Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 September 2025*

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant issued for the purposes of executing a custodial sentence – Article 4(6) – Grounds for optional non-execution of the European arrest warrant – Conditions for an executing Member State's assumption of responsibility for the execution of that sentence – Article 3(2) – Concept of 'finally judged … in respect of the same acts' – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters for the purpose of their enforcement in another Member State – Article 25 – Compliance with the conditions and procedure laid down by the framework decision in the event that a Member State undertakes to enforce a sentence handed down by a judgment delivered by an issuing State – Requirement of consent on the part of the issuing State as regards another Member State's assumption of responsibility for the enforcement of such a sentence – Article 4 – Possibility for the issuing State to forward the judgment and certificate referred to in that article to the executing State – Consequences where forwarding does not take place – Principle of sincere cooperation – Article 22 – Right of the issuing State to enforce that sentence – Maintenance of the European arrest warrant – Obligation on the part of the executing judicial authority to enforce a European arrest warrant)

In Case C-305/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Bucureşti (Court of Appeal, Bucharest, Romania), made by decision of 11 April 2022, received at the Court on 6 May 2022, in the proceedings relating to the execution of the European arrest warrant issued against

C.J.,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, C. Lycourgos, M.L. Arastey Sahún, S. Rodin, A. Kumin, N. Jääskinen (Rapporteur), D. Gratsias and M. Gavalec, Presidents of Chambers, E. Regan, I. Ziemele, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

Registrar: R. Şereş, Administrator,

* Language of the case: Romanian.

having regard to the written procedure and further to the hearing on 13 March 2024,

after considering the observations submitted on behalf of:

– C.J., representing himself,

– the Romanian Government, by M. Chicu and E. Gane, acting as Agents,

– the Czech Government, by L. Halajová, M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– the French Government, by B. Dourthe, acting as Agent,

– the Netherlands Government, by M.K. Bulterman, M.H.S. Gijzen and C.S. Schillemans, acting as Agents,

– the European Commission, by H. Leupold and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 June 2024,

having regard to the order of 13 September 2024 to reopen the oral procedure, and further to the hearing on 14 October 2024,

after considering the observations submitted on behalf of:

– the Romanian Government, by M. Chicu, E. Gane and L. Lițu, acting as Agents,

– the Czech Government, by L. Halajová, M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– the French Government, by B. Dourthe, acting as Agent,

– the Netherlands Government, by C.S. Schillemans, acting as Agent,

– the European Commission, by H. Leupold, L. Nicolae and J. Vondung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(5) and (6) and Article 8(1)(c) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), and of Article 4(2), Article 22(1) and Article 25 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

2 The request has been made in the proceedings relating to the execution of the European arrest warrant issued against C.J. by the Curtea de Apel București – Biroul executări penale (Court of Appeal, Bucharest – Office for Criminal Enforcement, Romania).

Legal context

International law

3 Article 3 of the Convention on the Transfer of Sentenced Persons, signed in Strasbourg on 21 March 1983, entitled 'Conditions for transfer' provides, in paragraph 1 thereof:

'A sentenced person may be transferred under this Convention only on the following conditions:

…

(f) if the sentencing and administering States agree to the transfer.'

European Union law

Framework Decision 2002/584

4 Recital 6 of Framework Decision 2002/584 states:

'The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.'

5 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

…'

6 Article 3 of that framework decision, entitled 'Grounds for mandatory non-execution of the European arrest warrant', provides:

'The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

…

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State:

…'

7 Article 4 of that framework decision, entitled 'Grounds for optional non-execution of the European arrest warrant', is worded as follows:

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

…

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

…'

8 Article 5 of Framework Decision 2002/584, entitled 'Guarantees to be given by the issuing Member State in particular cases', provides:

'The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

…

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.'

9 Article 8 of that framework decision, entitled 'Content and form of the European arrest warrant' provides:

'1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

…

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

…’

10 Article 12 of that framework decision, entitled ‘Keeping the person in detention’, is worded as follows:

‘When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. …’

11 Article 26 of that Framework Decision, entitled ‘Deduction of the period of detention served in the executing Member State’, provides, in paragraph 1 thereof:

‘The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.’

Framework Decision 2008/909

12 Recitals 2, 8 and 12 of Framework Decision 2008/909 state:

‘(2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty … and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State …

…

(8) In cases referred to in Article 4(1)(c) the forwarding of the judgment and the certificate to the executing State is subject to consultations between the competent authorities of the issuing and the executing States, and the consent of the competent authority of the executing State. …

…

(12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of [Framework Decision 2002/584]. This means, inter alia, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision [2002/584].’

