

Article 4(6) EAW Framework Decision after C.J. (C-305/22): Mutual Recognition,
Consent, and the Execution of Custodial Sentences

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ABSTRACT

In case C-305/22 C.J., the ECJ examined the relationship between Article 4(6) of Framework Decision 2002/584 (EAW Framework Decision), which is an optional refusal ground in connection with the European Arrest Warrant (EAW), and Framework Decision 2008/909. In the main proceedings, the execution of an EAW issued by a Romanian court was refused for the purpose of executing the judgment in Italy, the executing Member State. However, it was unclear whether the consent of the issuing Member State was required to apply that refusal ground. Through the analysis of the interplay between the two framework decisions, the ECJ established that such consent is necessary for the application of the refusal ground. Additionally, it established that the issuing authority should carefully consider its decision to grant consent to the recognition and execution of a judgment imposing a custodial sentence. However, the aspects that should be considered remain unclear, not to mention that Framework Decision 2008/909 does not provide for such a limitation of the punitive powers of Member States. For this, the judgment of the ECJ seems – at least in this regard – contradictory to say the least.

Keywords: Article 4(6); EAW; Framework Decision 2008/909; social rehabilitation; C-305/22

I. INTRODUCTION

On 6 May, 2022, the European Court of Justice (ECJ) received a submission concerning a European Arrest Warrant (EAW) issued by the Romanian *Curtea de Apel București* (Court of Appeal, Bucharest).¹ The referring court initiated the preliminary ruling procedure due to a peculiar situation that has never happened in the EU before (at least not that we know of based on the case law of the ECJ). The execution of the EAW, issued by the referring court in 2020, was refused by the Italian executing authority, namely, the *Corte d'appello di Roma* (Court of Appeal, Rome), invoking Article 4(6) of Framework Decision 2002/584 (EAW Framework Decision). It held that it was appropriate to enforce the judgment that was the basis of the EAW in Italy, rather than in Romania, the issuing Member State. The executing authority claimed that there was ground for optional non-execution of the EAW and for the enforcement of the underlying judgment in the executing Member State because the requested person resided in Italy. The executing authority claimed that executing the sentence in Italy would improve the chances of social rehabilitation of the requested person.²

The ECJ's judgment in this case further clarified the relationship between Article 4(6) EAW Framework Decision and Framework Decision 2008/909 on the mutual recognition of custodial sentences. It reiterated that the former refusal ground and the latter framework decision have the same purpose: improving the chances of social rehabilitation of sentenced persons. Additionally, it established that the issuing Member State has a discretionary right to decide whether to give up its punitive power in terms of a specific judgment in connection with Article 4(6) EAW Framework Decision – a novelty in the jurisprudence of the ECJ.

This annotation aims to highlight the importance of the judgment in terms of the relationship between Article 4(6) EAW Framework Decision and Framework Decision 2008/909, which has been a topic of less interest in legal literature. To this end, first, it will introduce case *C-305/22 C.J.*, including the facts of the case, the reasoning, and the judgment of the Court, followed by comments on the case highlighting the novelty of the judgment. The annotation primarily relies on doctrinal legal analysis of the concerned framework decisions and the preliminary ruling procedure, complemented with references to legal literature.

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¹ Case C-305/22 *C.J.* [2025] ECLI:EU:C:2025:665, para. 21.

² *ibid* para. 26.

II. FACTS OF THE CASE

A Romanian individual was sentenced to prison in Romania in 2017 in the main proceedings. In 2020, the referring court issued an EAW to execute the judgment.³ After receiving the EAW and arresting the requested person,⁴ the Italian executing authority requested the issuing authority to forward the judgment that was the basis of the EAW in order to invoke Article 4(6) EAW Framework Decision for the refusal of the EAW and the execution of the underlying judgment in the executing Member State. Although the issuing authority complied with the request, it did so while expressing its disagreement with the executing authority's intention to execute the judgment in the executing Member State.⁵ In another exchange with the executing authority, the issuing authority noted that it would not agree to the indirect recognition of the judgment that was the basis of the EAW and its enforcement in the executing member state, with the executing authority solely relying on Article 4(6) EAW Framework Decision, which allows for the refusal of the EAW if the executing authority pledges to execute the judgment that is the basis of the EAW in its own territory.⁶ The issuing authority explained that if the executing authority intended to invoke the refusal ground laid down in Article 4(6) EAW Framework Decision, it would have to acquire the consent of the issuing authority for the recognition and execution of that judgment on the basis of Framework Decision 2008/909.⁷ In other words, the issuing authority wished to strictly adhere to the procedure for the mutual recognition of judgments imposing custodial sentences, as laid down in Framework Decision 2008/909.

