with that person's physical and economic abilities, or in accordance with the agreement referred to in point 1 of Article 84(1). Likewise, one of the measures referred to in points 2 or 3 of that provision shall always be imposed, with an extension that may not be less than the extension resulting from the application of the conversion criteria laid down in Article 84(1) to one fifth of the sentence imposed.

4. The courts and tribunals may grant a suspension of any sentence imposed without the imposition of any condition if the convicted person suffers from a very serious, incurable illness, unless, at the time the offence was committed, the convicted person already had another suspended sentence for the same reason.

5. Even when the conditions laid down in points 1 and 2 of paragraph 2 of the present article have not been satisfied, the court or tribunal may order the suspension of the enforcement of custodial sentences of no more than five years for convicted persons who committed the offence as a result of their dependence on any of the substances set out in point 2 of Article 20, provided that it is certified to the requisite standard, by a duly accredited or approved public or private establishment or service, that the convicted person is drug-free or undergoing treatment for that purpose at the time the suspension is ordered.

The court or tribunal may order the necessary checks to be carried out in order to verify that the above requirements have been complied with.

If the convicted person is undergoing drug addiction treatment, the suspension of the enforcement of the sentence shall also be conditional on the person not abandoning the treatment until its completion. Relapses in treatment shall not be viewed as abandonment if they do not demonstrate a permanent abandonment of the drug addiction treatment.

6. For offences that may be prosecuted only following a complaint or an action brought by the victim, the courts and tribunals shall hear the victim and, as appropriate, the victim's representative before granting the suspension of the enforcement of the sentence'.

18 Article 90(1) of the Spanish Criminal Code provides the following:

'The judge responsible for the enforcement of sentences shall suspend the enforcement of the remainder of the custodial sentence and order the conditional release of prisoners who meet the following requirements:

- (a) they are classified as category 3 prisoners [(open prison facility)];
- (b) they have served three quarters of the sentence imposed;
- (c) they have a record of good behaviour.

In order to decide whether to suspend enforcement of the remainder of the sentence and grant a conditional release, the judge responsible for the enforcement of sentences shall assess the convicted person's personality, his or her record, the circumstances of the offence committed, the significance of any legal interests that might be affected by a repetition of the offence, his or her behaviour while serving the sentence, his or her family and social circumstances, and the effects that may be expected of the actual suspension of the sentence and of compliance with any measures imposed.

Suspension shall not be granted if the convicted person has not satisfied the civil liability obligation arising from the offence in the cases provided for and in accordance with the criteria laid down in Article 72(5) and (6) of Ley Orgánica 1/1979, General Penitenciaria [(Organic Law 1/1979 General law on prisons)] of 26 September 1979 [(BOE No 239 of 5 October 1979, p. 23180)]'.

The main proceedings and the questions referred for a preliminary ruling

- 19 In 2018, 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, sentenced YX to six months' imprisonment for tax fraud. Under Article 49 of the Criminal Code, that custodial sentence was subsequently replaced by a financial penalty of 180 daily fine units. Since the corresponding fine had not been paid and YX had not demonstrated that the failure to pay was not attributable to him, that court ordered the enforcement of that custodial sentence.
- 20 Since YX had, in the meantime, transferred his residence to Spain, the referring court issued a European arrest warrant on 2 February 2022 for his surrender for the purposes of enforcing that custodial sentence.
- 21 Pursuant to Article 4(6) of Framework Decision 2002/584, the competent Spanish judicial authority refused to surrender YX to the referring court due to the transfer of his residence to Spain and the wish he had expressed to serve his sentence in that Member State. That authority declared that it recognised the judgment issued by the referring court and requested the competent Spanish judicial authorities to enforce it.
- 22 On 11 October 2023, pursuant to Article 80 of the Spanish Criminal Code, the Juzgado Central de lo Penal nº 1 de Madrid (Central Criminal Court No 1, Madrid, Spain) suspended enforcement of the custodial sentence at issue in the main proceedings for a period of two years.
- 23 Following that suspension decision, the Portuguese Public Prosecutor's Office asked the referring court to make a reference to the Court of Justice for a preliminary ruling.
- 24 The referring court notes that the competent authority of the executing State is required, in principle, to recognise the sentencing judgment 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.