13 Article 3 of that framework decision, entitled 'Purpose and scope', provides, in paragraph 1 thereof:

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

14 Article 4 of that framework decision, entitled 'Criteria for forwarding a judgment and a certificate to another Member State' is worded as follows:

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

(a) the Member State of nationality of the sentenced person in which he or she lives; or

(b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced person will be deported, once he or she is released from the enforcement of the sentence …; or

(c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

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

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

…

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. … Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

…'

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

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

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.'

16 Under Article 13 of Framework Decision 2008/909, entitled 'Withdrawal of the certificate':

'As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.'

17 Article 22 of that framework decision, entitled 'Consequences of the transfer of the sentenced person', provides, in paragraph 1 thereof:

'Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.'

18 Article 23 of that framework decision, entitled 'Languages', provides, in paragraph 1 thereof:

'The certificate 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 or more other official languages of the Institutions of the European Union.'

19 Article 25 of that framework decision, entitled 'Enforcement of sentences following a European arrest warrant', states:

'Without prejudice to Framework Decision [2002/584], provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be

returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.'

20 Article 26 of Framework Decision 2008/909, entitled 'Relationship with other agreements and arrangements', provides in paragraph 1 thereof:

'Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

– The European Convention on the transfer of sentenced persons [(*European Treaty Series* No 112), signed at Strasbourg on 21 March 1983] and the Additional Protocol thereto of 18 December 1997;

– The European Convention on the International Validity of Criminal Judgements [(*European Treaty Series* No 70), signed at The Hague on 28 May 1970];

– Title III, Chapter 5, of the Convention …implementing the Schengen [Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 (OJ 2000 L 239, p. 19)];

– The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.'

The main proceedings and the questions referred

21 On 25 November 2020, the Curtea de Apel București (Court of Appeal, Bucharest, Romania), which is the referring court, issued a European arrest warrant against C.J., for the purpose of enforcing a custodial sentence imposed on him by a judgment of the Second Criminal Division of 27 June 2017. That judgment became final following the delivery of a judgment of the Criminal Division of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) of 10 November 2020 ('the sentencing judgment').

22 On 29 December 2020, C.J. was arrested in Italy.

23 On 31 December 2020, the Ministero della Giustizia (Ministry of Justice, Italy) informed the referring court of that arrest. At the request of that ministry, the European arrest warrant issued against C.J. was forwarded to the Corte d'appello di Roma (Court of Appeal, Rome, Italy), which is the executing judicial authority.

24 On 14 January 2021, at the request of the Italian authorities, the issuing judicial authority forwarded the sentencing judgment to those authorities. On that occasion, the referring court expressed its disagreement with the recognition of that judgment and the assumption of responsibility, in Italy, for the enforcement of the sentence imposed on C.J.

25 In response to a request from the Italian judicial authorities, that court explained, on 20 January 2021, that, if the execution of the European arrest warrant issued against C.J. were refused pursuant to Article 4(6) of Framework Decision 2002/584, it would not agree to the indirect recognition of that judgment and to the Italian Republic's assumption of responsibility for the enforcement of the sentence imposed on him, and that it would then request that the judgment be recognised and responsibility be assumed for its enforcement on the basis of Framework Decision 2008/909.

26 By judgment of 6 May 2021, the Corte d'appello di Roma (Court of Appeal, Rome) refused to surrender C.J., recognised the sentencing judgment and ordered that that sentence be enforced in Italy ('the recognition and enforcement decision'). That court held that it was appropriate to enforce that sentence in Italy in order to improve the chances of social rehabilitation for C.J., who was legally and actually resident in Italy.

27 Deducting the periods of detention already served by C.J., from 17 September to 16 December 2019 and from 29 December 2020 to the date of delivery of the recognition and enforcement decision, that court held that the total sentence remaining to be served by C.J. was 3 years, 6 months and 21 days.

28 On 20 May 2021, the recognition and enforcement decision was communicated to the referring court.

29 Subsequently, a certificate from the Office for the Enforcement of Sentences of the Rome Public Prosecutor's Office, dated 11 June 2021, was sent to the Romanian authorities from which it was apparent that C.J. was the subject of an enforcement warrant, issued on 20 May 2021, in the form of 'house arrest with concurrent suspension' and that the sentence remaining to be served by him was 3 years and 11 months of imprisonment, the start of the enforcement of that sentence having been set at 29 December 2020 and the end of that sentence on 28 November 2024.

