



Uimhir 20 de 2019

**An tAcht um Cheartas Coiriúil (Aitheantas Frithpháirteach do Bhreithiúnais
agus Breitheanna Promhaidh), 2019**
[An tiontú oifigiúil]



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**AN tACHT UM CHEARTAS COIRIÚIL (AITHEANTAS
FRITHPHÁIRTEACH DO BHREITHIÚNAIS AGUS BREITHEANNA
PROMHAIDH), 2019**

[An tiontú oifigiúil]

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CINNEADH RÉIME 2008/947/CGB ÓN gCOMHAIRLE AN 27 SAMHAIN 2008 MAIDIR LE PRIONSABAL AN AITHEANTAIS FHRITHPHÁIRTIGH A FHEIDHMIÚ MAIDIR LE BREITHIÚNAIS AGUS BREITHEANNA PROMHAIDH D'FHONN BEARTA PROMHAIDH AGUS SMACHTBHANNAÍ MALARTACHA A MHAOIRSIÚ

[2019.]

*An tAcht um Cheartas Coiriúil (Aitheantas
Frithpháirteach do Bhreithiúnais agus
Breitheanna Promhaidh), 2019.*

[Uimh. 20.]

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An tAcht um Dhlínse Choiriúil, 1960 (Uimh. 27)

An tAcht um Cheartas Coiriúil, 2006 (Uimh. 26)

An tAcht um Mí-Úsáid Drugaí, 1977 (Uimh. 12)

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Probation of Offenders Act 1907 (7 Edw. 7, c. 17)

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Uimhir 20 de 2019

**AN tACHT UM CHEARTAS COIRIÚIL (AITHEANTAS
FRITHPHÁIRTEACH DO BHREITHIÚNAIS AGUS BREITHEANNA
PROMHAIDH), 2019**

[An tiontú oifigiúil]

Acht do thabhairt éifeacht do Chinneadh Réime 2008/947/CGB ón gComhairle an 27 Samhain 2008¹ maidir le prionsabal an aitheantais fhrithpháirtigh a fheidhmiú maidir le breithiúnais agus breitheanna promhaidh d'fhonn bearta promhaidh agus smachtbhannaí malartacha a mhaoirsiú, arna leasú le Cinneadh Réime 2009/299/CGB ón gComhairle an 26 Feabhra 2009² lena leasaítear Cinntí Réime 2002/584/CGB, 2005/214/CGB, 2006/783/CGB, 2008/909/CGB agus 2008/947/CGB, agus lena ndéantar, ar an tslí sin, cearta nóis imeachta daoine a fheabhsú agus feidhmiú phrionsabal an aitheantais fhrithpháirtigh a chothú maidir le breitheanna arna dtabhairt i gcás an duine lena mbaineann a bheith as láthair ón triail; agus do dhéanamh socrú i dtaobh nithe gaolmhara. [7 Iúil 2019]

Achtaítear ag an Oireachtas mar a leanas:

CUID 1

RÉAMHRÁITEACH AGUS GINEARÁLTA

Gearrtheideal agus tosach feidhme

1. (1) Féadfar an tAcht um Cheartas Coiriúil (Aitheantas Frithpháirteach do Bhreithiúnais agus Breitheanna Promhaidh), 2019 a ghairm den Acht seo.
- (2) Tiocfaidh an tAcht seo i ngníomh cibé lá nó laethanta a cheapfaidh an tAire le hordú nó le horduithe i gcoitinne nó faoi threoir aon chríoch nó foráil áirithe agus féadfar laethanta éagsúla a cheapadh amhlaidh chun críoch éagsúil agus le haghaidh forálacha éagsúla.

Léiriú

2. (1) San Acht seo—

1 IO Uimh. L 337, 16.12.2008, lch.102

2 IO Uimh. L 81, 27.03.2009, lch.24

ciallaíonn “Acht 2006” an tAcht um Cheartas Coiriúil, 2006;

ciallaíonn “cúirt chúí”—

(a) i gcás go ndéanfar iarratas faoi *alt 23(1)(a)* i ndáil le breithiúnas agus, más infheidhme, i ndáil leis an mbreith phromhaidh i leith cion a gceanglófaí é a thriail sa Phríomh-Chúirt Choiriúil dá mba rud é go ndéileálfai leis faoi dhlí an Stáit, an Ard-Chúirt, agus

(b) in aon chás eile, an Chúirt Chuarda;

ciallaíonn “deimhniú Airteagal 6” an deimhniú—

(a) dá bhforáiltear in Airteagal 6 den Chinneadh Réime, agus

(b) a bhfuil an fhoirm chaighdeánach dó leagtha amach in Iarscríbhinn I a ghabhann leis an gCinneadh Réime;

ciallaíonn “Cinneadh Réime” Cinneadh Réime 2008/947/CGB ón gComhairle an 27 Samhain 2008 maidir le prionsabal an aitheantais fhrithpháirtigh a fheidhmiú maidir le breithiúnais agus breitheanna promhaidh d’fhonn bearta promhaidh agus smachtbhannaí malartacha a mhaoirsiú, arna leasú le Cinneadh Réime 2009/299/CGB ón gComhairle an 26 Feabhra 2009 lena leasaítear Cinntí Réime 2002/584/CGB, 2005/214/CGB, 2006/783/CGB, 2008/909/CGB agus 2008/947/CGB, agus lena ndéantar, ar an tslí sin, cearta nóis imeachta daoine a fheabhsú agus feidhmiú phrionsabal an aitheantais fhrithpháirtigh a chothú maidir le breitheanna arna dtabhairt i gcás an duine lena mbaineann a bheith as láthair ón triail (a bhfuil an téacs den Chinneadh Réime sin 2008/947/CGB ón gComhairle, arna leasú amhlaidh, leagtha amach mar áis tagartha sa *Sceideal*);

ciallaíonn “údarás inniúil Ballstáit”, i ndáil le Ballstát (seachas an Stát), an t-údarás arna shainainmniú ag an mBallstát sin chun bheith ina údarás inniúil sa Bhallstát sin chun críocha an Chinnidh Réime;

ciallaíonn “Aire” an tAire Dlí agus Cirt agus Comhionannais;

ciallaíonn “forordaithe” forordaithe le rialacháin arna ndéanamh ag an Aire;

folaíonn “beart promhaidh” tréimhse phromhaidh;

ciallaíonn “alt 2 d’Acht 1960” alt 2 den Acht um Dhlínse Choiriúil, 1960.

(2) Tá le focal nó le habairt a úsáidtear san Acht seo agus a úsáidtear freisin sa Chinneadh Réime an bhrí chéanna san Acht seo atá leis nó léi sa Chinneadh Réime, mura n-éilíonn an comhthéacs a mhalairt.

Feidhm an Achta

3. Ní bheidh feidhm ag forálacha an Achta seo i ndáil le breithiúnas a thabharfar roimh thosach feidhme na bhforálacha sin.

Údaráis inniúla a shainainmniú

4. (1) Faoi réir *fho-alt (2)*, déantar an tAire a shainainmniú mar an t-údarás inniúil sa Stát chun críocha an Chinnidh Réime.
- (2) Déantar an chúirt chuí a shainainmniú mar an t-údarás inniúil sa Stát chun na gcríoch seo a leanas—
- (a) Airteagal 14 den Chinneadh Réime (ach gan aon fhoráil den Airteagal sin a áireamh a bhaineann leis an mbreith ar scaoileadh saor coinníollach a chúlghairm), agus
- (b) Airteagal 20 den Chinneadh Réime sa mhéid go mbaineann sé le breitheanna iardain dá dtagraítear in Airteagal 14 den Chinneadh Réime (ach gan aon fhoráil de cheachtar de na hAirteagail sin a áireamh a bhaineann leis an mbreith ar scaoileadh saor coinníollach a chúlghairm).
- (3) D'fhonn amhras a sheachaint, ní bheidh an tAire ag gníomhú ina cháil nó ina cáil mar an t-údarás inniúil sa Stát chun críocha an Chinnidh Réime le linn dó nó di a fheidhmeanna nó a feidhmeanna a chomhlíonadh faoi *alt 1(2), 5(1) nó (3), 6 nó 19(2) nó (3)*.

Forálacha d'fhorlíonadh *alt 4*

5. (1) Féadfaidh an tAire, le hordú, cibé daoine a mheasfaidh sé nó sí a bheith cuí a shainainmniú chun cibé feidhmeanna a chomhlíonadh is feidhmeanna arb ina leith a bheidh an tAire ag gníomhú ina cháil nó ina cáil mar an t-údarás inniúil sa Stát chun críocha an Chinnidh Réime a shonrófar san ordú agus féadfar daoine éagsúla a shainainmniú amhlaidh chun feidhmeanna éagsúla a chomhlíonadh arb ina leith a bheidh an tAire ag gníomhú sa cháil sin dó nó di.
- (2) Fad a fhanfaidh ordú faoi *fho-alt (1)* i bhfeidhm, déanfar aon tagairt san Acht seo don Aire a fhorléiriú, sa mhéid go mbainfidh sí le comhlíonadh feidhme a shonrófar san ordú, mar thagairt don duine arna shainainmniú nó arna sainainmniú san ordú chun an fheidhm lena mbaineann a chomhlíonadh.
- (3) Déanfaidh an tAire, trí fhógra i scríbhinn, fógra a thabhairt d'Ard-Rúnaíocht Chomhairle an Aontais Eorpaigh i dtaobh ordú a dhéanamh faoin alt seo agus i dtaobh ainmneacha na ndaoine a shainainmneofar faoin ordú.

Orduithe agus rialacháin

6. (1) Féadfaidh an tAire, le rialacháin, foráil a dhéanamh maidir le haon ní dá dtagraítear san Acht seo mar ní atá forordaithe nó le forordú.
- (2) Gan dochar d'aon fhoráil den Acht seo, féadfaidh cibé forálacha teagmhasacha, forlontacha agus iarmhartacha a bheith i rialacháin faoin alt seo is dóigh leis an Aire a bheith riachtanach nó fóirsteanach chun críocha an rialacháin.
- (3) Déanfar gach ordú (seachas ordú faoi *alt 1(2)* nó ordú ó chúirt) agus gach rialachán faoin Acht seo a leagan faoi bhráid gach Tí den Oireachtas a luaithe is féidir tar éis a dhéanta agus, má dhéanann ceachtar Teach acu sin, laistigh den 21 lá a shuífidh an Teach sin tar éis an t-ordú nó an rialachán a leagan faoina bhráid, rún a rith ag neamhniú

an ordaithe nó an rialacháin, beidh an t-ordú nó an rialachán ar neamhní dá réir sin, ach sin gan dochar do bhailíocht aon ní a rinneadh roimhe sin faoin ordú nó faoin rialachán.

Caiteachais

7. Déanfar aon chaiteachais a thabhoídh an tAire ag riaradh an Achta seo a íoc, a mhéid a cheadóidh an tAire Caiteachais Phoiblí agus Athchóirithe é, as airgead a sholáthróidh an tOireachtas.

CUID 2

Is í ÉIRE AN STÁT EISIÚNA

Feidhm Chuid 2

8. Beidh feidhm ag an gCuid seo i gcás gurb é an Stát an stát eisiúna.

Mínithe

9. Sa Chuid seo—

tá le “ordú seirbhíse pobail” an bhrí a shanntar dó le halt 3 den Acht um Cheartas Coiriúil (Seirbhís Pobail), 1983;

tá le “Stiúrthóir na Seirbhíse Promhaidh” an bhrí a shanntar dó le halt 1 den Acht um Cheartas Coiriúil (Seirbhís Pobail), 1983;

ciallaíonn “breithiúnas sa Stát”—

- (a) ordú faoi alt 99(1) d’Acht 2006—
 - (i) ar dá bhun a rachaidh duine nádúrtha i gcúirtbhanna dá dtagraítear san alt sin, agus
 - (ii) a mbeidh coinníoll sonraithe ann lena gceanglófar an duine sin a chur faoi mhaoirseacht na Seirbhíse Promhaidh,
- (b) ordú seirbhíse pobail arna dhéanamh i leith duine nádúrtha,
- (c) ordú faoi alt 1 den *Probation of Offenders Act* 1907 ar dá bhun a rachaidh duine nádúrtha i gcúirtbhanna dá dtagraítear san alt sin i gcás go mbeidh sa chúirtbhanna sin an coinníoll a luaitear den chéad uair in alt 2(1) den Acht sin de bhua ordú promhaidh dá dtagraítear san alt sin 2(1),
- (d) cúirtbhanna dá dtagraítear in alt 28(2)(a) den Acht um Mí-Úsáid Drugaí, 1977—
 - (i) a rachaidh duine nádúrtha ann, agus
 - (ii) a mbeidh coinníoll ann lena gceanglófar an duine sin a chur faoi mhaoirseacht na Seirbhíse Promhaidh,
- (e) ordú lena bhforchuirfear smachtbhanna pobail (de réir bhrí alt 115 d’Acht na Leanaí, 2001) ar dhuine nádúrtha is leanbh de réir bhrí alt 3 den Acht sin,

(f) pianbhreith lena ngabhann maoirseacht iarscaoilte arna forchur ar dhuine nádúrtha faoi alt 29(1) den Acht um Chiontóirí Gnéis, 2001, nó

(g) pianbhreith dá dtagraítear in alt 2 d’Acht 1960 arna forchur ar dhuine nádúrtha a bhfuil breith phromhaidh tugtha ina thaobh nó ina taobh i leith na pianbhreithe sin;

ciallaíonn “breith phromhaidh”, i ndáil le breithiúnas dá dtagraítear i *mír (g)* den mhíniú ar “breithiúnas sa Stát”, treorú dá dtagraítear in alt 2 d’Acht 1960 ar dá bhun a scaoilfear an duine faoi phianbhreith saor as príosún ar feadh tréimhse is faide ná an chuid den phianbhreith phríosúnachta a bheidh fágtha agus dá dtagraítear san alt sin 2 a mbeadh ar an duine í a chur isteach murach gur scaoileadh saor é nó í;

tá le “Seirbhís Phromhaidh” an bhrí a shanntar dó le halt 1 den Acht um Cheartas Coiriúil (Seirbhís Pobail), 1983;

ciallaíonn “duine faoi phianbhreith”, i ndáil le breithiúnas sa Stát agus, más infheidhme, i ndáil leis an mbreith phromhaidh, an duine nádúrtha a mbeidh an breithiúnas sin agus, más infheidhme, an bhreith phromhaidh sin tugtha ina thaobh nó ina taobh;

ciallaíonn “breith iardain”, i ndáil le beart promhaidh nó smachtbhanna malartach arna fhorchur le breithiúnas sa Stát agus, más infheidhme, leis an mbreith phromhaidh, breith—

(a) lena ndéanfar oibleagáid nó treoir arna forchur leis an mbeart promhaidh nó leis an smachtbhanna malartach a athrú nó a chúlghairm,

(b) i ndáil le breithiúnas a thagann faoi réim *mhír (a)* den mhíniú ar “breithiúnas sa Stát”, lena ndéanfar an t-ordú lena mbaineann dá dtagraítear sa mhír sin a chúlghairm,

(c) i ndáil le breithiúnas dá dtagraítear i *mír (g)* den mhíniú ar “breithiúnas sa Stát”, lena ndéanfar an treorú lena mbaineann dá dtagraítear in alt 2 d’Acht 1960 a chúlghairm nó a athrú, nó

(d) lena ndéanfar, de dhroim mainneachtain ar thaobh an duine faoi phianbhreith an beart promhaidh nó an smachtbhanna malartach a chomhlíonadh—

(i) pianbhreith choimeádta, nó beart eile lena ngabhann cailleadh saoirse, a bheidh forchurtha ar an duine, a fhorfheidhmiú, nó

(ii) pianbhreith choimeádta, nó beart eile lena ngabhann cailleadh saoirse, a fhorchur ar an duine.