- 25 The conditions under which the competent authority of the executing State could alter the sentence imposed in the issuing State are exhaustively set out in Article 8 of Framework Decision 2008/909 and, in any event, the competent authority of the executing State cannot alter the substance of the sentence imposed by the competent authority of the issuing State.
- 26 Consequently, where the competent authority of the issuing State has not suspended a sentence under its national law, the competent authority of the executing State cannot suspend the enforcement of the sentence imposed on the person concerned in the issuing State, even if the national law of that authority allows this for sentences imposed in the executing State. Such a suspension would undermine the objectives pursued by Framework Decision 2008/909 and the principle of mutual recognition.
- 27 Furthermore, in paragraph 65 of the judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, (C-314/18, EU:C:2020:191), the Court held that Article 8 of Framework-Decision 2008/909 must be interpreted strictly.
- 28 Moreover, according to the referring court, Article 17 of Framework Decision 2008/909, which provides that the enforcement of a sentence is governed by the law of the executing State, refers only to measures intended to ensure the material enforcement of a custodial sentence and there is no basis for interpreting the provisions of that article as meaning that its scope includes a decision to suspend enforcement of a custodial sentence to which the requested person has been sentenced.
- 29 Furthermore, under Articles 12 and 13 of that framework decision, the executing judicial authority should have informed the issuing judicial authority of the possibility of suspending the enforcement of the sentence, in order to enable the latter to respond.
- 30 According to the referring court, those circumstances complicate its decision on whether to continue or to close the main proceedings. It considers that there is reasonable doubt as to the interpretation and application of EU law, which is not dispelled by the case-law of the Court of Justice and which has crucial consequences for the final outcome of those proceedings.
- 31 In those circumstances, 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) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) After [refusing] to execute a European arrest warrant pursuant to Article 4(6) of Framework Decision 2002/584 on the ground of the place of residence of the convicted individual, and after [recognising] the sentencing judgment, [can] the executing State rely on the application of its domestic law and its jurisdiction as the executing State to suspend the actual custodial sentence imposed by the issuing State, when the procedure for enforcement of that judgment has already begun?
- (2) [Can] the judicial authority of the executing State amend the decision of the judicial authority of the issuing State where that decision has become *res judicata*, other than in the cases provided for in Article 8 and Article 17(1) and (2) of Framework Decision 2008/909?

- (3) Should Article 17(1) of Framework Decision 2008/909 be interpreted as meaning that it allows the executing State to grant a suspension of the actual custodial sentence, by applying the conditions of its domestic law, where the competent authorities of the issuing State have not done so in accordance with their law?

In the event that the previous questions are answered in the affirmative:

- (4) In view of the provisions of Articles 12, 13 and 17(3) of Framework Decision 2008/909, should the Spanish judicial authorities (the executing State) have informed the issuing State in advance of their views on the possibility of suspending the custodial sentence imposed on the requested person?