30 In a letter of 28 June 2021 to the Ministero della Giustizia (Ministry of Justice, Italy) and the Corte d'appello di Roma (Court of Appeal, Rome), the Romanian judicial authorities reiterated their position referred to in paragraph 24 of the present judgment and stated that, as long as they were not informed of the start of the enforcement of C.J.' s prison sentence, they would retain the right to enforce the sentencing judgment. They also stated that the national warrant for enforcement of the prison sentence imposed on C.J. and the European arrest warrant issued against him had not been annulled and remained in force.

31 On 15 October 2021, the Office for Enforcement of the Second Criminal Division of the Curtea de Apel București (Court of Appeal, Bucharest) raised an objection to enforcement in respect of the sentencing judgment before the referring court.

32 In order to rule on that objection, that court must decide on the validity of the national warrant for enforcement of the prison sentence imposed on C.J. and of the European arrest warrant issued against him.

33 In those circumstances, the Curtea de Apel București (Court of Appeal, Bucharest) has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of Article 25 of Framework Decision [2008/909] be interpreted as meaning that the judicial authority executing a European [arrest] warrant, if it intends to apply Article 4(6) of Framework Decision [2002/584] for the purposes of recognising the judgment passing sentence, is required to request the [forwarding] of the judgment and the certificate issued pursuant to Framework Decision [2008/909] and to obtain the consent of the sentencing State pursuant to Article 4(2) of Framework Decision [2008/909]?

(2) Must the provisions of Article 4(6) of Framework Decision [2002/584], read in conjunction with Articles 25 and 4(2) of Framework Decision [2008/909], be interpreted as meaning that the refusal to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence, without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State, and without obtaining the consent of the sentencing State in the context of the recognition procedure, [cause] the sentencing State to forfeit its right to enforce the sentence under Article 22(1) of Framework Decision [2008/909]?

(3) Must Article 8(1)(c) of Framework Decision [2002/584] be interpreted as meaning that a judgment imposing a custodial sentence on the basis of which a European arrest warrant has been issued, the execution of which has been refused under Article 4(6) [of that Framework Decision], with recognition of the judgment passing sentence but without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State, and without obtaining the consent of the sentencing State in the context of the recognition procedure, is no longer enforceable?

(4) Must the provisions of Article 4(5) of Framework Decision [2002/584] be interpreted as meaning that a judgment refusing to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence pursuant to Article 4(6) of Framework Decision [2002/584], but without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State (EU Member State), and without obtaining the consent of the sentencing State in the context of the recognition procedure, amounts to a judgment "by a third State in respect of the same acts"?

If Question 4 is answered in the affirmative:

(5) Must the provisions of Article 4(5) of Framework Decision [2002/584] be interpreted as meaning that a judgment refusing to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence pursuant to Article 4(6) of [that framework decision], with the suspension of the sentence in accordance with the law of the executing State, amounts to a sentence that "is currently being served" where supervision of the sentenced person has not yet commenced?'

Procedure before the Court

34 On 23 January 2024, the Court decided to assign the present case to the First Chamber. A hearing took place on 13 March 2024 and the Advocate General delivered his Opinion on 13 June 2024, the oral part of the procedure having subsequently been closed.

35 At the request of the First Chamber of the Court, submitted pursuant to Article 60(3) of the Rules of Procedure of the Court of Justice, the Court decided, on 9 July 2024, to refer the case to the Grand Chamber.

36 By order of 13 September 2024, *C.J. (Enforcement of a sentence further to an EAW)*, (C-305/22, EU:C:2024:783), the Court, after hearing the Advocate General, ordered the reopening of the oral part of the procedure, in accordance with Article 83 of the Rules of Procedure. A second hearing took place on 14 October 2024.

37 On 12 December 2024, the Advocate General delivered his additional Opinion.

Consideration of the questions referred

The first to third questions

38 By its first to third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(6) of Framework Decision 2002/584 and Articles 4, 22 and 25 of Framework Decision 2008/909 must be interpreted as meaning that:

– first, the refusal by the executing judicial authority, based on the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, to surrender a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence presupposes that that judicial authority has complied with the conditions and the procedure laid down in Framework Decision 2008/909 as regards the recognition of the judgment in respect of that sentence and the assumption of responsibility for the enforcement of that sentence and,

– second, as the case may be, the issuing State retains the right to enforce that sentence and therefore to maintain the European arrest warrant in circumstances where the executing judicial authority, without having complied with the conditions and the procedure laid down in Framework Decision 2008/909 as regards the recognition of that judgment and that assumption of responsibility, has refused, on the basis of that ground, to execute that European arrest warrant.