Regardless of the issuing authority's intention, the executing authority proceeded with the recognition and enforcement of the judgment that served as the basis of the EAW, which was communicated to the issuing authority.⁸ Hence, this preliminary ruling procedure originated from different interpretations of Article 4(6) EAW Framework Decision and the corresponding rules of Framework Decision 2008/909 in the issuing and executing Member States. Essentially, the executing authority believed that the application of the refusal ground laid down in Article 4(6) EAW Framework Decision automatically enabled the recognition and enforcement of a judgment that was the basis of an EAW, while the issuing authority was convinced that recognition and enforcement should be carried out

³ *ibid* para. 21.

⁴ *ibid* para. 22.

⁵ *ibid* para. 24.

⁶ Council Framework Decision 2002/5894/JHA of the Council of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [2002] OJ L190, art. 4(6).

⁷ *C.J.* (n 1) para. 25.

⁸ *ibid* para. 26-29.

in an individual procedure based on Framework Decision 2008/909.

It is against this background that the issuing authority referred five questions to the ECJ. According to the Court, the first to third questions inquired whether applying the refusal ground laid down in Article 4(6) EAW Framework Decision presupposes that the executing authority complied with Framework Decision 2008/909 as regards the criteria laid down for the recognition and execution of a foreign judgment in the executing Member State, and if not, does the issuing Member State retain the right to execute the EAW.⁹

In addition, by the fourth question, the referring court essentially asked whether the decision to suspend the sentence recognised by the executing Member State results in the applicability of the *ne bis in idem* principle.¹⁰ Last, but not least, the fifth question was considered irrelevant to the case by the Court.¹¹ The latter questions and the ECJ's answers to them will not be analysed as they are not relevant to the topic of this annotation.

III. THE REASONING AND THE JUDGMENT OF THE COURT

By reformulating the first three questions, the ECJ held that the interplay between the EAW Framework Decision and Framework Decision 2008/909 had to be analysed. First, it considered whether the executing authority must meet the conditions for recognition and enforcement of a judgment imposing a custodial sentence, as laid down in Framework Decision 2008/909, if it intended to invoke Article 4(6) EAW Framework Decision to refuse an EAW with the intention to recognise and enforce the judgment that is the basis of that warrant. Second, it examined whether the issuing Member State retains the right to execute the judgment if the executing authority does not comply with the standards laid down in Framework Decision 2008/909.

To answer the first part of the question, the ECJ examined the rights and obligations of the issuing and executing Member States as set out in Framework Decision 2008/909 regulating the mutual recognition of judgments imposing custodial sentences. First, it compared the purpose of Framework Decision 2008/909 and the refusal ground in Article 4(6) EAW Framework Decision. It noted that both the former framework decision and the latter refusal ground aim to facilitate the social rehabilitation of a sentenced person after the execution of a custodial sentence. Moreover, they set the same requirements for the application of the refusal ground and the recognition and enforcement of judgments.¹² Thus,

⁹ *ibid* para. 38.

¹⁰ *ibid* para. 33(4).

¹¹ *ibid* para. 99.