Admissibility of the questions referred for a preliminary ruling

- 32 The Spanish Government submits that the information provided in the order for reference does not make it possible to identify the proceedings giving rise to the request for a preliminary ruling or to understand why the Court's answers to the questions referred for a preliminary ruling are necessary for the referring court to give a ruling.
- 33 It is true that the order for reference states that the purpose of the request for a preliminary ruling is to enable the referring court to decide whether to continue or to close those proceedings. However, the referring court appears to have accepted that the Spanish court responsible for enforcing the sentence which it imposed should proceed with the enforcement of that sentence, with the result that, in accordance with the principle of mutual recognition, it would have to abide by what the Spanish court decides.
- 34 Even if EU law prevented that Spanish court from suspending, in accordance with its national law, the custodial sentence imposed by the referring court, *quod non*, that would have no effect on the decision which should be adopted by the latter court. That decision depends exclusively on what that Spanish court communicates to the referring court concerning the enforcement of the sentence on the basis of its domestic law, pursuant to Article 21 of Framework Decision 2008/909.
- 35 In addition, Article 13 of that framework decision provides that a request for recognition and enforcement of a sentence may be withdrawn only before the commencement of enforcement of that sentence. In the present case, the suspension granted on the basis of Article 80 et seq. of the Spanish Criminal Code could only be regarded as a means of enforcing that sentence, occurring in the course of that enforcement.
- 36 According to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 8 April 2025, *European Public Prosecutor's Office (Judicial review of procedural acts)*, C-292/23, EU:C:2025:255, paragraph 36 and the case-law cited).

- 37 In the present case, as is apparent from paragraph 30 above and as the Spanish Government acknowledges, the referring court states that the answers provided by the Court of Justice to the questions referred are essential for it to decide on the outcome of the proceedings which concern the review of the enforcement of the sentence imposed on YX. In its view, depending on the answers provided by the Court of Justice, it will either have to close or continue those proceedings.
- 38 In that regard, it appears that, if the assessment of the referring court – as summarised in paragraphs 24 to 29 above and according to which, in essence, Article 8 of Framework Decision 2008/909 precludes a suspension, by the competent authority of the executing State, of the enforcement of the custodial sentence imposed by the competent authority of the issuing State or would require, at the very least, prior notice of the possibility of granting such a suspension – was well founded, that court might have to continue the main proceedings. On the other hand, if a suspension such as that ordered in the main proceedings were to fall, as the Spanish Government claims in essence in the arguments summarised in paragraphs 33 to 35 above, within the scope of Article 17 of that framework decision, it might find it necessary to close those proceedings.
- 39 Consequently, it does not appear that the questions referred for a preliminary ruling bear no relation to the actual facts of the main action or its purpose, or that they raise a hypothetical problem.
- 40 It follows that the questions referred for a preliminary ruling are admissible.

The questions referred for a preliminary ruling

Preliminary observations

- 41 It is apparent from the order for reference, first of all, that the Spanish judicial authorities refused, pursuant to Article 4(6) of Framework Decision 2002/584, to execute the European arrest warrant issued by the referring court for the purposes of enforcing a custodial sentence against YX, on the ground that he resides in Spain and expressed his wish to serve the sentence imposed on him in that Member State. Next, it follows from that order that those judicial authorities declared that they recognised the judgment by which that sentence was imposed and requested the competent Spanish judicial authority to enforce it. Lastly, it is apparent from that order that the Juzgado Central de lo Penal nº 1 de Madrid (Central Criminal Court No 1, Madrid) subsequently suspended the enforcement of that sentence.
- 42 However, it is not apparent from the order for reference or from the documents before the Court that the Portuguese Republic, as the State issuing the European arrest warrant against YX, gave its consent to the enforcement in Spain of the sentence imposed on him. In particular, at the hearing before the Court of Justice, it was not possible to determine with certainty whether or not the certificate referred to in Article 4 of Framework Decision 2008/909, the model for which appears in Annex I thereto ('the certificate'), had been forwarded, in accordance with the procedures laid down in Framework Decision 2008/909, by the competent Portuguese authorities to the competent Spanish authorities.
- 43 It must be highlighted that the forwarding of that certificate is one of the procedures which must be complied with when the executing State takes charge of the enforcement of a custodial sentence imposed in the issuing State.

