

**Translation from Finnish**  
**Legally binding only in Finnish and Swedish**  
**Ministry of Justice, Finland**

**Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on the Transfer of Sentenced Persons within the European Union and on the Application of the Framework Decision**

(1169/2011; amendments up to 39/2019 included)

By decision of Parliament, the following is enacted:

**Chapter 1**

**General provisions**

**Section 1**

**Implementation of the Framework Decision**

The provisions of a legislative nature in Council Framework Decision 2008/909/JHA 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, hereinafter *the Framework Decision*, shall have the force of law, unless otherwise provided in this Act.

Article 5 of Council Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, shall have the force of law.

**Section 2**

**Scope of application**

In accordance with this Act and the Framework Decision:

1) a custodial sentence or any other measure involving deprivation of liberty referred to in the Framework Decision imposed in another Member State of the European Union is enforced in Finland;

2) a judgment imposing a prison sentence in Finland or a decision, confirmed by a court in Finland, imposing involuntary psychiatric hospital care (*medical sanction*) on a person whose sentence has been waived is forwarded to another Member State of the European Union for the purpose of its enforcement.

In addition, the provisions of the Mental Health Act (1116/1990) and the Act on International Cooperation in the Enforcement of Certain Criminal Sanctions (21/1987) apply to requests for the enforcement of medical sanctions and equivalent measures involving some other form of deprivation of liberty.

### **Section 3**

#### **Competent authority**

The Central Administration of the Criminal Sanctions Agency decides on whether to send to another Member State a request to transfer enforcement of a sanction referred to in section 2 and on whether to consent to execution in Finland of such a request sent by another Member State. However, if a request concerns the transfer of enforcement from another Member State to Finland of any measure involving deprivation of liberty other than a prison sentence or the transfer of enforcement from Finland to another Member State of a medical sanction, the competent authority is the Ministry of Justice.

### **Chapter 2**

#### **Enforcement in Finland of a sanction imposed in another Member State**

### **Section 4**

#### **Conditions for taking up a request for consideration**

A request to transfer enforcement of a sanction is taken up for consideration without consulting the Central Administration of the Criminal Sanctions Agency, if the sentenced person is a Finnish citizen who:

- a) is living in Finland; or
- b) has been ordered to be deported or expelled to Finland on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment.

In situations other than those referred to in subsection 1, the consent of the Central Administration of the Criminal Sanctions Agency is required for a request to transfer enforcement of a sanction to be taken up for consideration. However, if the sanction referred to in the request is any measure involving deprivation of liberty other than a prison sentence, consent shall be given by the Ministry of Justice. Consent may be given if, due to the place of residence or other personal circumstances of the sentenced person or for special reasons, enforcement of the sanction in Finland would facilitate the reintegration of the sentenced person into society.

## **Section 5**

### **Provisional taking into custody**

In order to ensure enforcement, a public official with the power of arrest may, in a situation referred to in Article 14 of the Framework Decision, take a sentenced person into custody, if so requested by the state in which the judgment was delivered (*issuing state*). The request may be addressed directly to the public official with the power of arrest. The district court in the judicial district of which the person is being kept in custody, the District Prosecutor or the Senior Specialised Prosecutor serving in that judicial district, and the Central Administration of the Criminal Sanctions Agency shall be notified of the taking into custody without delay. (39/2019)

After having been notified of the taking into custody, the district court shall deal with the matter urgently in accordance with the provisions governing the consideration of requests for remand and decide whether the measure shall remain in effect. The district court shall immediately notify the Central Administration of the Criminal Sanctions Agency of its decision.

The provisions governing remand and remand imprisonment in the Coercive Measures Act (450/1987), the Remand Imprisonment Act (768/2005) and the Act on the Treatment of Persons in Police Custody (841/2006) apply to the taking into custody and keeping in custody, as appropriate.

If the Central Administration of the Criminal Sanctions Agency considers that there is an impediment to enforcement of the sanction, it shall order the immediate release of the person taken into custody. The person taken into custody shall also be released if the Central Administration of the Criminal Sanctions Agency has not received a request for enforcement with accompanying documents within 40 days of the taking into custody. The person taken into custody shall be released at the latest when the combined duration of deprivation of liberty in Finland and

in the issuing state corresponds to the duration of the period for which the sentenced person would have been deprived of liberty if the sanction had been enforced in the issuing state.

The period of deprivation of liberty shall be deducted from the duration of the sanction to be enforced in accordance with chapter 6, section 13 of the Criminal Code (39/1889).

Instead of taking into custody, a travel ban may be imposed on the sentenced person. The provisions of the Coercive Measures Act on travel bans and the provisions of this Act on taking into custody apply to the travel ban, as appropriate.