¹² *ibid* para. 43-44., 47. According to Framework Decision 2008/909, a judgment may be rec-

it concluded that the refusal ground regulated in Article 4(6) EAW Framework Decision may only be applied in compliance with the rules set out in Framework Decision 2008/909.¹³

Even though the ECJ clearly established that the concerned refusal ground may be applied strictly in compliance with the requirements laid down in Framework Decision 2008/909, it faced another problem, as it had yet to encounter any cases where the issuing authority did not consent to the recognition and execution of a judgment that was the basis of the EAW. Hence, to answer the first question, it also examined whether the consent of the issuing Member State to the recognition and execution of the judgment that is the basis of an EAW is a precondition for the application of the refusal ground in question.

In this regard, the ECJ first observed whether the consent of the issuing Member State is required for the recognition and execution of a judgment imposing a custodial sentence. It held that such consent is indeed indispensable, as indicated by certain rules laid down in Framework Decision 2008/909. First, it noted that Article 4 of Framework Decision 2008/909 states that recognition and enforcement may be initiated by the issuing Member State by sending the judgment and the certificate prescribed therein to the executing Member State. If a Member State does not do so, it indicates that it does not consent to the recognition and enforcement of the judgment. Consequently, the issuing Member State has the discretion to grant the executing Member State the right to execute a judgment delivered in the issuing Member State.¹⁴ Second, the ECJ also noted that Article 13 of Framework Decision 2008/909 entitles the issuing Member State to withdraw the certificate before the execution of the judgment begins, which reinstates its right to execute the judgment. In the Court's view, this also confirms that the consent of the issuing Member State is a condition for the recognition and execution of a judgment in the executing Member State.¹⁵ Moreover, it also held that the purpose of social rehabilitation – existing both in Framework Decision 2008/909 and Article 4(6) EAW Framework Decision previously estab-

ognised and enforced in another member state if the sentenced person is a national or a resident of the executing member state. Article 4(6) of the EAW Framework Decision sets the same conditions for the application of the refusal ground for the execution of the judgment that is the basis of the EAW in the executing member state. See: Framework Decision 2008/909/JHA of the Council 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 [2018] OJ L327/27 (Framework Decision 2008/909/JHA), art. 4(1)-(2) *cf.* EAW Framework Decision art. 4(6).

¹³ *C.J.* (n 1) paras. 49. and 51.

¹⁴ *ibid* para. 57.

¹⁵ *ibid* para. 59.

lished in the case law of the ECJ¹⁶ – is not unlimited. Instead, the recognition and execution of a judgment in another Member State must be consistent with the criminal policy considerations of the issuing Member State as well.¹⁷

Consequently, the executing Member State's request for a sentencing judgment is insufficient in and of itself for the recognition and execution of a judgment under Framework Decision 2008/909.¹⁸ The same applies to the application of the refusal ground regulated in Article 4(6) EAW Framework Decision as well. Even though the executing authority may invoke that refusal ground, it does not establish the consent that must be given by the issuing Member State for the recognition and execution of a judgment in the executing Member State.¹⁹ Furthermore, the ECJ noted that issuing an EAW already presupposes that the issuing Member State intends to exercise its right to execute the judgment. If it had not planned to do so, it would not have issued an EAW in the first place.²⁰

After having examined whether the consent of the issuing Member State is necessary for the application of the concerned refusal ground, it turned to the question of what the consequences are of the lack of that consent, since the executing authority proceeded as such in the case at hand.²¹ It argued that the right to execute the judgment in such cases is reserved for the issuing Member State,²² since the purpose of the EAW is to avoid the impunity of offenders escaping from the Member State where their criminal liability was established.²³ It held that if the refusal of execution without the consent of the issuing Member State would be possible, even though Framework Decision 2008/909 clearly provides discretion for it in this regard, it would undermine the very system of criminal cooperation based on the EAW, the purpose of which is to simplify cooperation in order to punish criminals. Such an interpretation of the concerned framework decisions would jeopardise the punitive aim of criminal justice.²⁴ Thus, the ECJ reiterated that the EAW may be upheld regardless of whether the executing authority decided to invoke Article 4(6) EAW Framework Decision.²⁵ However, it did note that the issuing authority should carefully consider the consequences of upholding an EAW in such cases so as not to disproportionately affect the

¹⁶ Case C-700/21 *O.G.* [2023] ECLI:EU:C:2023:444, para. 49.