- 44 It should be pointed out that the application of the ground for optional non-execution of a European arrest warrant provided for in Article 4(6) of Framework Decision 2002/584 is subject to two conditions being met, namely, first, that the requested person is staying in the executing Member State, is a national of or resident in that Member State and, second, that that State undertakes to execute, in accordance with its domestic law, the sentence or detention order in respect of which the European arrest warrant has been issued (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 43).
- 45 As regards the impact of Framework Decision 2008/909 on the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, it must be borne in mind that, like Framework Decision 2002/584, Framework Decision 2008/909 gives concrete expression, in criminal matters, to the principles of mutual trust and mutual recognition and thus further develops judicial cooperation concerning the recognition and enforcement of criminal judgments where persons were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State, with a view to facilitating their social rehabilitation (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 45).
- 46 Thus, in view of the identical objective pursued, first, by the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584 and, second, by the rules laid down in Framework Decision 2008/909, namely that of facilitating the social rehabilitation of sentenced persons in another Member State, where a judicial authority of the executing State wishes to apply that ground, it must take account of those rules (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 47).
- 47 Therefore, where an executing judicial authority intends to refuse, on the basis of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, the execution of a European arrest warrant issued for the purposes of enforcing a custodial sentence, the recognition of the sentencing judgment and of the assumption of responsibility for the enforcement of that sentence are governed by Framework Decision 2008/909 (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 51).
- 48 In that regard, it should be noted that, in the context of the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, the executing State's assumption of responsibility for the enforcement of the sentence imposed by the sentencing judgment handed down in the issuing State and which justified the issue of the European arrest warrant is subject to the consent of that issuing State, in accordance with the rules laid down in Framework Decision 2008/909 (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 67).
- 49 That consent takes the form of the forwarding, in accordance with the procedures laid down in Article 4 of Framework Decision 2008/909, to the executing State of the sentencing judgment handed down by a court of the issuing State, together with the certificate (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 57).
- 50 Accordingly, where an executing judicial authority intends to refuse, on the basis of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant, the competent authority of the issuing State may refuse such forwarding

if it considers, on the basis of objective circumstances, that the sentence will not actually be enforced in the executing State or that enforcement of that sentence in that State will not contribute to the objective of social rehabilitation of the requested person upon expiry of the custodial sentence imposed on him or her. The issuing judicial authority may still refuse that forwarding on the basis of considerations relating to the criminal policy of the issuing State (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 72).

- 51 That said, although the forwarding by the issuing State of the sentencing judgment and the certificate that must accompany it is thus conceived as a mere possibility, it must be borne in mind that, in order to ensure, inter alia, that the operation of the European arrest warrant is not brought to a standstill, the duty of sincere cooperation, laid down in the first subparagraph of Article 4(3) TEU, entails a dialogue between the executing and issuing judicial authorities. It follows in particular from that principle that the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (see, to that effect, judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 68).
- 52 Therefore, the issuing and executing judicial authorities must, in order to ensure effective cooperation in criminal matters, make full use of the instruments provided for in Framework Decisions 2002/584 and 2008/909, such as the consultations preceding the forwarding of the sentencing judgment handed down by a court of the issuing State and of the certificate, in order to foster mutual trust on the basis of that cooperation. It should be recalled, in that regard, that, in accordance with Article 4(3) of the latter framework decision, such consultations are mandatory where, as in the present case, enforcement of the sentence is envisaged in a Member State other than that of the nationality of the person concerned, namely in the situation referred to in Article 4(1)(c) of that framework decision (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 69).
- 53 As regards the obligations of the issuing State, it should be pointed out that it is for that State to ensure that the prerogative conferred on it by Framework Decision 2008/909 not to forward to the executing State the sentencing judgment imposed by one of its courts and the certificate is exercised in such a way as to enable effective cooperation in criminal matters and to ensure that the operation of the European arrest warrant and the mutual recognition of judgments in criminal matters for the purposes of their enforcement in another Member State are not brought to a standstill (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 71).
- 54 It will therefore be for the referring court to satisfy itself that the consent required was, in the present case, given by the competent Portuguese authority in accordance with the detailed rules laid down in Framework Decision 2008/909 and, if that were not the case, whether effective cooperation with the Spanish executing judicial authorities obliges it to grant that consent.
- 55 If it is not possible for the executing State actually to assume responsibility for enforcing the sentence, for whatever reason, including on account of non-compliance with the conditions and procedure laid down in Framework Decision 2008/909, it follows from the principle of mutual recognition that, in order to prevent the impunity of the requested person, a European arrest warrant must be executed (judgment of 4 September 2025, *C.J. (Enforcement of a sentence further to an EAW)*, C-305/22, EU:C:2025:665, paragraph 70).