Iarraidh ar bhreithiúnas sa Stát, etc., a chur ar aghaidh chuig údarás inniúil Ballstáit

10. (1) Féadfaidh Stiúrthóir na Seirbhíse Promhaidh (de réir bhrí alt 1 den Acht um Cheartas Coiriúil (Seirbhís Pobail), 1983) iarraidh i scríbhinn a dhéanamh chuig an Aire chun breithiúnas sa Stát agus, más infheidhme, chun an bhreith phromhaidh i leith an duine faoi phianbhreith a chur ar aghaidh, de réir *alt 11*, chuig údarás inniúil Ballstáit.

(2) Féadfaidh an duine faoi phianbhreith, i leith breithiúnas sa Stát, iarraidh i scríbhinn a dhéanamh chuig an Aire chun an breithiúnas sin agus, más infheidhme, chun an bhreith phromhaidh a chur ar aghaidh, de réir *alt 11*, chuig údarás inniúil Ballstáit.

- (3) Féadfaidh an duine faoi phianbhreith, i leith breithiúnas sa Stát, iarraidh i scríbhinn a dhéanamh chuig an Aire chun an breithiúnas sin agus, más infheidhme, chun an bhreith phromhaidh a chur ar aghaidh, de réir *alt 11*, chuig údarás inniúil Ballstáit d'ainneoin nach é an Ballstát ina bhfuil gnáthchónaí ar an duine sin go dleathach, arna fhorléiriú de réir *alt 11(10)*, an Ballstát sin.

Breithiúnas sa Stát, etc., a chur ar aghaidh chuig údarás inniúil Ballstáit

11. (1) Ar iarraidh a fháil faoi *alt 10(1)* nó *(2)*, féadfaidh an tAire, de réir *fho-alt (8)*, an breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh lena mbaineann an iarraidh a chur ar aghaidh chuig an údarás inniúil Ballstáit lena mbaineann an iarraidh más deimhin leis an Aire maidir leis an duine faoi phianbhreith—
- (a) go bhfuil gnáthchónaí air nó uirthi go dleathach sa Bhallstát eile,
- (b) go bhfuil sé nó sí tar éis filleadh, nó go dteastaíonn uaidh nó uaithi filleadh, ar an Stát sin, agus
- (c) gur tharla ceann amháin díobh seo a leanas:
- (i) go bhfuil an ghnáth-thréimhse ama chun achomharc a thionscnamh i gcoinne an bhreithiúnais dulta in éag gan aon achomharc den sórt sin a bheith déanta;
- (ii) go ndearnadh achomharc den sórt sin a tharraingt siar nó a thréigean;
- (iii) ar aon achomharc den sórt sin a bheith déanta, gur seasadh leis an mbreithiúnas sin.
- (2) Ar iarraidh a fháil faoi *alt 10(3)*, féadfaidh an tAire, de réir *fho-alt (8)*, an breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh lena mbaineann an iarraidh a chur ar aghaidh chuig an údarás inniúil Ballstáit lena mbaineann an iarraidh, más deimhin leis an Aire—
- (a) gur thoiligh an t-údarás inniúil Ballstáit sin leis an gcur ar aghaidh sin, agus
- (b) gur tharla ceann amháin díobh seo a leanas:
- (i) go bhfuil an ghnáth-thréimhse ama chun achomharc a thionscnamh i gcoinne an bhreithiúnais dulta in éag gan aon achomharc den sórt sin a bheith déanta;
- (ii) go ndearnadh achomharc den sórt sin a tharraingt siar nó a thréigean;
- (iii) ar aon achomharc den sórt sin a bheith déanta, gur seasadh leis an mbreithiúnas sin.
- (3) (a) Chun críocha *mhír (c)(i) d'fho-alt (1)* nó *mhír (b)(i) d'fho-alt (2)*, féadfaidh an tAire a iarraidh ar chláraitheoir nó cléireach na cúirte a thug an breithiúnas sa Stát lena mbaineann, i gcás go mbeidh an ghnáth-thréimhse ama chun achomharc a thionscnamh i gcoinne an bhreithiúnais dulta in éag gan aon achomharc den sórt sin a bheith déanta, deimhniú arna shíniú ag an gcláraitheoir nó ag an gcléireach a sholáthar don Aire ina luafar go bhfuil an ghnáth-thréimhse ama chun achomharc i gcoinne an bhreithiúnais a dhéanamh dulta in éag gan aon achomharc den sórt sin a bheith déanta.

- (b) Chun críocha *mhír (c)(ii)* agus *(iii) d'fho-alt (1)* nó *mhír (b)(ii)* nó *(iii) d'fho-alt (2)*, féadfaidh an tAire a iarraidh ar chláraitheoir nó cléireach na cúirte ar chuici a bheidh achomharc i gcoinne an bhreithiúnais sa Stát lena mbaineann déanta—
- (i) comhairle a thabhairt don Aire i dtaobh na nithe seo a leanas—
- (I) an ndearnadh achomharc den sórt sin a tharraingt siar nó a thréigean, nó
- (II) ar achomharc den sórt sin a bheith déanta, ar seasadh leis an mbreithiúnas sin,
- agus
- (ii) más í an chomhairle a thabharfar gurb amhlaidh an cás, deimhniú a sholáthar don Aire a bheidh sínithe ag an gcláraitheoir nó ag an gcléireach ina luafar, mar is cuí—
- (I) go ndearnadh achomharc den sórt sin a tharraingt siar nó a thréigean, nó
- (II) ar achomharc den sórt sin a bheith déanta, gur seasadh leis an mbreithiúnas sin.
- (4) Beidh feidhm ag *fo-alt (5)* más rud é go ndéanfaidh an t-údarás inniúil Ballstáit, ar chuige a bheidh breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh curtha ar aghaidh faoin alt seo, iarraidh chuig an Aire go ndéanfar an breithiúnas nó cóip den bhreithiúnas arna fíordheimhniú go cuí a sholáthar dó.
- (5) (a) Comhlíonfaidh an tAire iarraidh faoi *fho-alt (4)* a luaithe is indéanta.
- (b) Chun críoch an chomhlíonta sin, féadfaidh an tAire a iarraidh ar chláraitheoir nó cléireach na cúirte, ag a mbeidh an breithiúnas sa Stát lena mbaineann tugtha, an breithiúnas sin nó cóip den bhreithiúnas arna fíordheimhniú go cuí a sholáthar don Aire.
- (6) Comhlíonfaidh cláraitheoir nó cléireach na cúirte lena mbaineann, is ábhar d'iarraidh faoi *fho-alt (3)* nó *(5)(b)*, an iarraidh a luaithe is indéanta tar éis dó nó di an iarraidh a fháil.
- (7) Le linn don Aire breith a thabhairt i dtaobh an ndéanfaidh sé nó sí, faoin alt seo, breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh a chur ar aghaidh chuig an údarás inniúil Ballstáit, beidh aird aige nó aici ar na dearbhuithe arna ndéanamh ag an mBallstát eile faoi Airteagail 5(4), 10(4) agus 14(3) den Chinneadh Réime.
- (8) I gcás go mbeidh breith tugtha ag an Aire breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh a chur ar aghaidh chuig an údarás inniúil Ballstáit, déanfaidh an tAire—
- (a) an breithiúnas agus, más infheidhme, an bhreith phromhaidh a mbeidh deimhniú Airteagal 6 (agus, faoi réir *fho-alt (11)*, aistriúchán ar an deimhniú Airteagal 6 sin i dteanga iomchuí), arna shíniú ag an Aire, ag gabháil leis nó léi a chur ar aghaidh go díreach chuig an údarás inniúil Ballstáit ar aon mhodh ar ar féidir taifead i scríbhinn

a tháirgeadh faoi choinniollacha lena gceadófar don údarás inniúil Ballstáit fire an 2 (nó, más infheidhme, na 3 nó na 4) dhoiciméad a shuíomh, agus

- (b) más rud é go ndéanfaidh an t-údarás inniúil Ballstáit iarraidh chuig an Aire chun an deimhniú Airteagal 6 bunaidh nó an bhreith phromhaidh bhunaidh a sholáthar don údarás inniúil Ballstáit, na nithe seo a leanas a sholáthar don údarás inniúil Ballstáit—
 - (i) an deimhniú Airteagal 6 bunaidh sin nó an bhreith phromhaidh bhunaidh sin, nó
 - (ii) cóip den deimhniú Airteagal 6 bunaidh sin nó den bhreith phromhaidh bhunaidh sin arna deimhniú ag an Aire mar chóip dhílis den leagan bunaidh sin.
- (9) Ní dhéanfaidh an tAire breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh mar aon leis an deimhniú Airteagal 6 a bheidh ag gabháil leis nó léi a chur ar aghaidh faoin alt seo chuig níos mó ná údarás inniúil Ballstáit amháin ag aon tráth amháin.
- (10) (a) Faoi réir *mhír (b)*, measfar gnáthchónaí a bheith ar an duine faoi phianbhreith go dleathach i mBallstát eile más rud é go raibh cónaí air nó uirthi go dleathach sa Stát sin díreach sular tugadh an breithiúnas sa Stát lena mbaineann.
 - (b) Tabharfar neamhaird, chun críocha *mhír (a)*, ar thréimhse ina ndearnadh an duine faoi phianbhreith a athchur faoi choimeád, nó ina raibh pianbhreith phríosúnachta nó choinneála (i scoil coinneála leanaí de réir bhrí alt 3 d’Acht na Leanaí, 2001 nó in áit arna soláthar faoi alt 2 d’Acht na bPríosún, 1970) á cur isteach aige nó aici, sa Stát.
- (11) Ní cheanglófar ar an Aire aistriúchán dá dtagraítear i *bhfo-alt (8)(a)* ar an deimhniú Airteagal 6 lena mbaineann a chur ar aghaidh chuig an údarás inniúil Ballstáit más rud é gurb eol don Aire nach bhfuil aistriúchán den sórt sin ag teastáil ón údarás inniúil Ballstáit.
- (12) San alt seo, ciallaíonn “teanga iomchuí”, i ndáil le haistriúchán ar dheimhniú Airteagal 6 a bheidh le cur ar aghaidh faoin alt seo chuig an údarás inniúil Ballstáit, teanga oifigiúil an Bhallstáit nó ceann de theangacha oifigiúla an Bhallstáit.

Deimhniú Airteagal 6 a tharraingt siar

12. (1) I gcás go mbeidh breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh curtha ar aghaidh faoi *alt 11* chuig údarás inniúil Ballstáit, féadfaidh an tAire, an tráth céanna leis an gcur ar aghaidh sin nó dá éis, iarraidh i scríbhinn a dhéanamh chuig an údarás inniúil Ballstáit chun an phianbhreith choimeádta uasta, nó beart eile lena ngabhann cailleadh saoirse, a d’fhéadfaí a fhorchur ar an duine faoi phianbhreith dá mainneodh sé nó sí an beart promhaidh nó an smachtbhanna malartach lena mbaineann a chomhlíonadh, a chur in iúl don Aire.
- (2) Tá feidhm ag *fo-alt (3)* i gcás go bhfaighidh an tAire—
 - (a) faisnéis de bhun iarraidh faoi *fho-alt (1)*, nó
 - (b) tar éis breithiúnas sa Stát agus, más infheidhme, an bhreith phromhaidh a chur ar aghaidh faoi *alt 11* chuig údarás inniúil Ballstáit, fógra maidir le breith ón údarás

inniúil Ballstáit oiriúnú a dhéanamh, de réir Airteagal 9 den Chinneadh Réime, ar an mbeart promhaidh nó ar an smachtbhanna malartach lena mbaineann.