## **Section 6**

### **Double criminality**

If a sanction has been imposed for an act referred to in Article 7(1) of the Framework Decision, consenting to a request to transfer its enforcement is not subject to the condition that the act constitutes an offence under Finnish law or would do so if committed in Finland in similar circumstances.

If a sanction has been imposed for an act other than those referred to in Article 7(1), consenting to a request to transfer its enforcement is subject to the condition that the act constitutes an offence under Finnish law or would do so if committed in Finland in similar circumstances.

## **Section 7**

### **Adapting a sanction**

Any decision to adapt a sanction under the conditions set out in Article 8(2) and (3) of the Framework Decision is made by the Helsinki District Court. Requests for adapting a sanction are submitted by a prosecutor on the proposal of the Central Administration of the Criminal Sanctions Agency. The provisions on criminal procedure apply, where applicable, to adapting sanctions.

The sentenced person shall be given an opportunity to be heard in a case involving the adaptation of a sanction. In dealing with such cases, the provisions of section 17 on the right to legal counsel and defence counsel apply.

## **Section 8**

### **Enforcement of sanctions**

The enforcement of sanctions in Finland is governed by Finnish law.

## **Section 9**

### **Request for consent to derogate from the specialty rule**

The sentenced person shall personally state in a district court session whether he or she consents to being prosecuted, punished or deprived of his or her liberty in Finland for an offence committed before his or her transfer other than that concerned by the request to transfer enforcement of the sanction imposed. On the proposal of the prosecutor, the case is considered in the district court of the judicial district in which the sentenced person is serving a prison sentence or which is otherwise deemed appropriate.

Before the sentenced person's consent is received, he or she shall be informed of its consequences.

The consent referred to in subsection 1 and the information referred to in subsection 2 above shall be entered in the record.

The district court is competent to deal with the cases referred to in this section even in single-judge formation. The court session may be held at another time and in another place than specified in the provisions governing the sessions of a general court of first instance.

The consent referred to in Article 18(2)(g) of the Framework Decision may be requested by a prosecutor. If the case concerns the enforcement of a prison sentence, the consent may be requested by a prosecutor or the Central Administration of the Criminal Sanctions Agency, and if the case concerns the enforcement of a medical sanction, the consent may be requested by the Ministry of Justice.

A prosecutor competent to prosecute the criminal case in question is also competent to perform the prosecutorial duties referred to in this section. For special reasons, the competent prosecutor may be some other prosecutor.

## **Section 10**

### **Languages and translations**

The Central Administration of the Criminal Sanctions Agency accepts the certificate referred to in Article 4 of the Framework Decision if it is provided in Finnish, Swedish or English or accompanied by a translation into one of these languages. The Central Administration of the Criminal Sanctions Agency may also accept a certificate in a language other than Finnish, Swedish or English, if there is no other impediment to accepting it.

Where necessary, the Central Administration of the Criminal Sanctions Agency is responsible for the translation of the certificate and the judgment into Finnish or Swedish.

Sentenced persons have the right to be informed of any decision in the case in a language they understand.

If the sanction to be transferred to Finland for enforcement is a measure involving deprivation of liberty other than a custodial sentence, the Ministry of Justice is responsible for the translations referred to in this section.

## **Chapter 3**

### **Forwarding a request to transfer enforcement of a sanction imposed in Finland to another Member State**

## **Section 11**

### **Conditions for forwarding a request**

A prerequisite for forwarding a request to transfer enforcement of a sanction to a Member State referred to in Article 4(1) of the Framework Decision is that the transfer would facilitate the reintegration of the sentenced person into society due to the nationality, place of residence or other personal circumstances of the sentenced person or for special reasons.

Transfer of enforcement of a sanction shall be requested in accordance with Article 5 of the Framework Decision by forwarding the judgment or a certified copy of it together with the certificate for which the standard form is given in Annex I of the Framework Decision to the Member State referred to in subsection 1.

## **Section 12**

### **Consent of the sentenced person to transfer of enforcement**

The sentenced person shall expressly state whether he or she consents to the transfer of enforcement of the sanction to another Member State. The consent shall be given to the prison director or the public official in charge of enforcement. A written record shall be drawn up of the proceedings at which the consent is given.

Before the sentenced person's consent is received, he or she shall be informed of its consequences, explaining that the sentenced person's consent is not required for the transfer of enforcement of the sanction in the situations referred to in Article 6 of the Framework Decision.

The sentenced person shall be notified of the transfer request by using the standard form set out in Annex II of the Framework Decision.

If the sentenced person is in another Member State, consent shall be given in accordance with the procedural provisions in force there.