¹⁷ *C.J.* (n 1) para. 62-63.

¹⁸ *ibid* para. 64.

¹⁹ *ibid* para. 65.

²⁰ *ibid* para. 67.

²¹ *ibid* para. 74.

²² *ibid* para. 76.

²³ *ibid* para. 77.

²⁴ *ibid* paras. 79-80. and 82.

²⁵ *ibid* para. 84.

concerned person with its decision in the process.²⁶

IV. COMMENTS

In summary, the ECJ established a clear relationship between Article 4(6) EAW Framework Decision and Framework Decision 2008/909. It highlighted that it is not enough to pursue a legitimate aim when applying the refusal ground; the executing authority must also acquire the consent of the issuing Member State when it wants to execute a judgment that is the basis of an EAW in line with the rules laid down in the latter framework decision. In addition, the ECJ held that if these requirements are not met, the issuing Member State is entitled to uphold the EAW to execute the underlying judgment.

Consequently, the ECJ's judgment in case C-305/22 C.J. clarified the relationship between the EAW Framework Decision and Framework Decision 2008/909 by further developing its case law on the interpretation of the refusal ground regulated in Article 4(6) EAW Framework Decision. Even though it already confirmed in its previous judgments that the refusal ground is only applicable if it serves a legitimate purpose,²⁷ that is, the social reintegration of the sentenced person,²⁸ it has failed to emphasise the necessity of acquiring consent to recognise and execute a judgment from the issuing Member State as required by Framework Decision 2008/909 until now. This is especially important because neither the EAW Framework Decision nor Framework Decision 2008/909 provides any rules for cases in which the procedures for the recognition and execution of an EAW and a judgment imposing a custodial sentence overlap.²⁹ This is a particularly significant problem in terms of Framework Decision 2008/909, which was adopted six years after the EAW Framework Decision, thus it could have easily regulated the relationship between the two cooperation systems, but failed to do so. Nevertheless, the ECJ's judgment in the current case mitigates this overlap by prescribing the application of the same standards for the refusal of an EAW for the purpose of executing the underlying judgment and the recognition and execution of a judgment in the executing Member State, including acquiring the consent of the issuing Member State.

²⁶ *ibid* para. 85.

²⁷ O.G. (n 16) para. 49.; Case C-514/17 *Sut* [2018] ECLI:EU:C:2018:1016, para. 33. and 36.

²⁸ Stefano Montaldo, 'Framework Decision 2008/909/JHA and Fundamental Rights Concerns: In Search of Appropriate Remedies' in Stefano Montaldo (ed), *The Transfer of Prisoners in the European Union. Challenges and Prospects in the Implementation of Framework Decision 2008/909/JHA* (Eleven 2020) 48.

²⁹ Stefano Montaldo, Alexandru Damian and José A. Brandariz, 'The Road Ahead: Proposals for Improving the Implementation of Framework Decision 2008/909/JHA' in Stefano Montaldo (ed), *The Transfer of Prisoners in the European Union. Challenges and Prospects in the Implementation of Framework Decision 2008/909/JHA* (Eleven 2020) 159.

Moreover, the current judgment suggests that these two procedures are not mutually exclusive; hence, judicial authorities are not obliged to choose which one of them they intend to utilise for the execution of a judgment rendered in absentia of the accused, as it was previously suggested by one author.³⁰ This conclusion is further reiterated by the fact that the ECJ held that the issuing and executing authorities must consult with each other only after the application of this refusal ground is considered.³¹ I believe that such a consultation would serve to clarify whether the issuing Member State is willing to give up its role in executing the judgment. If not, the EAW shall be executed even though the executing authority would rather execute the judgment in its own territory for better social rehabilitation.³² Such practice could prove to be beneficial for judicial cooperation because the question of the execution of a judgment in another Member State does not have to be discussed prior to issuing an EAW, which would prolong judicial cooperation.