- (3) Faoi réir *fho-ailt (4)* agus *(5)*, féadfaidh an tAire, tar éis dó nó di aird a bheith aige nó aici ar an bhfaisnéis nó ar an oiriúnú dá dtagraítear i *bhfo-alt (2)*, breith a thabhairt i dtaobh an deimhniú Airteagal 6 lena mbaineann a tharraingt siar más é tuairim an Aire go mba é leas an phobail é, nó go mbeadh sé ar mhaithe leis an gceartas, dá ndéanfaí amhlaidh.
- (4) Ní dhéanfaidh an tAire deimhniú Airteagal 6 a tharraingt siar faoi *fho-alt (3)* más rud é go mbeidh maoirsiú ar an mbeart promhaidh nó ar an smachtbhanna malartach tosaithe cheana féin sa stát forghníomhaitheach.
- (5) Déanfaidh an tAire, a luaithe is indéanta tar éis dó nó di breith a thabhairt faoi *fho-alt (3)* deimhniú Airteagal 6 a tharraingt siar ach, in aon chás, tráth nach déanaí ná 10 lá tar éis dó nó di an fhaisnéis nó an fógra lena mbaineann dá dtagraítear i *bhfo-alt (2)* a fháil, fógra i scríbhinn maidir leis an mbreith sin a thabhairt don údarás inniúil Ballstáit agus don duine faoi phianbhreith.

Iarmhairtí de dhroim aitheantas arna thabhairt do bhreithiúnas sa Stát

13. (1) Faoi réir *fho-alt (3)* agus *alt 15*, beidh feidhm ag *fo-alt (2)* más rud é—
 - (a) go ndéanfaidh an t-údarás inniúil Ballstáit aitheantas a thabhairt do bhreithiúnas sa Stát agus, más infheidhme, don bhreith phromhaidh a bheidh curtha ar aghaidh faoi *alt 11* chuig an údarás inniúil sin, agus
 - (b) go mbeidh an t-aitheantas sin curtha in iúl ag an údarás inniúil Ballstáit don Aire.
- (2) (a) Ní bheidh inniúlacht ag an Stát a thuilleadh i ndáil le maoirsiú a dhéanamh ar an mbeart promhaidh nó an smachtbhanna malartach arna fhorchur leis an mbreithiúnas sa Stát agus, más infheidhme, leis an mbreith phromhaidh ná chun breitheanna iardain a thabhairt ar an mbeart promhaidh sin nó ar an smachtbhanna malartach sin.
- (b) Beidh inniúlacht ag an stát forghníomhaitheach i ndáil le maoirsiú a dhéanamh ar an mbeart promhaidh nó an smachtbhanna malartach arna fhorchur leis an mbreithiúnas sa Stát agus, más infheidhme, leis an mbreith phromhaidh agus chun breitheanna iardain a thabhairt ar an mbeart promhaidh sin nó ar an smachtbhanna malartach sin.
- (3) Fillfidh an inniúlacht dá dtagraítear i *bhfo-alt (2)(a)* ar an Stát, agus scoirfear den inniúlacht dá dtagraítear i *bhfo-alt (2)(b)*, díreach tar éis don údarás inniúil Ballstáit fógra faoi *alt 12(5)* a fháil maidir le breith faoi *alt 12(3)* ón Aire chun an deimhniú Airteagal 6 lena mbaineann a tharraingt siar.
- (4) (a) Beidh feidhm ag *mir (b)* i gcás go bhfaighidh an tAire fógra ón stát forghníomhaitheach á rá go bhfuil an stát forghníomhaitheach tar éis diúltú freagracht a ghabháil air féin as breith iardain faoi Airteagal 14(3) den Chinneadh Réime agus, dá dhroim sin, go bhfuil an t-údarás inniúil Ballstáit, sa mhéid go mbaineann sé leis an mbreith iardain sin, tar éis dlínse a tharchur ar ais chuig an Stát de réir Airteagal 14(4) den Chinneadh Réime.

- (b) Sa mhéid go mbaineann sé leis an mbreith iardain, fillfidh an inniúlacht dá dtagraítear i *bhfo-alt (2)(a)* ar an Stát, agus scoirfear den inniúlacht dá dtagraítear i *bhfo-alt (2)(b)*, díreach tar éis don Aire fógra den sórt sin a fháil.
- (5) I gcás go mbeidh feidhm ag *fo-alt (2)*, (3) nó (4) i ndáil le breithiúnas sa Stát agus, más infheidhme, i ndáil leis an mbreith phromhaidh, déanfaidh an tAire, a luaithe is indéanta tar éis an chur i bhfeidhm sin, fógra i scríbhinn maidir leis an gcur i bhfeidhm sin a thabhairt don chúirt a thug an breithiúnas.

Oibleagáid faisnéis áirithe a sholáthar d'údarás inniúil Ballstáit

14. (1) Déanfaidh an tAire, ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh agus a luaithe a thiocfaidh an tAire ar an eolas, i ndáil leis an mbreithiúnas sa Stát agus, más infheidhme, i ndáil leis an mbreith phromhaidh lena mbaineann, aon imthosca nó fionnachtana a chur in iúl don údarás inniúil Ballstáit, is imthosca nó fionnachtana a d'fhágfadh, i dtuairim an Aire, dá mba rud é go raibh an t-údarás inniúil Ballstáit ar an eolas faoi na himthosca nó faoi na fionnachtana, go bhféadfadh an t-údarás inniúil Ballstáit breith iardain amháin nó níos mó ná breith iardain amháin a thabhairt i ndáil leis an duine faoi phianbhreith.
- (2) Beidh feidhm ag *fo-alt (3)* i gcás go mbeidh dlínse ag an Stát, de bhun Airteagal 14(3) den Chinneadh Réime, maidir le breith iardain i ndáil le breithiúnas sa Stát agus, más infheidhme, i ndáil leis an mbreith phromhaidh.
- (3) Cuirfidh an tAire, a luaithe is indéanta tar éis breith iardain lena mbaineann an fo-alt seo a thabhairt, an bhreith sin a chur in iúl don údarás inniúil Ballstáit ar aon mhodh ar ar féidir taifead i scríbhinn a fhágáil.
- (4) Maidir leis an gcúirt a dhéanfaidh ordú (más ann) ar breith iardain í dá dtagraítear i *bhfo-alt (3)*, cuirfidh sí faoi deara cóip dheimhnithe den ordú a thabhairt don Aire tráth nach déanaí ná 4 lá oibre tar éis an t-ordú a dhéanamh.

Dlínse a tharchur ar ais chuig an Stát

15. (1) Más rud é, fad a bheidh an beart promhaidh nó an smachtbhanna malartach lena mbaineann á mhaoirsiú ag an stát forghníomhaitheach, go ndéanfar an duine faoi phianbhreith a chúiseamh i gcion faoi dhlí an Stáit, féadfaidh an tAire a iarraidh ar an údarás inniúil Ballstáit an inniúlacht dá dtagraítear in *alt 13(2)(b)*, sa mhéid go mbaineann an inniúlacht sin leis an mbeart promhaidh sin nó leis an smachtbhanna malartach sin, a tharchur ar ais chuig an Stát de bhun Airteagal 20(2) den Chinneadh Réime.
- (2) Beidh feidhm ag *fo-ailt (3)* go (5) i gcás go ndéanfaidh an t-údarás inniúil Ballstáit, i ndáil leis an mbeart promhaidh nó leis an smachtbhanna malartach lena mbaineann, an inniúlacht dá dtagraítear in *alt 13(2)(b)* a tharchur ar ais chuig an Stát—
- (a) de réir Airteagal 20(1) den Chinneadh Réime, nó
- (b) de réir Airteagal 20(2) den Chinneadh Réime tar éis don údarás inniúil Ballstáit iarraidh faoi *fho-alt (1)* arna déanamh ag an Aire a fháil.

- (3) (a) Athchromfaidh an Stát ar an inniúlacht dá dtagraítear in *alt 13(2)(b)* i ndáil leis an mbeart promhaidh nó leis an smachtbhanna malartach lena mbaineann.
- (b) Féadfaidh an tAire, chun críocha *fho-alt (4)*, a iarraidh ar an údarás inniúil Ballstáit faisnéis a bhaineann leis na nithe seo a leanas a sholáthar don Aire—
- (i) a fhad agus a mhéid a chomhlíon an duine faoi phianbhreith an beart promhaidh nó an smachtbhanna malartach sa stát forghníomhaitheach, agus
- (ii) aon bhreitheanna iardain arna dtabhairt ag an stát forghníomhaitheach i leith an bhirt promhaidh nó an smachtbhanna mhalartaigh.
- (4) Déanfaidh an tAire agus an chúirt chúí araon aon fhaisnéis arna soláthar don Aire a chur i gcuntas, is faisnéis de bhun iarraidh faoi *fho-alt (3)* chun an beart promhaidh nó an smachtbhanna malartach lena mbaineann a mhaoirsiú a thuilleadh agus i leith breitheanna iardain ar an mbeart promhaidh nó ar an smachtbhanna malartach.
- (5) I gcás go mbeidh an Stát, faoi *fho-alt (3)*, tar éis athchromadh ar dhlínse san inniúlacht dá dtagraítear in *alt 13(2)(b)* i ndáil leis an mbeart promhaidh nó leis an smachtbhanna malartach lena mbaineann, déanfaidh an tAire—
- (a) más rud é gur de bhun iarraidh faoi *fho-alt (1)* an t-athchromadh, fógra i scríbhinn faoin athchromadh a thabhairt don duine faoi phianbhreith a luaithe is indéanta tar éis an athchromtha sin, nó
- (b) más rud é gur de bhun Airteagal 20(1) den Chinneadh Réime an t-athchromadh, gach iarracht réasúnach chun fógra i scríbhinn faoin athchromadh sin a thabhairt don duine faoi phianbhreith.

CUID 3

IS Í ÉIRE AN STÁT FORGHNÍOMHAITHEACH

Feidhm Chuid 3

16. Tá feidhm ag an gCuid seo más rud é—

- (a) gurb é an Stát an Ballstát ar chuige atá breithiúnas agus, más infheidhme, an bhreith phromhaidh curtha ar aghaidh ag an údarás inniúil sa stát eisiúna de réir Airteagal 5 den Chinneadh Réime, nó
- (b) gurb é an Stát an stát forghníomhaitheach.

Léiriú

17. (1) Sa Chuid seo—

ciallaíonn “cion ioncain”, i ndáil le stát eisiúna, cion i dtaca le cánacha, dleachtanna, custaim nó rialú malartaithe;

ciallaíonn “duine faoi phianbhreith”, i ndáil le breithiúnas agus, más infheidhme, i ndáil leis an mbreith phromhaidh, an duine nádúrtha a mbeidh an breithiúnas sin agus, más infheidhme, an bhreith phromhaidh sin tugtha ina thaobh nó ina taobh.

- (2) Faoi réir *fho-ailt* (3) agus (5), maidir le duine nádúrtha a raibh a phríomháit chónaithe nó a príomháit chónaithe aige nó aici go dleathach sa Stát ar feadh an 12 mhí díreach roimh an dáta a gheobhaidh an tAire breithiúnas agus, más infheidhme, an bhreith phromhaidh i leith an duine sin, a bheidh curtha ar aghaidh ag an údarás inniúil sa stát eisiúna de réir *alt 20*, measfar, chun críocha na Coda seo, go bhfuil gnáthchónaí air nó uirthi go dleathach sa Stát an dáta a gheobhaidh an tAire an céanna.
- (3) Faoi réir *fho-alt* (4), i gcás pianbhreith ar fionraí nó scaoileadh saor coinníollach, ní mheasfar gnáthchónaí a bheith ar dhuine nádúrtha go dleathach sa Stát chun críocha na Coda seo mura mbeidh a phríomháit chónaithe nó a príomháit chónaithe aige nó aici go dleathach sa Stát ar feadh an 12 mhí díreach roimh fhorchur na pianbhreithe ar fionraí nó, de réir mar a bheidh, na pianbhreithe coimeádta lena mbaineann an scaoileadh saor coinníollach.
- (4) Chun a chinneadh an raibh a phríomháit chónaithe nó a príomháit chónaithe ag an duine nádúrtha sa Stát ar feadh an 12 mhí díreach roimh phianbhreith ar fionraí nó, de réir mar a bheidh, pianbhreith choimeádta lena mbaineann scaoileadh saor coinníollach a fhorchur, tabharfar neamhaird ar aon tréimhse ar lena linn a rinneadh an duine a athchur faoi choimeád roimh an triail ba bhun leis an bpianbhreith ar fionraí nó leis an bpianbhreith choimeádta.
- (5) Chun a chinneadh an raibh a phríomháit chónaithe nó a príomháit chónaithe ag duine nádúrtha sa Stát ar feadh an 12 mhí díreach roimh phianbhreith neamhchoimeádta (nach pianbhreith neamhchoimeádta í i dteannta pianbhreith choimeádta arna forchur leis an mbreithiúnas) a fhorchur de bhun breithiúnais, tabharfar neamhaird ar aon tréimhse ar lena linn a rinneadh an duine a athchur faoi choimeád roimh an triail ba bhun leis an bpianbhreith neamhchoimeádta.

Cionta comhréire

18. Chun críocha na Coda seo—

- (a) tá cion faoi dhlí an stáit eisiúna ina chion comhréire le cion faoi dhlí an Stáit i gcás go mbeadh an gníomh nó an neamhghníomh, arb é an cion é faoi dhlí an stáit eisiúna, dá ndéanfaí sa Stát é, ina chion faoi dhlí an Stáit, agus
- (b) tá cion faoi dhlí an Stáit ina chion comhréire le cion faoi dhlí an stáit eisiúna i gcás go mbeadh an gníomh nó an neamhghníomh, arb é an cion é faoi dhlí an Stáit, dá ndéanfaí sa stát eisiúna é, ina chion faoi dhlí an stáit eisiúna.