- 56 On the other hand, if the certificate has been forwarded by the competent Portuguese authorities to the competent Spanish authorities in accordance with the detailed rules laid down by Framework Decision 2008/909, thus reflecting the consent of the issuing State to the sentence imposed on YX being enforced in the executing State, which ultimately is a matter for the referring court to ascertain, it is necessary to answer the questions referred.

The first to third questions referred for a preliminary ruling

- 57 By its first to third questions referred for a preliminary ruling, which it is appropriate to examine together, the referring court asks, in essence, whether Article 8(1) and Article 17(1) of Framework Decision 2008/909 must be interpreted as precluding, where the competent judicial authority of the executing State has refused, under Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant issued by the competent judicial authority of the issuing State for the purposes of enforcing a custodial sentence and the competent judicial authority of the executing State has undertaken to enforce that sentence, another competent judicial authority of the executing State from subsequently suspending, under its national law, the enforcement of that sentence.
- 58 Under Article 8(1) of Framework Decision 2008/909, where, as in the present case, the competent authority of the executing State decides not to rely on one of the grounds for non-recognition and non-execution provided for in Article 9 of that framework decision, it must recognise the judgment forwarded to it in accordance with Article 4 and the procedure described in Article 5 of that framework decision, and forthwith take all the necessary measures for the enforcement of the sentence.
- 59 In accordance with Article 8(2) and (3) of Framework Decision 2008/909, adaptations to the sentence are possible only where the duration or nature of the sentence is incompatible with the law of the executing State.
- 60 That article therefore lays down strict conditions for the adaptation, by the competent authority of the executing State, of the sentence handed down in the issuing State, those conditions being the sole exceptions to the obligation imposed on that authority, under Article 8(1) of that framework decision, to recognise a judgment which has been forwarded to it and to execute the sentence, which is to correspond, in its length and nature, to the sentences imposed in the judgment delivered in the issuing State (judgments of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 36, and of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191, paragraph 65).
- 61 In the present case, it is common ground that the measure suspending the execution of the custodial sentence imposed by the referring court was not ordered by the competent judicial authority of the executing State because of an incompatibility between the nature or duration of the sentence and the legislation of that Member State, with the result that that measure cannot in any event be regarded as an adaptation of the sentence made possible by virtue of Article 8(2) and (3) of Framework Decision 2008/909.
- 62 The referring court, the Portuguese Government and the European Commission submit that the suspension of the execution of the custodial sentence at issue in the main proceedings falls within the scope of Article 8(1) of Framework Decision 2008/909 and accordingly could have been granted only by the referring court, which is the competent authority of the issuing State.