Finally, it is worth emphasising that the ECJ drew attention to the significance of the decision of the issuing authority. Although it is acknowledged that the purpose of the social reintegration of the requested person may not be pursued limitlessly and may be subject to restrictions based on the criminal justice policies of the issuing Member State, the issuing authority should still carefully consider the consequences of its decision denying consent to the recognition and execution of a judgment in the executing Member State. Unfortunately, the ECJ has failed to elaborate on its position. Consequently, it remains a question what aspects it deems worthy of consideration when deciding on consenting to the recognition and execution of a judgment imposing custodial sentences. However, I believe that the issuing authority should have fundamental rights-based considerations when deciding on consent to recognition and execution, such as the right to private and family life, which is closely related to social reintegration especially in light of the preamble of Framework Decision 2008/909 which sets out on multiple accounts that the chances of social rehabilitation may be enhanced if the custodial sentence is executed in a Member State to which a sentenced person is attached by family, linguistic, cultural, social or economic links.³³ On the other hand though, it is worthy of emphasis that the ECJ's ambiguous suggestion may constrict the sovereignty of Member States in exercising their punitive powers. Such limitation is not put forward in Framework Decision 2008/909. Moreover, even the current judgment of the ECJ suggests that Mem-

³⁰ Alessandro Roasó, 'Framework Decision 2008/909/JHA in Context: Interplay with the European Arrest Warrant and (EU) Extradition Law' in Stefano Montaldo (ed), *The Transfer of Prisoners in the European Union. Challenges and Prospects in the Implementation of Framework Decision 2008/909/JHA* (Eleven 2020) 85.

³¹ *C.J.* (n 1) para. 68.

³² *ibid* para. 70.

³³ Framework Decision 2008/909/JHA, Preamble (9)-(10).

ber States have a wide margin of discretionary power when deciding on giving consent to the execution of a judgment in another Member State. Thus, this part of the ECJ's judgment seems contradictory to its other observations. Nevertheless, the Court's real intentions with this statement remain unknown. Perhaps it will elaborate its view on this matter in a future preliminary ruling procedure in the same vein.

V. CONCLUSION

In conclusion, the ECJ's judgment in case C-305/22 provides valuable additions to its case law regarding the interplay between the EAW Framework Decision and Framework Decision 2008/909. It not only reaffirms that Article 4(6) EAW Framework Decision and Framework Decision 2008/909 have the same purpose, but it also reiterates that the refusal ground regulated in Article 4(6) is applicable only in compliance with the latter framework decision. By doing so, it established that the consent of the issuing Member State is a condition for the recognition and execution of a sentencing judgment in the executing Member State. This is especially important since it was not obvious before the judgment that mere recourse to Article 4(6) EAW Framework Decision cannot substitute the consent of the issuing Member State in this regard. Moreover, it clarified that the issuing Member State retains the right to execute the judgment if consent is not provided, thereby strengthening the underlying logic of the EAW.

As a result, judicial authorities now have clear instructions to follow when they wish to apply Article 4(6) EAW Framework Decision. The judgment suggests that the executing authority must acquire the consent of the issuing Member State for the recognition and execution of a judgment serving as the basis of an EAW. It also became clear that the application of Article 4(6) EAW Framework Decision and the recognition and execution of a judgment based on Framework Decision 2008/909 are not mutually exclusive, which eliminates the need for consultation between issuing and executing authorities prior to the issuance of an EAW, thereby simplifying judicial cooperation in cases concerning the execution of judgments imposing custodial sentences.

Finally, it should be kept in mind that the Court also introduced an unclear obligation for the issuing authority when considering consenting to the recognition and execution of a judgment imposing a custodial sentence, suggesting that the issuing authority should measure the pros and cons of giving consent from the point of view of the requested person. In my opinion, such an assessment can only be carried out from a fundamental rights perspective. However, the Court failed to point this out in its judgment. Nevertheless, if the ECJ further elaborates this obligation in the future, it might turn out that it aims to constrict the Member States punitive powers for the sake of fundamental rights protection.

and social rehabilitation of sentenced persons, which is clearly not provided for in Framework Decision 2008/909. As such, this part of the current judgment may give rise to confusion in national courts.