Bearta promhaidh agus smachtbhannaí malartacha lena mbaineann *Cuid 3*

19. (1) Beidh feidhm ag an gCuid seo maidir leis na bearta promhaidh agus leis na smachtbhannaí malartacha seo a leanas:
 - (a) oibleagáid ar an duine faoi phianbhreith aon athrú ar a áit chónaithe nó ar a háit chónaithe nó ar a áit oibre nó ar a háit oibre a chur in iúl d’údarás sonrach;

- (b) oibleagáid ar an duine faoi phianbhreith gan dul isteach i gceantair nó áiteanna áirithe nó i limistéir shainithe áirithe sa stát eisiúna nó sa Stát;
 - (c) oibleagáid ar an duine faoi phianbhreith ina mbeidh teorainneacha maidir le críoch an Stáit a fhágáil;
 - (d) treoracha maidir leis an duine faoi phianbhreith a bhaineann le hiompar, áit chónaithe, oideachas agus oiliúint, gníomhaíochtaí fóillíochta, nó ina mbeidh teorainneacha nó módúlachtaí maidir le gníomhaíocht ghairmiúil a sheoladh (ach gan dícháiliúchán gairmiúil arna fhorchur ar an duine faoi phianbhreith mar chuid den bheart nó den smachtbhanna a áireamh);
 - (e) oibleagáid ar an duine faoi phianbhreith tuairisciú d'údarás sonrach ag tráthanna sonraithe;
 - (f) oibleagáid ar an duine faoi phianbhreith teagmháil le daoine sonracha a sheachaint;
 - (g) oibleagáid ar an duine faoi phianbhreith teagmháil le nithe sonracha a sheachaint, ar nithe iad a d'úsáid, nó ar dócha a úsáidfidh, an duine faoi phianbhreith d'fhonn cion a dhéanamh;
 - (h) oibleagáid ar an duine faoi phianbhreith cúiteamh airgeadais a thabhairt mar gheall ar an dochar arb é an cion ba bhun leis an mbreithiúnas lena mbaineann ba chúis leis, nó oibleagáid cruthúnas a sholáthar go ndearnadh an oibleagáid chéadluaite, nó iad araon, a chomhlíonadh;
 - (i) oibleagáid ar an duine faoi phianbhreith seirbhís pobail a dhéanamh;
 - (j) oibleagáid ar an duine faoi phianbhreith comhoibriú le hoifigeach promhaidh nó le hionadaí do sheirbhís shóisialta ar a bhfuil freagrachtaí i leith daoine faoi phianbhreith;
 - (k) oibleagáid ar an duine faoi phianbhreith dul faoi chóireáil theiripeach nó faoi chóireáil don andúil;
 - (l) faoi réir *fho-alt (2)*, beart promhaidh nó smachtbhanna malartach arna fhorordú chun críocha na míre seo.
- (2) D'fhonn beart promhaidh nó smachtbhanna malartach a fhorordú, beidh aird ag an Aire ar na nithe seo a leanas—
- (a) Airteagal 1 den Chinneadh Réime, go háirithe athshlánúchán sóisialta daoine faoi phianbhreith a éascú, agus
 - (b) comhairle arna tabhairt ag Stiúrthóir na Seirbhíse Promhaidh don Aire—
 - (i) á rá go bhfuil beart nó smachtbhanna den sórt sin i mBallstát eile nach dtagann faoi réim *fho-alt (1)* faoi láthair, agus
 - (ii) á rá go bhfuil an tSeirbhís Phromhaidh in ann an beart sin nó an smachtbhanna sin a mhaoirsiú.
- (3) Déanfaidh an tAire, a luaithe is indéanta tar éis beart promhaidh nó smachtbhanna malartach a fhorordú chun críocha *fho-alt (1)(l)*, trí fhógra i scríbhinn arna thabhairt

d’Ard-Rúnaíocht Chomhairle an Aontais Eorpaigh, a chur in iúl don Ard-Rúnaíocht go bhfuil an Stát toilteanach an beart sin nó an smachtbhanna sin a mhaoirsiú, de réir mar a bheidh.

Breithiúnas, etc., a chur ar aghaidh chuig údarás inniúil sa Stát

20. (1) Beidh feidhm ag *fo-alt (2)* más rud é go n-eascróidh ceann amháin nó níos mó ná ceann amháin de na nithe seo a leanas (dá ngairtear “ní iomchuí” san alt seo):
- (a) nach mbeidh na nithe seo a leanas ag gabháil le breithiúnas agus, más infheidhme, leis an mbreith phromhaidh a chuirfear ar aghaidh chuig an Aire de bhun Airteagal 5 den Chinneadh Réime—
 - (i) deimhniú Airteagal 6, nó
 - (ii) más i dteanga seachas an Ghaeilge nó an Béarla a bheidh an deimhniú Airteagal 6, aistriúchán ar an deimhniú sin sa Ghaeilge nó sa Bhéarla;
 - (b) go measfaidh an tAire maidir le deimhniú Airteagal 6 a bheidh ag gabháil le breithiúnas agus, más infheidhme, leis an mbreith phromhaidh a chuirfear ar aghaidh chuig an Aire de bhun Airteagal 6 den Chinneadh Réime—
 - (i) go bhfuil sé neamhiomlán, nó
 - (ii) gur léir nach bhfreagraíonn sé don bhreithiúnas sin agus, más infheidhme, don bhreith sin.
- (2) Déanfaidh an tAire, a luaithe is indéanta tar éis do ní iomchuí eascairt, trí fhógra i scríbhinn arna thabhairt don údarás inniúil sa stát eisiúna—
- (a) an ní iomchuí a chur in iúl don údarás inniúil sa stát eisiúna, agus
 - (b) tréimhse ama réasúnach a shonrú ar laistigh di a fhéadfaidh an t-údarás inniúil sa stát eisiúna an gníomh leigheasta riachtanach a dhéanamh i ndáil leis an ní iomchuí.
- (3) Beidh feidhm ag *fo-alt (4)* más rud é go mbeidh doiciméad, a bheidh curtha ar aghaidh chuig an Aire chun críocha na Coda seo, curtha ar aghaidh go díreach chuig an Aire ar mhodh ar a mbeidh taifead i scríbhinn fágtha den doiciméad sin faoi choinníollacha a cheadóidh don Aire fire an doiciméid sin a shuíomh.
- (4) Measfar gurb é an taifead i scríbhinn den doiciméad an doiciméad a bheidh curtha ar aghaidh.
- (5) Chun críocha na Coda seo, measfar gur cóip dhílis de dhoiciméad bunaidh doiciméad más rud é go mbeidh sé deimhnithe mar chóip dhílis den doiciméad bunaidh ag an údarás inniúil sa stát eisiúna.
- (6) In imeachtaí lena mbaineann an Chuid seo, glacfar doiciméad i bhfianaise gan a thuilleadh cruthúnais má airbheartaíonn an doiciméad gurb é atá ann—
- (a) breithiúnas arna thabhairt ag an údarás inniúil sa stát eisiúna,
 - (b) breith phromhaidh arna thabhairt ag an údarás inniúil sa stát eisiúna,

- (c) deimhniú Airteagal 6 arna eisiúint ag an údarás inniúil sa stát eisiúna nó aistriúchán dá dtagraítear i *bhfo-alt (1)(a)(ii)* ar an deimhniú Airteagal 6, nó
 - (d) cóip dhílis den bhreithiúnas, breith phromhaidh, deimhniú Airteagal 6 nó aistriúchán sin.
- (7) In imeachtaí lena mbaineann an Chuid seo, mura suítear a mhalairt, beidh doiciméad a airbheartaíonn gur cóip dhílis de bhreithiúnas, breith phromhaidh nó deimhniú Airteagal 6 é dá dtagraítear i *bhfo-alt (6)*, ina fhianaise ar an mbreithiúnas, ar an mbreith phromhaidh nó ar an deimhniú lena mbaineann, de réir mar a bheidh.

Toiliú le breithiúnas, etc., a chur ar aghaidh i gcás nach bhfuil gnáthchónaí ar duine faoi phianbhreith go dleathach sa Stát

21. D’ainneoin nach bhfuil gnáthchónaí ar an duine faoi phianbhreith lena mbaineann go dleathach sa Stát, féadfaidh an tAire toiliú a thabhairt go ndéanfaidh an t-údarás inniúil Ballstáit breithiúnas, agus más infheidhme, an bhreith phromhaidh i leith an duine sin a chur ar aghaidh de réir Airteagal 5 den Chinneadh Réime más rud é—
- (a) gur saoránach Éireannach an duine, nó
 - (b) i dtuairim an Aire, go bhfuil dlúthbhaint ag an duine leis an Stát agus gur ar mhaithe le hathshlánúchán sóisialta an duine déanamh amhlaidh.

Breithiúnas, etc., a chur ar aghaidh chuig an Aire

22. (1) Beidh feidhm ag *fo-alt (2)* i gcás go bhfaighidh—
- (a) cúirt,
 - (b) Aire (seachas an tAire Dlí agus Cirt agus Comhionannais), nó
 - (c) aon duine a bheidh, thar ceann an Stáit, ag comhlíonadh aon fheidhm rialtais nó a bheidh, thar ceann an Stáit, ag urscaoileadh dualgais phoiblí i ndáil le riarachán poiblí,
- doiciméad iomchuí go díreach ó údarás inniúil an stáit eisiúna.
- (2) Déanfaidh an chúirt, an tAire nó an duine dá dtagraítear i *bhfo-alt (1)*—
- (a) an doiciméad iomchuí a chur ar aghaidh chuig an Aire, agus
 - (b) a luaithe is indéanta, an gníomh a bheidh déanta agus dá dtagraítear i *mír (a)* a chur in iúl d’údarás inniúil an stáit eisiúna, ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh.
- (3) San alt seo, ciallaíonn “doiciméad iomchuí”—
- (a) breithiúnas,
 - (b) breith phromhaidh,
 - (c) deimhniú Airteagal 6, nó
 - (d) aistriúchán ar dheimhniú Airteagal 6.

Breithiúnas, etc., a bhreithniú

23. (1) Faoi réir *fho-ailt* (2) agus (3), déanfaidh an tAire, tar éis don Aire breithiúnas agus, más infheidhme, an bhreith phromhaidh a fháil de bhun Airteagal 5 den Chinneadh Réime—
- (a) faoi réir *fho-alt* (9), iarratas, iar bhfógra chun an duine faoi phianbhreith, na Seirbhíse Promhaidh agus ceannfort an Gharda Síochána don dúiche ina bhfuil nó ina mbeidh cónaí ar an duine faoi phianbhreith, chuig an gcúirt chuí chun aitheantas a fháil faoi *alt* 24 don bhreithiúnas sin agus, más infheidhme, don bhreith phromhaidh sin, nó
 - (b) faoi réir *fho-alt* (10), ar cheann amháin nó níos mó ná ceann amháin de na forais a shonraítear in aon cheann *d'fho-ailt* (5) go (7), diúltú an breithiúnas sin agus, más infheidhme, an bhreith phromhaidh sin a aithint chun go ngabhfáidh an Stát air féin freagracht as an mbeart promhaidh nó as an smachtbhanna malartach lena mbaineann a mhaoirsiú.
- (2) Féadfaidh an tAire gníomh a iarchur faoi *fho-alt* (1) i leith an bhreithiúnais agus, más infheidhme, na breithe promhaidh dá dtagraítear san *fho-alt* sin más gá fós aon ghníomh leigheasta riachtanach dá dtagraítear in *alt* 20(2)(b) a dhéanamh, laistigh den tréimhse ama réasúnach dá dtagraítear san *alt* sin a shonrófar san fhógra lena mbaineann faoi *alt* 20(2) a thabharfar don údarás inniúil sa stát eisiúna, maidir leis an deimhniú Airteagal 6 a bhí ag gabháil nó ar chóir a bheith ag gabháil, leis an mbreithiúnas sin agus, más infheidhme, leis an mbreith phromhaidh sin.
- (3) Sula ndéanfaidh an tAire gníomh faoi *fho-alt* (1), rachaidh sé nó sí i gcomhairle leis an tSeirbhís Phromhaidh agus leis an nGarda Síochána.
- (4) I gcás go bhfaighidh an tAire breithiúnas agus, más infheidhme, an bhreith phromhaidh, mar aon leis an deimhniú Airteagal 6 a bheidh ag gabháil leis nó léi, de bhun Airteagail 5 agus 6 den Chinneadh Réime, déanfaidh an tAire, má iarrann an t-údarás inniúil sa stát eisiúna air nó uirthi déanamh amhlaidh, an téarma príosúnachta uasta, nó cailleadh saoirse eile a d'fhéadfaí a fhorchur ar an duine faoi phianbhreith, dá mainneodh sé nó sí an beart promhaidh nó an smachtbhanna malartach lena mbaineann a chomhlíonadh, a chur in iúl don údarás inniúil sa stát eisiúna.
- (5) Faoi réir *fho-alt* (8), féadfaidh an tAire diúltú breithiúnas agus, más infheidhme, an bhreith phromhaidh a aithint más rud é go mbeidh feidhm ag ceann amháin nó níos mó ná ceann amháin de na forais seo a leanas:
- (a) go mbeidh feidhm ag ní iomchuí de réir bhrí *alt* 20(1) i ndáil leis an deimhniú Airteagal 6 a bhí ag gabháil, nó ar chóir a bheith ag gabháil, leis an mbreithiúnas sin agus, más infheidhme, leis an mbreith phromhaidh sin, agus go mbeidh an tréimhse ama réasúnach arna sonrú san fhógra lena mbaineann faoi *alt* 20(2) arna thabhairt don údarás inniúil sa stát eisiúna i leith an ní sin tar éis dul in éag gan an gníomh leigheasta riachtanach dá dtagraítear in *alt* 20(2)(b) a bheith déanta i leith an ní sin;
 - (b) go mbeidh beart promhaidh nó smachtbhanna malartach sa deimhniú Airteagal 6 sin nach dtagann faoi réim *alt* 19(1);
 - (c) de bhua aon Acht den Oireachtas, go mbeidh an duine faoi phianbhreith díolmhaithe, faoi dhlí an Stáit, ó ionchúiseamh i leith cion arb éard é gníomh

nó neamhghníomh arb éard é, cibé acu go hiomlán nó go páirteach, an cion lena mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh;