- 63 The Spanish Government submits, on the other hand, that it follows from the Spanish Criminal Code that a suspension such as that ordered in the main proceedings falls within the field of enforcement of sentences and, therefore, within the scope of Article 17(1) of that framework decision.
- 64 It is apparent from that provision that the enforcement of a sentence under that framework decision is to be governed by the law of the executing State once the sentenced person has been transferred to the competent authorities of that State and those authorities are, in principle, alone competent to decide on the procedures for enforcement and to determine the measures relating thereto, including the grounds for early or conditional release. Thus, that provision covers measures seeking to ensure the physical enforcement of a custodial sentence and the social rehabilitation of the sentenced person (judgment of 15 April 2021, *AV (Aggregate sentence)*, C-221/19, EU:C:2021:278, paragraph 39).
- 65 As the Advocate General observed in points 26 and 27 of her Opinion, it is therefore necessary to determine whether a suspension of the enforcement of a custodial sentence, such as that at issue in the main proceedings, must be regarded as altering the conviction 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.
- 66 In that respect, it should be pointed out that, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraph 37).
- 67 In the first place, as regards the wording of Article 8(1) and Article 17(1) of Framework Decision 2008/909, none of those provisions expressly refers 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. Moreover, that wording does not make it possible to determine whether such a suspension measure infringes the obligation for the executing Member State to recognise the judgment and enforce the sentence, laid down in the first of those provisions, or whether it falls within the concept of ‘procedures for enforcement’ of the sentence, within the meaning of the second of those provisions.
- 68 In the second place, as regards the contextual interpretation, it is necessary, first, to interpret the concept of ‘procedures for enforcement’ in Article 17(1) of Framework Decision 2008/909, by taking into consideration paragraphs 3 and 4 of that article and Article 13 of that framework decision.
- 69 Under Article 17(3) of Framework Decision 2008/909, the competent authority of the executing State is required to inform the competent authority of the issuing State, upon the latter’s request, of the applicable provisions on possible early or conditional release, and the issuing State may agree to the application of such provisions or it may withdraw the certificate.
- 70 In accordance with Article 13 of that framework decision, the certificate must be withdrawn from the executing State before enforcement of the sentence has begun.

- 71 Furthermore, Article 17(4) of that framework-decision provides that Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.
- 72 Accordingly, while Article 17(1) of Framework Decision 2008/909 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, for the rights to be informed, upon request, of the applicable provisions of the executing State on early or conditional release and to withdraw the certificate, and 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.
- 73 In that regard, it should be noted that, unlike early or conditional release, which occurs only after enforcement of part of the custodial sentence and, therefore, suspends only part of its enforcement, the suspension, by a judicial authority of the executing State, of the enforcement of a custodial sentence imposed by the competent judicial authority of the issuing State, before any actual enforcement of that sentence, entails the suspension of that sentence in its entirety.
- 74 The powers conferred by Article 17(3) and (4) of Framework Decision 2008/909 on the competent authority of the issuing Member State should therefore, a fortiori, apply to such a measure. As is apparent from the preceding paragraphs, the EU legislature provided for those powers only in relation to the conditions for early or conditional release.
- 75 As the Advocate General observed in point 55 of her Opinion, it must therefore be held that Article 17(3) and (4) of Framework Decision 2008/909 states that the suspension, by an executing judicial authority, of the enforcement of a custodial sentence imposed by the issuing judicial authority does not fall within the scope of Article 17(1).
- 76 Second, as the Commission submits, that interpretation is supported by Framework Decision 2008/947, which concerns the recognition, inter alia, of judgments and probation decisions, since, first of all, under Article 1(3)(a) thereof, the scope of that framework decision and that of Framework Decision 2008/909 are mutually exclusive.
- 77 Next, as is apparent from Article 2(2) of Framework Decision 2008/947, a ‘suspended sentence’ means ‘a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures’ and ‘such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority’.
- 78 Lastly, Article 2(1) and (5) of that framework decision states that the judgment and, where appropriate, the separate probation decision are to be taken by a competent authority of the issuing State.
- 79 Accordingly, the fact that a framework decision, separate from Framework Decision 2008/909, applies to judgments which themselves entail suspension of a custodial sentence, or are accompanied by separate probation decisions, confirms that the question whether or not suspension of a custodial sentence must be granted, in the context of those two framework

decisions, 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.