## **Section 13**

### **Granting permission to derogate from the specialty rule**

The Helsinki District Court decides on granting permission for the prosecution, punishment or deprivation of liberty of a sentenced person transferred to another Member State due to an offence other than that for the enforcement of which he or she was transferred to the Member State in question. In other respects, the provisions of the Act on Surrender Procedures between Finland and Other Member States of the European Union (1286/2003) on the granting of permission to derogate from the specialty rule apply to the conditions and procedure for granting such permission.

## **Section 14**

### **Languages and translations**

The Central Administration of the Criminal Sanctions Agency is responsible for the translation of the certificate referred to in Article 5 of the Framework Decision and, in the cases referred to in Article 23(3) of the Framework Decision, of the judgment into a language accepted by the

executing state. If the request concerns the transfer of enforcement of a medical sanction, the Ministry of Justice is responsible for the translations.

## **Chapter 4**

### **Miscellaneous provisions**

#### **Section 15**

##### **Partial enforcement**

If a sentence that has been imposed after a judgment has been reversed under the procedure laid down in chapter 31, section 9b of the Code of Judicial Procedure is transferred to another Member State for enforcement, that part of the original sentence which is not transferred may no longer be enforced in Finland after enforcement of the sentence in another Member State has ended.

#### **Section 16**

##### **Hearing sentenced persons**

In addition to the provisions of Article 6 of the Framework Decision and this Act, the provisions of the Administrative Procedure Act (434/2003) apply to the hearing of sentenced persons.

#### **Section 17**

##### **Right to legal counsel and defence counsel**

The sentenced person has the right to legal counsel.

A defence counsel shall be appointed for the sentenced person, if he or she so requests. The provisions of chapter 2 of the Criminal Procedure Act (689/1997) apply, as appropriate, to defence counsel, including to the appointment of defence counsel by virtue of office. The defence counsel is appointed by the Central Administration of the Criminal Sanctions Agency or, in cases related to the enforcement of a medical sanction or any other measure involving deprivation of liberty, by the Ministry of Justice. The court considering a matter referred to in this Act may also appoint a defence counsel. The sentenced person shall be informed without delay of his or her right to legal counsel and to a court-appointed defence counsel.

If the sentenced person is in another Member State and a legal counsel has been appointed for him or her there, the prerequisite for appointing a defence counsel is that there are special reasons for this from the perspective of the legal protection of the sentenced person.

The Ministry of Justice orders a reasonable remuneration to be paid to the defence counsel from state funds, which shall be borne by the State.

## **Section 18**

### **Transit**

Permission for the transit through Finland of a sentenced person whose transfer to another Member State has been requested is granted by the Ministry of Justice. The transit of Finnish citizens through Finland may be permitted, if the conditions laid down in this Act and in the Framework Decision for transferring a sentenced person to the executing state exist or if the sentenced person has consented to transit through Finland.

The transit request shall be accompanied by the certificate referred to in Article 4 of the Framework Decision. Provisions on the translation of the certificate are laid down in section 10.

## **Section 19**

### **Request for review**

Decisions made by the Central Administration of the Criminal Sanctions Agency or the Ministry of Justice under this Act may be appealed against to the Helsinki Administrative Court as provided in the Administrative Judicial Procedure Act (586/1996). Appeals shall be considered urgently. The decision of the Helsinki Administrative Court is not subject to appeal.

The provisions of the Coercive Measures Act on requests for a review of a court decision on remand or a travel ban apply to requests for a review of a district court decision referred to in section 5. A district court decision referred to in section 7 may be appealed against to a court of appeal in accordance with the provisions of the Code of Judicial Procedure on appealing against district court decisions. District court decisions referred to in section 13 may be appealed against to the Supreme Court in accordance with the provisions of the Act on Surrender Procedures between Finland and Other Member States of the European Union on appealing against district court decisions in surrender cases, as appropriate.

## **Section 20**

### **Relationship to other legislation**

Notwithstanding this Act, the Act on Nordic Cooperation in Criminal Matters (326/1963) may be applied.

## **Section 21**

### **Entry into force**

This Act enters into force on 5 December 2011.

The provisions in force at the time of the entry into force of this Act apply to requests for transfer forwarded before the Act's entry into force.

The provisions in force at the time of the entry into force of this Act apply in relation to any Member State that has not implemented the Framework Decision by the time of the entry into force of this Act or that has made the declaration referred to in Article 28(2) of the Framework Decision until the Member State concerned has implemented the Framework Decision or until the Framework Decision has become applicable in the Member State that has made the declaration referred to in Article 28(2) of the Framework Decision.