- (d) go ndéanfar foráil leis an mbreithiúnas agus, más infheidhme, leis an mbreith phromhaidh maidir le cóireáil liachta nó theiripeach nárbh fhéidir leis an Stát nó go mbeadh sé neamhphraiticiúil don Stát, i dtuairim an Aire agus d'ainneoin *alt 24(2)*, í a sholáthar nó a mhaoirsiú;
 - (e) faoi réir *fho-alt (6)*, go mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh le cion a measfar faoi dhlí an Stáit gur cion é a rinneadh go hiomlán, nó a ndearnadh cuid riachtanach de, sa Stát.
- (6) Ní fhéadfaidh an tAire diúltú breithiúnas agus, más infheidhme, an bhreith phromhaidh a aithint ar an bhforas dá dtagraítear i *bhfo-alt (5)(e)* i ndáil le cion arna dhéanamh go páirteach sa Stát ach amháin in imthosca eisceachtúla, ag féachaint d'imthosca sonracha an cháis, agus go háirithe do cibé acu a rinneadh nó nach ndearnadh mórchuid nó cuid riachtanach den iompar lena mbaineann sa stát eisiúna.
- (7) Faoi réir *alt 21* agus *fho-alt (8)*, diúltóidh an tAire breithiúnas agus, más infheidhme, an bhreith phromhaidh a aithint más rud é go mbeidh feidhm ag ceann amháin nó níos mó ná ceann amháin de na forais seo a leanas:
- (a) nach bhfuil an duine faoi phianbhreith tar éis filleadh ar an Stát agus nach dteastaíonn uaidh nó uaithi filleadh ar an Stát;
 - (b) nach bhfuil an tAire tar éis a thoiliú nó a toiliú a thabhairt maidir leis an mbreithiúnas agus, más infheidhme, leis an mbreith phromhaidh, i leith an duine faoi phianbhreith, a chur ar aghaidh i gcás nach bhfuil gnáthchónaí ar an duine sin go dleathach sa Stát;
 - (c) gur léir láithreach ón bhfaisnéis arna soláthar sa deimhniú Airteagal 6 lena mbaineann gurbh ionann an breithiúnas agus, más infheidhme, an bhreith phromhaidh a aithint agus sárú ar an bprionsabal *ne bis in idem*;
 - (d) go mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh le cion faoi dhlí an stáit eisiúna nach bhfreagraíonn do chion faoi dhlí an Stáit;
 - (e) go bhfreagraíonn an cion faoi dhlí an stáit eisiúna lena mbaineann an breithiúnas do chion faoi dhlí an Stáit, arb ina leith nach bhféadfaí imeachtaí a thionscnamh i gcoinne duine den aois chéanna leis an duine faoi phianbhreith mar gheall ar a aois nó a haois tráth an chion;
 - (f) nár láithrigh an duine faoi phianbhreith i bpearsa ag na himeachtaí ba chúis leis an mbreithiúnas ach amháin i gcás go léirítear sa deimhniú Airteagal 6 a bhí ag gabháil leis an mbreithiúnas na nithe a cheanglaítear le pointí 2, 3 agus 4 de phointe (h) d'Iarscríbhinn I a ghabhann leis an gCinneadh Réime;
 - (g) gur lú ná 6 mhí fad an bhirt phromhaidh nó an smachtbhanna mhalartaigh lena mbaineann nó gur lú ná 6 mhí an méid atá fágtha d'fhad an bhirt nó an smachtbhanna.

- (8) Sa chás dá dtagraítear i *bhfo-alt (5)* nó *(7)*, féadfaidh an tAire, ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh, a iarraidh ar an údarás inniúil sa stát eisiúna aon fhaisnéis bhreise a cheanglaítear a chur ar fáil don Aire a luaithe is indéanta, sula gcinntfidh an tAire gan breithiúnas agus, más infheidhme, an bhreith phromhaidh a aithint chun go ngabhfaidh an Stát air féin freagracht as an mbeart promhaidh nó as an smachtbhanna malartach lena mbaineann a mhaoirsiú.
- (9) I gcás gurb í an Chúirt Chuarda an chúirt chúí chun críoch iarratais faoi *fho-alt (1)(a)*, déanfar an t-iarratas chuig an mbreitheamh den Chuairead a bheidh sainainmnithe chun na críche sin ag Uachtarán na Cúirte Cuarda.
- (10) Ní dhiúltóidh an tAire breithiúnas agus, más infheidhme, an bhreith phromhaidh a aithint ar an bhforas, i ndáil le cion ioncaim—
- (a) nach déantar aon cháin ná dleacht den chineál lena mbaineann an cion a fhorchur sa Stát, nó
- (b) nach ionann an cineál rialacha a bhaineann le cánacha, dleachtanna, custaim nó rialú malartaithe a bhfuil feidhm acu sa stát eisiúna agus na rialacha a bhfuil feidhm acu sa Stát maidir le cánacha, dleachtanna, custaim nó rialú malartaithe.

An chúirt chúí d'fhormhuiniú breithiúnais, etc.

24. (1) Beidh feidhm ag *fo-alt (2)* i gcás go ndéanfar iarratas faoi *alt 23(1)(a)* chuig an gcúirt chúí agus gur deimhin leis an gcúirt chúí go geomhlíonann an breithiúnas agus, más infheidhme, an bhreith phromhaidh is ábhar don iarratas forálacha na Coda seo is infheidhme maidir leis an mbreithiúnas sin agus, más infheidhme, maidir leis an mbreith phromhaidh sin.
- (2) Faoi réir *fho-ailt (3)* go *(10)* agus *ailt 25* agus *30*—
- (a) déanfaidh an chúirt chúí, faoi réir *mhíreanna (b)* agus *(c)*, ordú lena bhformhuinítear an breithiúnas agus, más infheidhme, an bhreith phromhaidh chun go n-aithneofar iad agus chun go ngabhfaidh an Stát air féin freagracht as an mbeart promhaidh nó as an smachtbhanna malartach lena mbaineann a mhaoirsiú,
- (b) más é tuairim na cúirte cúí go bhfuil an beart promhaidh nó an smachtbhanna malartach lena mbaineann, mar gheall ar chineál an bhirt promhaidh nó an smachtbhanna mhalartaigh, ar neamhréir le dlí an Stáit, féadfaidh sí—
- (i) an beart nó an smachtbhanna a oiriúnú de réir beart nó smachtbhanna arna fhorordú le dlí an Stáit i leith cion a fhreagraíonn don chion arb ina leith a rinneadh an beart promhaidh nó an smachtbhanna malartach a fhorchur, agus
- (ii) na hoiriúnuithe lena mbaineann a shonrú san ordú dá dtagraítear i *mír (a)*, agus
- (c) más é tuairim na cúirte cúí go bhfuil an tréimhse ar lena linn a mhairfidh an beart promhaidh nó an smachtbhanna malartach lena mbaineann ar neamhréir le dlí an Stáit, féadfaidh sí—

- (i) an tréimhse sin a oiriúnú de réir tréimhse ar lena linn a mhairfidh beart nó smachtbhanna, de réir mar a bheidh, arna fhorordú le dlí an Stáit i leith cion a fhreagraíonn don chion arb ina leith a rinneadh an beart promhaidh nó an smachtbhanna malartach a fhorchur, agus
 - (ii) na hoiriúnuithe lena mbaineann a shonrú san ordú dá dtagraítear i *mír (a)*.
- (3) (a) Freagróidh cineál an bhirt promhaidh nó an smachtbhanna mhalartaigh arna oiriúnú faoi *fho-alt (2)(b)*, a mhéid is indéanta, do chineál an bhirt promhaidh nó an smachtbhanna mhalartaigh roimh an oiriúnú sin.
- (b) Ní dhéanfar an t-oiriúnú faoi *fho-alt (2)(b)* ar an mbeart promhaidh nó ar an smachtbhanna malartach ar shlí—
- (i) a fhágfaidh go ndéanfar an beart promhaidh nó an smachtbhanna malartach a fhorthromú, nó
 - (ii) a fhágfaidh go sárófar an pionós uasta arna fhorordú le dlí an Stáit i leith cion a fhreagraíonn don chion arb ina leith a rinneadh an beart promhaidh nó an smachtbhanna malartach a fhorchur.
- (4) (a) Freagróidh an tréimhse ar lena linn a mhairfidh an beart promhaidh nó an smachtbhanna malartach arna oiriúnú faoi *fho-alt (2)(c)*, a mhéid is indéanta, don tréimhse ar lena linn a mhairfidh an beart promhaidh nó an smachtbhanna malartach roimh an oiriúnú sin.
- (b) Ní dhéanfar an t-oiriúnú faoi *fho-alt (2)(c)* ar an tréimhse ar lena linn a mhairfidh an beart promhaidh nó an smachtbhanna malartach ar shlí—
- (i) a fhágfaidh go ndéanfar an beart promhaidh nó an smachtbhanna malartach a fhorthromú, nó
 - (ii) a fhágfaidh go sárófar an pionós uasta arna fhorordú le dlí an Stáit i leith cion a fhreagraíonn don chion arb ina leith a rinneadh an beart promhaidh nó an smachtbhanna malartach a fhorchur.
- (c) I gcás gur faide an tréimhse ar lena linn a mhairfidh an beart promhaidh nó an smachtbhanna malartach ná a mhairfidh an tréimhse uasta arna forordú le dlí an Stáit i leith cion a fhreagraíonn don chion arb ina leith a rinneadh an beart promhaidh nó an smachtbhanna malartach a fhorchur, beidh an t-oiriúnú faoi *fho-alt (2)(c)* ar an tréimhse chéadluaithe comhionann leis an dara tréimhse a luaitear.
- (5) Maidir le hordú faoi *fho-alt (2)(a)*, sonrófar ann—
- (a) an beart nó an smachtbhanna faoi dhlí an Stáit dá bhfreagraíonn an beart promhaidh nó smachtbhanna malartach lena mbaineann, agus
 - (b) an chúirt arb os a comhair a bheidh aon imeachtaí iardain, a bhaineann leis an mbeart promhaidh nó leis an smachtbhanna malartach, le tionscnamh.
- (6) Faoi réir *fho-ailt (9)* agus *(10)*, féadfaidh an chúirt chúí diúltú breithiúnas agus, más infheidhme, an bhreith phromhaidh a fhorghuiniú más rud é go mbeidh feidhm ag ceann amháin nó níos mó ná ceann amháin de na forais seo a leanas:

- (a) go mbeidh feidhm ag ní iomchuí de réir bhrí *alt 20(1)* i ndáil leis an deimhniú Airteagal 6 a bhí ag gabháil, nó ar chóir a bheith ag gabháil, leis an mbreithiúnas sin agus, más infheidhme, leis an mbreith phromhaidh sin, agus go mbeidh an tréimhse ama réasúnach arna sonrú san fhógra lena mbaineann faoi *alt 20(2)* arna thabhairt don údarás inniúil sa stát eisiúna i leith an ní sin tar éis dul in éag gan an gníomh leigheasta riachtanach dá dtagraítear in *alt 20(2)(b)* a bheith déanta i leith an ní sin;
 - (b) go mbeidh beart promhaidh nó smachtbhanna malartach sa deimhniú Airteagal 6 sin nach dtagann faoi réim *alt 19(1)*;
 - (c) de bhua aon Acht den Oireachtas, go mbeidh an duine faoi phianbhreith díolmhaithe, faoi dhlí an Stáit, ó ionchúiseamh i leith cion arb éard é gníomh nó neamhghníomh arb éard é, cibé acu go hiomlán nó go páirteach, an cion lena mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh;
 - (d) go ndéanfar foráil leis an mbreithiúnas agus, más infheidhme, leis an mbreith phromhaidh maidir le cóireáil liachta nó theiripeach nárbh fhéidir leis an Stát nó go mbeadh sé neamhphraiticiúil don Stát, i dtuairim na cúirte cuí agus d'ainneoin *alt 24(2)*, í a sholáthar nó a mhaoirsiú;
 - (e) faoi réir *fho-alt (7)*, go mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh le cion a measfar faoi dhlí an Stáit gur cion é a rinneadh go hiomlán, nó a ndearnadh cuid riachtanach de, sa Stát.
- (7) Ní fhéadfaidh an chúirt chuí diúltú breithiúnas agus, más infheidhme, an bhreith phromhaidh a fhorghuiniú ar an bhforas dá dtagraítear i *bhfo-alt (6)(e)* i ndáil le cion arna dhéanamh go páirteach sa Stát ach amháin in imthosca eisceachtúla, ag féachaint d'imthosca sonracha an cháis, agus go háirithe do cibé acu a rinneadh nó nach ndearnadh mórchuid nó cuid riachtanach den iompar lena mbaineann sa stát eisiúna.
- (8) Faoi réir *alt 21* agus *fho-ailt (9)* agus *(10)*, diúltóidh an chúirt chuí breithiúnas agus, más infheidhme, an bhreith phromhaidh a fhorghuiniú más rud é go mbeidh feidhm ag ceann amháin nó níos mó ná ceann amháin de na forais seo a leanas:
- (a) nach bhfuil an duine faoi phianbhreith tar éis filleadh ar an Stát agus nach dteastaíonn uaidh nó uaithi filleadh ar an Stát;
 - (b) nach bhfuil an tAire tar éis a thoiliú nó a toiliú a thabhairt maidir leis an mbreithiúnas agus, más infheidhme, leis an mbreith phromhaidh, i leith an duine faoi phianbhreith, a chur ar aghaidh i gcás nach bhfuil gnáthchónaí ar an duine sin go dleathach sa Stát;
 - (c) gur léir láithreach ón bhfaisnéis arna soláthar sa deimhniú Airteagal 6 lena mbaineann gurbh ionann an breithiúnas agus, más infheidhme, an bhreith phromhaidh a fhorghuiniú agus sárú ar an bprionsabal *ne bis in idem*;
 - (d) go mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh le cion faoi dhlí an stáit eisiúna nach bhfreagraíonn do chion faoi dhlí an Stáit;
 - (e) go bhfreagraíonn an cion faoi dhlí an stáit eisiúna lena mbaineann an breithiúnas do chion faoi dhlí an Stáit, arb ina leith nach bhféadfaí imeachtaí a thionscnamh i

gcoinne duine den aois chéanna leis an duine faoi phianbhreith mar gheall ar a aois nó a haois tráth an chiona;

- (f) nár láithrigh an duine faoi phianbhreith i bpearsa ag na himeachtaí ba chúis leis an mbreithiúnas ach amháin i gcás go léirítear sa deimhniú Airteagal 6 a bhí ag gabháil leis an mbreithiúnas na nithe a cheanglaítear le pointí 2, 3 agus 4 de phointe (h) d'Iarscríbhinn I a ghabhann leis an gCinneadh Réime;
 - (g) gur lú ná 6 mhí fad an bhirt phromhaidh nó an smachtbhanna mhalartaigh nó gur lú ná 6 mhí an méid atá fágtha d'fhad an bhirt nó an smachtbhanna.
- (9) I gcás dá dtagraítear i *bhfo-alt (6)* nó *(8)*, féadfaidh an chúirt chuí a iarraidh ar an Aire aon fhaisnéis bhreise a theastaíonn ón gcúirt chuí a fháil ón údarás inniúil sa stát eisiúna a luaithe is indéanta, sula ndiúltóidh an chúirt chuí breithiúnas agus, más infheidhme, an bhreith phromhaidh a fhorhmuiniú chun go ngabhfaidh an Stát air féin freagracht as an mbeart promhaidh nó as an smachtbhanna malartach lena mbaineann a mhaoirsiú.
- (10) Ní dhiúltóidh an chúirt chuí breithiúnas agus, más infheidhme, an bhreith phromhaidh a fhorhmuiniú ar an bhforas, i ndáil le cion ioncain—
- (a) nach déantar aon cháin ná dleacht den chineál lena mbaineann an cion a fhorchur sa Stát, nó
 - (b) nach ionann an cineál rialacha a bhaineann le cánacha, dleachtanna, custaim nó rialú malartaithe a bhfuil feidhm acu sa stát eisiúna agus na rialacha a bhfuil feidhm acu sa Stát maidir le cánacha, dleachtanna, custaim nó rialú malartaithe.