- 80 In the third place, as regards the objectives of Framework Decision 2008/909 in general and of Articles 8 and 17 in particular, it is apparent from Article 3(1) of that framework decision that it seeks to establish the rules enabling a Member State, with a view to facilitating the social rehabilitation of the sentenced person, to recognise a judgment and enforce the sentence.
- 81 In that regard, recital 5 of that framework decision states that relations between Member States are characterised by special mutual confidence in other Member States' legal systems and that those relations justify allowing the executing State to recognise decisions taken by the issuing State's authorities. That framework-decision is thus aimed at further developing cooperation between Member States concerning the enforcement of criminal judgments, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State.
- 82 Moreover, recital 9 of Framework Decision 2008/909 states that enforcement of the sentence in the executing State seeks to enhance the possibility of social rehabilitation of the sentenced person and, in the context of satisfying itself that the enforcement of the sentence by the executing State will serve that purpose, the competent authority of the issuing State is called upon to take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.
- 83 It follows that it is primarily for the competent authority of the issuing State to carry out the necessary assessments for the purposes of assessing the prospects of social rehabilitation of the sentenced person in the Member States concerned and that relations between Member States characterised by special mutual trust in their respective judicial systems justify, with the consent of the issuing State, the executing State being authorised to recognise decisions taken by the authorities of the issuing State for the purposes of their enforcement.
- 84 As the Advocate General observed, in essence, in points 65 to 67 of her Opinion, 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 that special mutual trust and would therefore run counter to the objective of further developing cooperation between Member States concerning the enforcement of judgments in criminal matters.
- 85 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.
- 86 In the light of all the foregoing considerations, it must be concluded 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.

- 87 As the Commission submits, it follows that, in the case in the main proceedings, the view must be taken that, for the purposes of the application of Framework Decision 2008/909, enforcement of the sentence imposed by the referring court in respect of YX has not yet begun, with the result that, in accordance with Article 13 of that framework decision, the competent authority of the issuing State may still withdraw any certificate forwarded and request the surrender of YX for the purposes of enforcing that sentence.
- 88 That conclusion is not undermined by the fact that the Court has held, in essence, that a decision revoking 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, since it leaves the sentence handed down in such a decision unchanged with regard to both its nature and its quantum, and since the authority responsible for deciding on such a revocation is not called upon to re-examine the merits of the case that gave rise to the criminal conviction (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).
- 89 First of all, the case-law arising from the judgments cited in the preceding paragraph concerns the interpretation of Framework Decision 2002/584, and not that of Framework Decision 2008/909.
- 90 Next, in the cases which gave rise to those judgments, the suspension of the enforcement of the various custodial sentences had been granted by the competent authority of the issuing State in the sentencing judgments. As noted in paragraphs 76 to 79 above, the recognition and enforcement of such judgments does not fall within the scope of Framework Decision 2008/909, but that of Framework Decision 2008/947.
- 91 Lastly, as the Advocate General observed, in essence, in point 72 of her Opinion, the fact that the revocation of the suspension of the enforcement of a custodial sentence, on account of the infringement by the person concerned of an objective condition attached to that suspension, may fall within the scope of the enforcement of the sentence imposed does not necessarily mean that the decision as to whether or not it is appropriate, in a given case, to grant the suspension of a custodial sentence is of the same nature.
- 92 In the light of all the foregoing considerations, the answer to the first to third questions referred for a preliminary ruling is that Article 8(1) and Article 17(1) of Framework Decision 2008/909 must be interpreted as precluding, where the competent judicial authority of the executing State has refused, under Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant issued by the competent judicial authority of the issuing State for the purposes of enforcing a custodial sentence and the competent judicial authority of the executing State has undertaken to enforce that sentence, another competent judicial authority of the executing State from subsequently suspending, under its national law, the enforcement of that sentence.

The fourth question referred for a preliminary ruling

- 93 In view of the answer given to the first to third questions referred for a preliminary ruling, there is no need to reply to the fourth question referred for a preliminary ruling.

Costs

- 94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 8(1) and Article 17(1) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009,

must be interpreted as precluding, where the competent judicial authority of the executing State has refused, under Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, to execute a European arrest warrant issued by the competent judicial authority of the issuing State for the purposes of enforcing a custodial sentence and the competent judicial authority of the executing State has undertaken to enforce that sentence, another competent judicial authority of the executing State from subsequently suspending, under its national law, the enforcement of that sentence.

[Signatures]