Forálacha is infheidhme maidir le cásanna scaoileadh saor coinníollach agus pianbhreitheanna ar fionraí

25. (1) Gan dochar do ghinearáltacht *alt 24*, i gcás go ndéanfaidh an chúirt chuí ordú faoi *alt 24(2)* i ndáil le breithiúnas agus, más infheidhme, i ndáil leis an mbreith phromhaidh a bhaineann le pianbhreith ar fionraí, sonrúfar san ordú—
- (a) go bhfreagraíonn an pianbhreith ar fionraí do pianbhreith ar fionraí faoi alt 99 d'Acht 2006, agus
 - (b) an príosún ina mbeidh an duine faoi phianbhreith le cimiú i gcás go ndéanfar fionraí na pianbhreithe a chúlghairm de réir alt 99(10) nó (17) d'Acht 2006.
- (2) Gan dochar do ghinearáltacht *alt 24*, i gcás go ndéanfaidh an chúirt chuí ordú faoi *alt 24(2)* i ndáil le breithiúnas agus, más infheidhme, i ndáil leis an mbreith phromhaidh a bhaineann le scaoileadh saor coinníollach, sonrúfar san ordú—
- (a) go bhfreagraíonn an scaoileadh saor coinníollach do threorú arna thabhairt ag an Aire faoi alt 2 d'Acht 1960, agus
 - (b) an áit chuig a dtógfar an duine faoi phianbhreith más rud é go ngabfar é nó í faoi alt 7 d'Acht 1960.
- (3) Faoi réir *alt 30*, is é is éifeacht d'ordú faoi *alt 24(2)* i ndáil le breithiúnas agus, más infheidhme, i ndáil leis an mbreith phromhaidh a bhaineann le pianbhreith ar fionraí nó le scaoileadh saor coinníollach go n-údarófar don Stát an pianbhreith choimeáda

lena mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh ó thaobh chineál agus fhad na pianbhreithe sin, lúide an tréimhse den phianbhreith a bheidh curtha isteach ag an duine faoi phianbhreith iarbhír sa stát eisiúna nó in áit eile, a fhorfheidhmiú agus aird chuí ar aon loghadh pianbhreithe arna fhabhrú sa stát eisiúna más rud é—

- (a) go mainneoidh an duine faoi phianbhreith coinníoll den phianbhreith ar fionraí nó den scaoileadh saor coinníollach a chomhlíonadh, nó
- (b) i gcás pianbhreith ar fionraí, go gciontófar an duine faoi phianbhreith i gcion sna himthosca a shonraítear in alt 99(9) d'Acht 2006.

Teorainneacha ama chun breith a thabhairt

26. (1) Faoi réir *fho-alt (3)*, déanfaidh an tAire iarratas faoi *alt 23(1)(a)* a luaithe is indéanta agus, in aon chás, in am trátha chun a chumasú don chúirt chuí breith a thabhairt maidir leis an iarratas—
- (a) faoi réir *mhír (b)*, laistigh de thréimhse 60 lá ón tráth a gheobhaidh an tAire breithiúnas agus, más infheidhme, an bhreith phromhaidh mar aon leis an deimhniú Airteagal 6 a bheidh ag gabháil leis nó léi, nó
 - (b) i gcás ina mbeidh feidhm ag *alt 20(1)* agus (2) maidir leis an deimhniú Airteagal 6, laistigh de thréimhse 60 lá ón ngníomh leigheasta lena mbaineann agus dá dtagraítear in *alt 20(2)(b)* a dhéanamh.
- (2) Faoi réir *fho-alt (3)*, tabharfaidh an tAire breith dá dtagraítear in *alt 23(1)(b)* a luaithe is indéanta agus, in aon chás—
- (a) faoi réir *mhír (b)*, laistigh de thréimhse 60 lá ón tráth a gheobhaidh an tAire breithiúnas agus, más infheidhme, an bhreith phromhaidh mar aon leis an deimhniú Airteagal 6 a bheidh ag gabháil leis nó léi, nó
 - (b) i gcás ina mbeidh feidhm ag *alt 20(1)* agus (2) maidir leis an deimhniú Airteagal 6, laistigh de thréimhse 60 lá ón ngníomh leigheasta lena mbaineann agus dá dtagraítear in *alt 20(2)(b)* a dhéanamh.
- (3) Nuair nach féidir leis an Aire, in imthosca eisceachtúla, an teorainn ama dá bhforáiltear i *bhfo-alt (1)* nó (2) a chomhlíonadh, déanfaidh an tAire, a luaithe is indéanta, na nithe seo a leanas a chur in iúl don údarás inniúil sa stát eisiúna ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh—
- (a) an mhoill sin,
 - (b) na cúiseanna atá leis an moill sin, agus
 - (c) an t-am a mheastar is gá chun breith chríochnaitheach a thabhairt maidir leis an mbreithiúnas agus, más infheidhme, maidir leis an mbreith phromhaidh lena mbaineann.
- (4) Le linn dó nó di iarratas a dhéanamh faoi *alt 23(1)(a)*, cuirfidh an tAire na nithe seo a leanas in iúl don chúirt chuí—

- (a) faoi réir *mhír (b)*, an dáta a gheobhaidh an tAire an breithiúnas agus, más infheidhme, an bhreith phromhaidh mar aon leis an deimhniú Airteagal 6 a bheidh ag gabháil leis nó léi agus is ábhar don iarratas, nó
 - (b) i gcás ina mbeidh feidhm ag *alt 20(1)* agus (2) maidir leis an deimhniú Airteagal 6, an dáta (más ann) a scoir an t-alt sin d'fheidhm a bheith aige maidir leis an deimhniú.
- (5) Faoi réir *fho-alt (6)*, tabharfaidh an chúirt chúí breith maidir le hiarratas faoi *alt 23(1)*
- (a) a luaithe is indéanta agus, in aon chás—
 - (a) faoi réir *mhír (b)*, laistigh den tréimhse 60 lá ón tráth a gheobhaidh an tAire an breithiúnas agus, más infheidhme, an bhreith phromhaidh mar aon leis an deimhniú Airteagal 6 a bheidh ag gabháil leis nó léi agus is ábhar don iarratas, nó
 - (b) i gcás ina mbeidh feidhm ag *alt 20(1)* agus (2) maidir leis an deimhniú Airteagal 6, laistigh den tréimhse 60 lá ón ngníomh leigheasta lena mbaineann agus dá dtagraítear in *alt 20(2)(b)* a dhéanamh.
- (6) Nuair nach féidir leis an gcúirt chúí, in imthosca eisceachtúla, an teorainn ama dá bhforáiltear i *bhfo-alt (5)* a chomhlíonadh, déanfaidh sí, a luaithe is indéanta, a chur faoi deara go ndéanfar na nithe seo a leanas a chur in iúl don Aire—
- (a) an mhoill sin,
 - (b) na cúiseanna atá leis an moill, agus
 - (c) an t-am a mheastar is gá chun breith chríochnaitheach a thabhairt maidir leis an mbreithiúnas agus, más infheidhme, maidir leis an mbreith phromhaidh lena mbaineann.
- (7) Déanfaidh an tAire, a luaithe is indéanta tar éis faisnéis a fháil faoi *fho-alt (6)*, ar aon mhodh ar ar féidir taifead i scríbhinn a fhágáil, an fhaisnéis sin a thabhairt don údarás inniúil sa stát eisiúna.

Fógra i dtaobh breithiúnas agus, más infheidhme, breith phromhaidh a fhorhuiniú

27. I gcás go mbeidh ordú déanta ag an gcúirt chúí faoi *alt 24(2)*, cuirfidh sí faoi deara cóip dheimhnithe den ordú, a mbeidh i gceangal léi cóip den bhreithiúnas agus, más infheidhme, den bhreith phromhaidh is ábhar don ordú, a chur, laistigh de 4 lá oibre ón ordú a dhéanamh, chuig na daoine seo a leanas—
- (a) an duine faoi phianbhreith,
 - (b) an tAire,
 - (c) Stiúrthóir na Seirbhíse Promhaidh, agus
 - (d) ceannfort an Gharda Síochána don dúiche ina bhfuil nó ina mbeidh cónaí ar an duine faoi phianbhreith.

Aitheantas a thabhairt do bhreithiúnas agus do bhreith phromhaidh

28. (1) I gcás ordú faoi *alt 24(2)* a bheith déanta maidir le breithiúnas agus, más infheidhme, maidir leis an mbreith phromhaidh, déanfaidh an tAire—
- (a) an breithiúnas, agus más infheidhme, an bhreith phromhaidh is ábhar don ordú a aithint chun go ngabhfaidh an Stát air féin freagracht as an mbeart promhaidh nó as an smachtbhanna malartach lena mbaineann a mhaoirsiú, agus
 - (b) a luaithe is indéanta, gach beart riachtanach chun an beart promhaidh nó an smachtbhanna malartach a mhaoirsiú.
- (2) Maidir le beart promhaidh nó smachtbhanna malartach arna fhorghuiniú le hordú ón gcúirt chuí faoi *alt 24(2)*, measfar, chun críocha dhlí an Stáit, gur beart nó smachtbhanna é faoi dhlí an Stáit arna shonrú de bhun *alt 24(5)* agus beidh an éifeacht chéanna leis amhail is dá mba bheart nó smachtbhanna den sórt sin é.
- (3) Faoi réir *alt 30*, déanfar aon imeachtaí iardain maidir le beart promhaidh nó smachtbhanna malartach arna fhorghuiniú le hordú ón gcúirt chuí faoi *alt 24(2)*, a thionscnamh os comhair na cúirte a shonrófar de bhun *alt 24(5)(b)* chun imeachtaí iardain a bhaineann leis an mbeart promhaidh nó leis an smachtbhanna malartach a thionscnamh.
- (4) Maidir le cúirt a dhéanfaidh ordú in imeachtaí iardain a bhaineann le beart promhaidh nó le smachtbhanna malartach arna fhorghuiniú le hordú ón gcúirt chuí faoi *alt 24(2)*, cuirfidh sí faoi deara cóip dheimhnithe den ordú a chur chuig an Aire laistigh de 4 lá oibre ón dáta a dhéanfar an t-ordú.

Oibleagáid faisnéis áirithe a sholáthar d'údarás inniúil sa stát eisiúna

29. (1) Cuirfidh an tAire aon cheann de na nithe seo a leanas in iúl láithreach don údarás inniúil sa stát eisiúna, ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh:
- (a) go bhfuil aitheantas tugtha ag an Aire, faoi *alt 28*, do bhreithiúnas agus, más infheidhme, do bhreith phromhaidh chun go ngabhfaidh an Stát freagracht air féin as an mbeart promhaidh nó as an smachtbhanna malartach lena mbaineann a mhaoirsiú;
 - (b) aon bhreith ón Aire dá dtagraítear in *alt 23(1)(b)*, mar aon leis na cúiseanna atá leis an mbreith sin;
 - (c) aon bhreith ón gcúirt chuí faoi *alt 24* gan breithiúnas agus, más infheidhme, gan an bhreith phromhaidh a fhorghuiniú, mar aon leis na cúiseanna atá leis an mbreith sin;
 - (d) ordú ón gcúirt chuí faoi *alt 24(2)* lena ndéantar beart promhaidh nó smachtbhanna malartach a oiriúnú, mar aon leis na cúiseanna atá leis an oiriúnú sin;
 - (e) más rud é go bhfuil feidhm ag *alt 30* maidir le breithiúnas agus, más infheidhme, maidir leis an mbreith phromhaidh, nach ngabhfaidh an Stát air féin freagracht as breith iomchuí a thabhairt de réir bhrí *alt 30(1)*.

- (2) Déanfaidh an tAire aon cheann de na nithe seo a leanas a chur in iúl gan mhoill don údarás inniúil sa stát eisiúna, ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh:
- (a) go ndearnadh doiciméad iomchuí (de réir bhrí *alt 22(3)*) a chur ar aghaidh chuig an Aire faoi *alt 22*;
 - (b) nár cuireadh tús leis an mbeart promhaidh nó leis an smachtbhanna malartach lena mbaineann a mhaoirsiú, nó gur scoireadh dá mhaoirsiú, mar gheall ar ilphardún, pardún nó loghadh pionóis a bheith deonaithe faoi dhlí an Stáit nó an stáit eisiúna don duine faoi phianbhreith i leith an chiona lena mbaineann an breithiúnas agus, más infheidhme, an bhreith phromhaidh.
- (3) Más rud é, mar gheall nach féidir an duine faoi phianbhreith a aimsiú sa Stát tar éis an breithiúnas agus, más infheidhme, an bhreith phromhaidh, mar aon leis an deimhniú Airteagal 6 a bheidh a gabháil leis nó léi, a chur ar aghaidh chuig an Aire de bhun Airteagail 5 agus 6 den Chinneadh Réime, nach féidir go praiticiúil leis an Stát an beart promhaidh nó an smachtbhanna malartach lena mbaineann a mhaoirsiú, cuirfidh an tAire an méid sin in iúl don údarás inniúil sa stát eisiúna ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh.
- (4) I gcás go mbeidh aitheantas tugtha ag an Aire don bhreithiúnas agus, más infheidhme, don bhreith phromhaidh faoi *alt 28* (seachas breithiúnas agus, más infheidhme, an bhreith phromhaidh lena mbaineann *alt 30(1)*), déanfaidh an tAire, a luaithe is indéanta, aon bhreith iardain a chur in iúl don údarás inniúil sa stát eisiúna ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh, ar breith í—
- (a) lena ndéanfar an beart promhaidh nó an smachtbhanna malartach lena mbaineann a mhodhnú,
 - (b) lena ndéanfar fionraí fhorghníomhú an bhreithiúnais a chúlghairm,
 - (c) lena ndéanfar an bhreith maidir le scaoileadh saor coinníollach a chúlghairm, nó
 - (d) lena ndéanfar, de dhroim mainneachtain ar thaobh duine faoi phianbhreith an beart promhaidh nó an smachtbhanna malartach a chomhlíonadh—
 - (i) pianbhreith choimeádta, nó beart eile lena ngabhann cailleadh saoirse, a fhorfheidhmiú i leith an duine, nó
 - (ii) pianbhreith choimeádta, nó beart eile lena ngabhann cailleadh saoirse, a fhorchur ar an duine.
- (5) Faoi réir *fho-ailt (6)* agus *(7)*, déanfaidh an tAire, a luaithe is indéanta, fógra i dtaobh na nithe seo a leanas a thabhairt don údarás inniúil sa stát eisiúna ag a bhfuil dlínse maidir le breith iomchuí de réir bhrí *alt 30(1)*, de bhun fheidhm *alt 30*—
- (a) aon fhionnachtain ar dóigh go gcúlghairfear an bhreith maidir le scaoileadh saor coinníollach dá toradh,
 - (b) na fíorais agus na himthosca breise go léir a iarrfaidh an t-údarás inniúil sa stát eisiúna a sholáthar, nó

- (c) na fíoras agus na himthosca breise go léir, a bhfuil eolas ina dtaobh riachtanach chun a chumasú don údarás inniúil sa stát eisiúna an bhreith iomchuí sin a thabhairt de réir a dhlí náisiúnta.
- (6) Tabharfaidh an tAire fógra i dtaobh na fionnachtana dá dtagraítear i *bhfo-alt (5)(a)* agus úsáid á baint aige nó aici as an bhfoirm atá leagtha amach in Iarscríbhinn II a ghabhann leis an gCinneadh Réime.
- (7) Tabharfaidh an tAire fógra i dtaobh na bhfíoras agus na n-imthosca dá dtagraítear i *mír (b)* nó *(c) d'fho-alt (5)* ar aon mhodh ar ar féidir taifead i scríbhinn a tháirgeadh (lena n-áirítear, más indéanta, an fhoirm atá leagtha amach in Iarscríbhinn II a ghabhann leis an gCinneadh Réime a úsáid).

Ní bheidh dlínse chun breitheanna iardain a thabhairt i gcásanna áirithe

30. (1) Beidh feidhm ag an alt seo más rud é—

- (a) go mbainfidh an breithiúnas agus, más infheidhme, an bhreith phromhaidh le scaoileadh saor coinníollach lena mbaineann *alt 25(2)*, agus
- (b) faoi dhlí an stáit eisiúna, nach mór éisteacht bhreithiúnach a thabhairt don duine faoi phianbhreith sula dtabharfar breith (dá ngairtear “breith iomchuí” san alt seo) i dtaobh an bhreith maidir leis an scaoileadh saor coinníollach a chúlghairm.
- (2) I gcás go ndéanfaidh an chúirt chuí ordú faoi *alt 24(2)*, sonródh sí san ordú nach ngabhfaidh an Stát air féin freagracht as breith iomchuí a thabhairt.
- (3) Déanfaidh an tAire an dlínse a tharchur ar ais chuig an údarás inniúil sa stát eisiúna más é tuairim an Aire—
 - (a) nár chomhlíon an duine faoi phianbhreith an beart promhaidh nó an smachtbhanna malartach arna fhorghuiniú le hordú faoi *alt 24(2)* agus lena mbaineann an t-alt seo, agus
 - (b) gur gá breith iomchuí a thabhairt.
- (4) Ní dhéanfaidh an t-alt seo difear d'oibriú *alt 28*.
- (5) I gcás go mbeidh an duine faoi phianbhreith chun fianaise a thabhairt ag éisteacht bhreithiúnach sa stát eisiúna, beidh feidhm ag ailt 68 go 72 den Acht um Cheartas Coiriúil (Cúnamh Frithpháirteach), 2008, fairis na fógraí go léir is gá, chun críocha na héisteachta sin.

Ní bheidh breithiúnas in-athbhreithnithe

31. Ní fhéadfaidh duine achomharc a dhéanamh sa Stát i gcoinne breithiúnas is bonn do bheart promhaidh nó do smachtbhanna malartach lena mbaineann an Chuid seo.

Dlínse a tharchur ar ais chuig an údarás inniúil sa stát eisiúna

32. (1) Féadfaidh an tAire dlínse maidir leis an mbeart promhaidh nó leis an smachtbhanna malartach lena mbaineann a mhaoirsiú, agus maidir le gach breith iardain dá dtagraítear

in Airteagal 14 den Chinneadh Réime a bhaineann leis an gcéanna, a tharchur ar ais chuig an údarás inniúil sa stát eisiúna más rud é—

- (a) gur deimhin leis an Aire ar fhorais réasúnacha gur éalaigh an duine faoi phianbhreith nó nach bhfuil gnáthchónaí air nó uirthi go dleathach sa Stát a thuilleadh, nó
 - (b) go ndéanfar imeachtaí coiriúla nua a thionscnamh i gcoinne an duine faoi phianbhreith sa stát eisiúna agus go n-iarrfaidh an t-údarás inniúil sa stát eisiúna amhlaidh.
- (2) Ar an dáta agus ón dáta a dhéanfar dlínse a tharchur ar ais chuig an údarás inniúil sa stát eisiúna faoi *fho-alt (1)*, ní bheidh dlínse ag an Stát a thuilleadh maidir leis an mbeart promhaidh nó leis an smachtbhanna malartach lena mbaineann a mhaoirsiú ná maidir le haon bhreitheanna iardain dá dtagraítear in Airteagal 14 den Chinneadh Réime a bhaineann leis an gcéanna.
- (3) Tabharfaidh an tAire fógra don chúirt arna sonrú in *alt 24(5)(b)*, laistigh de 4 lá oibre ón tarchur a bheith déanta, go ndearnadh dlínse a tharchur faoi *fho-alt (1)*.

AN SCEIDEAL

CINNEADH RÉIME 2008/947/CGB ÓN gCOMHAIRLE AN 27 SAMHAIN 2008 MAIDIR LE PRIONSABAL AN AITHEANTAIS FHRITHPHÁIRTIGH A FHEIDHMIÚ MAIDIR LE BREITHIÚNAIS AGUS BREITHEANNA PROMHAIDH D'FHONN BEARTA PROMHAIDH AGUS SMACHTBHANNAÍ MALARTACHA A MHAOIRSIÚ

(IO L 337, 16.12.2008, LCH. 102)

ARNA LEASÚ LE CINNEADH RÉIME 2009/299/CGB ÓN gCOMHAIRLE AN 26 FEABHRA 2009

(IO L 81, 27.3.2009, LCH. 24)

CINNEADH RÉIME 2008/947/CGB ÓN GCOMHAIRLE

an 27 Samhain 2008

maidir le prionsabal an aitheantais fhrithpháirtigh a fheidhmiú maidir le breithiúnais agus breitheanna promhaidh d'fhonn bearta promhaidh agus smachtbhannaí malartacha a mhaoirsiú

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Federal Republic of Germany and of the French Republic ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.
- (2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the principle of mutual recognition of judicial decisions, established in the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ⁽³⁾. In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.
- (3) 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 ⁽⁴⁾ concerns the mutual recognition and enforcement

1 OJ C 147, 30.6.2007, p. 1.

2 Opinion of 25 October 2007 (not yet published in the Official Journal).

3 OJ C 53, 3.3.2005, p. 1.

4 OJ L 327, 5.12.2008, p. 27.

of custodial sentences or measures involving deprivation of liberty. Further common rules are required, in particular where a non-custodial sentence involving the supervision of probation measures or alternative sanctions has been imposed in respect of a person who does not have his lawful and ordinary residence in the State of conviction.

- (4) The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. The present Framework Decision provides for a more effective instrument because it is based on the principle of mutual recognition and all Member States participate.
- (5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.
- (8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.
- (9) There are several types of probation measures and alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.
- (10) The probation measures and alternative sanctions that are, in principle, obligatory to supervise include, *inter alia*, orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a 'safe-driving course'), leisure activities (such as an obligation to cease playing or attending a certain sport) and limitations on or modalities of carrying out a professional

activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).

- (11) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.
- (12) The Member State where the person concerned is sentenced may forward a judgment and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to the recognition thereof and to the supervision of probation measures or alternative sanctions contained therein.
- (13) The decision on whether to forward the judgment and, where applicable, the probation decision to another Member State should be taken in each individual case by the competent authority of the issuing Member State, taking into account, *inter alia*, the declarations made in accordance with Articles 5(4), 10(4) and 14(3).
- (14) The judgment and, where applicable, the probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State, taking account of any conditions set out in the relevant declaration made by that State in accordance with this Framework Decision, consents to such forwarding. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.
- (15) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned, this could imply that having made the relevant declaration in accordance with this Framework Decision, Member States, when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has, in such cases, no further effect than to enable the executing State to take those types of subsequent decisions.
- (16) A Member State may refuse to recognise a judgment and, where applicable, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.
- (17) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions

of this Framework Decision, while taking into account of the objectives thereof. Any decision to apply this ground for refusal should be based on a case-by-case analysis and on consultations between the competent authorities of the issuing and executing States.

- (18) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to recognise the judgment and, where applicable, the probation decision if the community service would normally be completed in less than six months.
- (19) The form of the certificate is drafted in such a way so that essential elements of the judgment and, where applicable, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State. The certificate should assist the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation measures and alternative sanctions, and subsequent decisions in case, notably, of non-compliance with a probation measure or alternative sanction.
- (20) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote direct contact between their competent authorities in the application of this Framework Decision.
- (21) All Member States should ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with their national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.
- (22) All subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.
- (23) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention.
- (24) Since the objectives of this Framework Decision, namely 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, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objectives and scope

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;
- (b) recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽⁵⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽⁶⁾.

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

Article 2

Definitions

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:

5 OJ L 76, 22.3.2005, p. 16.

6 OJ L 328, 24.11.2006, p. 59

(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;

3. ‘conditional sentence’ shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4. ‘alternative sanction’ shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

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;

6. ‘conditional release’ shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;

7. ‘probation measures’ shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;

8. ‘issuing State’ shall mean the Member State in which a judgment is delivered;

9. ‘executing State’ shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 8.

Article 3

Designation of competent authorities

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

2. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
3. If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, upon request of the person concerned, such decision may be reviewed by a court or by another independent court-like body.
4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 4

Types of probation measures and alternative sanctions

1. This Framework Decision shall apply to the following probation measures or alternative sanctions:
 - (a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;
 - (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
 - (c) an obligation containing limitations on leaving the territory of the executing State;
 - (d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
 - (e) an obligation to report at specified times to a specific authority;
 - (f) an obligation to avoid contact with specific persons;
 - (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
 - (h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
 - (i) an obligation to carry out community service;
 - (j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
 - (k) an obligation to undergo therapeutic treatment or treatment for addiction.
2. Each Member State shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 5

Criteria for forwarding a judgment and, where applicable, a probation decision

1. The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.
2. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.
3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision under paragraph 2.
4. Each Member State shall make a declaration to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a declaration at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 6

Procedure for forwarding a judgment and, where applicable, a probation decision

1. When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.
2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1, 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 their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.
3. The certificate referred to in paragraph 1 shall be signed and its content certified as accurate by the competent authority of the issuing State.
4. Apart from the measures and sanctions referred to in Article 4(1), the certificate referred to in paragraph 1 of this Article shall include only such measures or sanctions as notified by the executing State in accordance with Article 4(2).
5. The competent authority of the issuing State shall forward the judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1 only to one executing State at any one time.

6. 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 created by Council Joint Action 98/428/JHA ⁽⁷⁾, in order to obtain the information from the executing State.

7. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate referred to in paragraph 1, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, *ex officio*, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 7

Consequences for the issuing State

1. Once the competent authority of the executing State has recognised the judgment and, where applicable, the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition, the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternative sanctions imposed, nor to take subsequent measures referred to in Article 14(1).

2. The competence referred to in paragraph 1 shall revert to the issuing State:

- (a) as soon as its competent authority has notified withdrawal of the certificate referred to in Article 6(1), pursuant to Article 9(4), to the competent authority of the executing State;
- (b) in cases referred to in Article 14(3) in combination with 14(5); and
- (c) in cases referred to in Article 20.

Article 8

Decision of the executing State

1. The competent authority of the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance with Article 5 and following the procedure laid down in Article 6 and shall without delay take all necessary measures for the supervision of the probation measures or alternative sanctions, unless it decides to invoke one of the grounds for refusing recognition and supervision referred to in Article 11.

2. The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate referred to in Article 6(1) is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

7 OJ L 191, 7.7.1998, p. 4.

Article 9

Adaptation of the probation measures or alternative sanctions

1. If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.
2. Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State.
3. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.
4. Following receipt of the information referred to in Articles 16(2) or 18(5), the competent authority of the issuing State may decide to withdraw the certificate referred to in Article 6(1) provided that supervision in the executing State has not yet begun. In such cases, the decision shall be taken and communicated as soon as possible and within ten days of the receipt of the information.

Article 10

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,
 - illicit trafficking in narcotic drugs and psychotropic substances,
 - illicit trafficking in weapons, munitions and explosives,
 - corruption,

- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests ⁽⁸⁾,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

2. The Council may decide to add other categories of offences to the list provided for in paragraph 1 of this Article at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 26(1) of this Framework Decision, whether the list should be extended or amended.

8 OJ C 316, 27.11.1995, p. 49.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the judgment and, where applicable, the probation decision and the supervision of probation measures and of alternative sanctions subject to the condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 11

Grounds for refusing recognition and supervision

1. The competent authority of the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:
 - (a) the certificate referred to in Article 6(1) is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State;
 - (b) the criteria set forth in Articles 5(1), 5(2) or 6(4) are not met;
 - (c) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would be contrary to the principle of *ne bis in idem*;
 - (d) in a case referred to in Article 10(3) and, where the executing State has made a declaration under Article 10(4), in a case referred to in Article 10(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of the judgment or, where applicable, the probation decision may not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;
 - (e) the enforcement of the sentence is statute-barred according to the law of the executing State and relates to an act which falls within its competence according to that law;
 - (f) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;
 - (g) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued;
 - (h) according to the certificate provided for in Article 6, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:
 - (i) in due time:

— either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

— was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame;

(i) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding Article 9, the executing State is unable to supervise in view of its legal or health-care system;

(j) the probation measure or alternative sanction is of less than six months' duration; or

(k) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(k) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State only in exceptional circumstances and on a case-by case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (h), (i), (j) and (k), before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.

4. Where the competent authority of the executing State has decided to invoke a ground for refusal referred to in paragraph 1 of this Article, in particular the grounds referred to under paragraph 1(d) or (k), it may nevertheless, in agreement with the competent authority of the issuing State, decide to supervise the probation measures or alternative sanctions that are imposed in the judgment and, where applicable, the probation decision forwarded to it, without assuming the responsibility for taking any of the decisions referred to in Article 14(1)(a), (b) and (c).

*Article 12***Time limit**

1. The competent authority of the executing State shall decide as soon as possible, and within 60 days of receipt of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1), whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall immediately inform the competent authority of the issuing State, by any means which leaves a written record, of its decision.

2. When in exceptional circumstances it is not possible for the competent authority of the executing State to comply with the time limit provided for in paragraph 1, it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

*Article 13***Governing law**

1. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

2. The competent authority of the executing State may supervise an obligation as referred to in Article 4(1)(h) by requiring the sentenced person to provide proof of compliance with an obligation to compensate for the prejudice caused by the offence.

*Article 14***Jurisdiction to take all subsequent decisions and governing law**

1. The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

- (a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;
- (b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

2. The law of the executing State shall apply to decisions taken pursuant to paragraph 1 and to all subsequent consequences of the judgment including, where applicable, the enforcement and, if necessary, the adaptation of the custodial sentence or measure involving deprivation of liberty.

3. Each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as an executing State it will refuse to assume the responsibility provided for in paragraph 1(b) and (c) in cases or categories of cases to be specified by that Member State, in particular:

(a) in cases relating to an alternative sanction, where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(b) in cases relating to a conditional sentence;

(c) in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. When a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority of the executing State shall transfer jurisdiction back to the competent authority of the issuing State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c) needs to be taken.

5. In the cases referred to in paragraph 3 of this Article, the obligation to recognise the judgment and, where applicable, the probation decision, as well as the obligation to take without delay all necessary measures for the supervision of the probation measures or alternative sanctions, as referred to in Article 8(1), shall not be affected.

6. Declarations as mentioned in paragraph 3 shall be made by notification to the General Secretariat of the Council. Any such declaration may be withdrawn at any time. The declarations and withdrawals mentioned in this Article shall be published in the *Official Journal of the European Union*.

Article 15

Consultations between competent authorities

Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

Article 16

Obligations of the authorities involved where the executing State has jurisdiction for subsequent decisions

1. 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, of all decisions on the:

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

2. If so requested by the competent authority of the issuing State, the competent authority of the executing State shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1).

3. The competent authority of the issuing State shall immediately inform the competent authority of the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1(a), (b) or (c) being taken.

Article 17

Obligations of the authorities involved where the issuing State has jurisdiction for subsequent decisions

1. If the competent authority of the issuing State has jurisdiction for the subsequent decisions mentioned in Article 14(1) pursuant to the application of Article 14(3), the competent authority of the executing State shall immediately notify it of:

- (a) any finding which is likely to result in revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;
- (b) any finding which is likely to result in the imposition of a custodial sentence or measure involving deprivation of liberty;
- (c) all further facts and circumstances which the competent authority of the issuing State requests to be provided and which are essential in order to allow it to take subsequent decisions in accordance with its national law.

2. When a Member State has made use of the possibility referred to in Article 11(4), the competent authority of that State shall inform the competent authority of the issuing State in case of non-compliance by the sentenced person with a probation measure or alternative sanction.
3. Notice of the findings mentioned in paragraph 1(a) and (b) and in paragraph 2 shall be given using the standard form set out in Annex II. Notice of the facts and circumstances mentioned in paragraph 1(c) shall be given by any means which leaves a written record, including, where possible, through the form set out in Annex II.
4. If, under the national law of the issuing State, the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons.
5. The competent authority of the issuing State shall without delay inform the competent authority of the executing State of all decisions on:
 - (a) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;
 - (b) the enforcement of the custodial sentence or measure involving deprivation of liberty, where such measure is contained in the judgment;
 - (c) the imposition of a custodial sentence or measure involving deprivation of liberty, where such measure is not contained in the judgment;
 - (d) the lapsing of the probation measure or alternative sanction.

Article 18

Information from the executing State in all cases

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 of:

1. the transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6(7);
2. the fact that it is in practice impossible to supervise the probation measures or alternative sanctions for the reason that, after transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case the executing State shall be under no obligation to supervise the probation measures or alternative sanctions;
3. the final decision to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions;

4. any decision not to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions in accordance with Article 11, together with the reasons for the decision;
5. any decision to adapt the probation measures or alternative sanctions in accordance with Article 9, together with the reasons for the decision;
6. any decision on amnesty or pardon which leads to not supervising the probation measures or alternative sanctions for the reasons referred to in Article 19(1), together, where applicable, with the reasons for the decision.

Article 19

Amnesty, pardon, review of judgment

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.
2. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

Article 20

End of jurisdiction of the executing State

1. If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.
2. If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.
3. When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 16(1).

Article 21

Languages

The certificate referred to in Article 6(1) shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the

Council that it will accept a translation in one of more other official languages of the institutions of the European Union.

Article 22

Costs

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

Article 23

Relationship with other agreements and arrangements

1. This Framework Decision shall, in relations between the Member States, from 6 December 2011, replace the corresponding provisions of the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 6 December 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 6 December 2008, in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

4. Member States shall, by 6 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

Article 24

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 25

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 6 December 2011.

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

[2019.]

*An tAcht um Cheartas Coiriúil (Aitheantas
Frithpháirteach do Bhreithiúnais agus
Breitheanna Promhaidh), 2019.*

[Uimh. 20.]

Sc.

Article 26

Review

1. By 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States under Article 25(2).
2. On the basis of this report, the Council shall assess:
 - (a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and
 - (b) the application of this Framework Decision.
3. The report shall be accompanied, if necessary, by legislative proposals.

Article 27

Entry into force

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

Done at Brussels, 27 November 2008.

For the Council
The President
M. ALLIOT-MARIE

ANNEX I

CERTIFICATE

referred to in Article 6 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 sanctions¹

(a) Issuing State:
Executing State:

(b) Court which issued the judgment imposing a suspended sentence, conditional sentence or alternative sanction

Official name:

Please indicate whether any additional information concerning the judgment is to be obtained from:

- the court specified above
- the central authority: if you ticked this box, please provide the official name of this central authority:
- another competent authority: if you ticked this box, please provide the official name of this authority:

Contact details of the court/central authority/other competent authority Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(c) Authority which issued the probation decision (where applicable)

Official name:

Please indicate whether any additional information concerning the probation decision is to be obtained from:

- the authority specified above

¹ This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the institutions of the European Union that is accepted by that State.

- the central authority: if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):
- another competent authority; if you ticked this box, please provide the official name of this authority:

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

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(d) Competent authority for supervision of the probation measures or alternative sanctions

Authority which has competence in the issuing State for supervising the probation measures or alternative sanctions:

- the court/authority referred to in point (b)
- the authority referred to in point (c)
- another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions:

- the authority specified above
- the central authority: if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c):

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

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):
 Position (title/grade):
 Tel. (country code) (area/city code)
 Fax (country code) (area/city code)
 E-mail (if any):
 Languages that may be used for communication:

- (e) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

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

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

- (f) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

- the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State

- the sentenced person has moved or intends to move to the executing State for the following reason(s)(please tick the relevant box):
- the sentenced person has been granted an employment contract in the executing State:
- the sentenced person is a family member of a lawful and ordinary resident person of the executing State:
- the sentenced person intends to follow a study or training in the executing State;
- other reason (please specify):

(g) Indications regarding the Judgment and, where applicable, the probation decision

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

Where applicable, the probation decision was issued on (date: DD-MM-YYYY):

The judgment became final on (date: DD-MM-YYYY):

Where applicable, the probation decision became final on (date: DD-MM-YYYY):

The execution of the judgment started on (if different from the date on which the judgment became final) (date: DD-MM-YYYY):

Where applicable, the execution of the probation decision started on (if different from the date on which the probation decision became final) (date: DD-MM-YYYY):

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total..... offences,

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

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

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

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption

- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
 - laundering of the proceeds of crime
 - counterfeiting of currency, including of the euro
 - computer-related crime
 - environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
 - facilitation of unauthorised entry and residence
 - murder, grievous bodily injury
 - illicit trade in human organs and tissue
 - kidnapping, illegal restraint and hostage-taking
 - racism and xenophobia
 - organised or armed robbery
 - illicit trafficking in cultural goods, including antiques and works of art
 - swindling
 - racketeering and extortion
 - counterfeiting and piracy of products
 - forgery of administrative documents and trafficking therein
 - forgery of means of payment
 - illicit trafficking in hormonal substances and other growth promoters
 - illicit trafficking in nuclear or radioactive materials
 - trafficking in stolen vehicles
 - rape
 - arson
 - crimes within the jurisdiction of the International Criminal Court
 - unlawful seizure of aircraft/ships
 - sabotage
3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:

- (h) Indicate if the person appeared in person at the trial resulting in the decision:
1. Yes, the person appeared in person at the trial resulting in the decision.
 2. No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

- 3.1 a. the person was summoned in person on... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- 3.1 b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- 3.2. being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- 3.3. the person was served with the decision on... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- the person expressly stated that he or she does not contest this decision,

OR

- the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

(i) Indications regarding the nature of the sentence imposed by the judgment or, where applicable, the probation decision

1. This certificate is related to a:

- suspended sentence(= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed)
- conditional sentence:
 - the imposition of a sentence has been conditionally deferred by imposing one or more probation measures

- one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty
 - alternative sanction:
 - the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
 - the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
 - conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)
2. Additional information
- 2.1. The sentenced person was in pre-trial detention during the following period:
- 2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):
- 2.3. In case of a suspended sentence
- duration of the custodial period imposed that was conditionally suspended:
 - duration of the period of suspension:
- 2.4. If known, length of deprivation of liberty to be served upon
- revocation of suspension of the execution of the judgment;
 - revocation of the decision on conditional release; or
 - breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):

- (j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)
1. Total duration of the supervision of the probation measure(s) or alternative sanction(s):
 2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):
 3. Duration of the total probation period (if different from the duration indicated under point 1):
 4. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):
 - an obligation for the sentenced person to inform a specific authority of any change of residence or working place
 - an obligation not to enter certain localities, places or defined areas in the issuing or executing State

- an obligation containing limitations on leaving the territory of the executing State
 - instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
 - an obligation to report at specified times to a specific authority
 - an obligation to avoid contact with specific persons
 - an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
 - an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
 - an obligation to carry out community service
 - an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
 - an obligation to undergo therapeutic treatment or treatment for addiction
 - other measures that the executing State is prepared to supervise in accordance with a notification under Article 4(2) of the Framework Decision
5. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 4:
6. Please tick the following box if relevant probation reports are available:
- If you ticked this box, please indicate in which language(s) these reports are drawn up ⁽¹⁾:

- (k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s) (optional information):
- The text of the judgment and, where applicable, the probation decision is attached to the certificate.
- Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:
- Name:
- Position (title/grade):
- Date:
- File reference (if any):
- (Where appropriate) Official stamp:

¹ The issuing State is not obliged to provide translations of these reports.

ANNEX II

FORM

referred to in Article 17 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

**REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION,
OR OF ANY OTHER FINDINGS**

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

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the judgment and, where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:

File reference (if any):

Where applicable, probation decision issued on:

File reference (if any):

Court which issued the judgment

Official name:

Address:

Where applicable, authority which issued the probation decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

(d) Probation measure(s) or alternative sanction(s):

The person referred to in (a) is in breach of the following obligation(s) or instruction(s):

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority
- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- an obligation to carry out community service
- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures:

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

(f) Other findings (if any)

Description of the findings:

- (g) Details of the person to be contacted if additional information is to be obtained concerning the breach:
- Surname:
- Forename(s):
- Address:
- Tel. (country code) (area/city code)
- Fax (country code) (area/city code)
- E-mail (if any):
- Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:
- Name:
- Position (title/grade):
- Date:
- Official stamp (where applicable):

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,
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