The impact of Framework Decision 2008/909 on the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584

39 At the outset, it should be noted that Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between

the Member States (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 42 and the case-law cited).

40 In the field governed by that framework decision, the principle of mutual recognition, which, according to recital 6, constitutes the 'cornerstone' of judicial cooperation in criminal matters, is expressed in Article 1(2) of that framework decision, which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision (see, to that effect, judgment of 6 June 2023, *O.G. (European arrest warrant issued against a third-country national)*, C-700/21, EU:C:2023:444, paragraph 32 and the case-law cited).

41 It follows, first, that the executing judicial authorities may refuse to execute a European arrest warrant only on grounds stemming from Framework Decision 2002/584, as interpreted by the Court. Second, while the execution of a European arrest warrant constitutes the rule, refusal to execute that warrant is intended to be an exception, which must therefore be interpreted strictly (judgment of 6 June 2023, *O.G. (European arrest warrant issued against a third-country national)*, C-700/21, EU:C:2023:444, paragraph 33 and the case-law cited).

42 As regards such grounds, that framework decision lays down, in Article 3 thereof, the grounds for mandatory non-execution of a European arrest warrant and, in Articles 4 and 4a, the grounds for optional non-execution of that warrant.

43 As regards the grounds for optional non-execution listed in Article 4 of Framework Decision 2002/584, the application of the ground provided for in point 6 of that article is subject to two conditions being met, namely, first, that the requested person is staying in the executing Member State, is a national of or resident in that Member State and, second, that that State undertakes to execute, in accordance with its domestic law, the sentence or detention order in respect of which the European arrest warrant has been issued (judgment of 6 June 2023, *O.G. (European arrest warrant issued against a third-country national)*, C-700/21, EU:C:2023:444, paragraph 46 and the case-law cited).

44 Where the executing judicial authority finds that both of the conditions have been satisfied, it must then ascertain whether there is a legitimate interest to justify the sentence imposed in the issuing Member State being enforced on the territory of the executing Member State. That assessment allows that authority to take account of the objective pursued by Article 4(6) of Framework Decision 2002/584 which consists, according to well-established case-law, in increasing the requested person's chances of reintegrating into society when the sentence imposed on him or her expires (see, to that effect, judgment of 6 June 2023, *O.G. (European arrest warrant issued against a third-country national)*, C-700/21, EU:C:2023:444, paragraph 49 and the case-law cited).

45 As regards the impact of Framework Decision 2008/909 on the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, it must be borne in mind that, like Framework Decision 2002/584, Framework Decision 2008/909 gives concrete expression, in criminal matters, to the principles of mutual trust and mutual recognition which require, particularly with regard to the area of freedom, security and justice, that each Member State, save in exceptional circumstances, consider the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law. The latter framework decision thus further develops judicial cooperation concerning the recognition

and enforcement of criminal judgments where persons were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State, with a view to facilitating their social rehabilitation (see, to that effect, judgment of 9 November 2023, *Staatsanwaltschaft Aachen*, C-819/21, EU:C:2023:841, paragraph 19).

46 According to Article 3(1), the purpose of Framework Decision 2008/909 is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence issued by a court in another Member State. As is apparent from Article 26(1), that framework decision replaces the provisions of the conventions on the transfer of sentenced persons, referred to in that article, applicable in relations between the Member States (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 36 and 37).

47 Thus, in view of the identical nature of the objective pursued, first, by the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584 and, second, by the rules laid down by Framework Decision 2008/909, namely that of facilitating the social rehabilitation of persons sentenced in another Member State, it must be held that where a judicial authority of the executing State wishes to apply that ground, it must take account of those rules.

48 In that regard, it must be pointed out, as the Advocate General observed in point 45 of his Opinion of 13 June 2024, that there is nothing to indicate that the EU legislature intended to provide for two separate legal systems as regards the recognition and enforcement of judgments in criminal matters, according to whether or not a European arrest warrant exists.

49 To that effect, Article 25 of Framework Decision 2008/909, read in the light of recital 12, provides that provisions of that framework decision are to apply, *mutatis mutandis* to the extent they are compatible with provisions under Framework Decision 2002/584, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in accordance with Article 4(6) of the latter framework decision. That is also the case where, acting under Article 5(3) of the latter framework decision, a Member State has imposed, as a condition for the execution of a European arrest warrant for the purposes of prosecution in the issuing State, that the person concerned be returned to the executing State in order to serve the sentence imposed on him or her in the issuing State.

50 As regards the latter situation, referred to in Article 5(3) of Framework Decision 2002/584, it is apparent from the case-law of the Court that the enforcement of the sentence is governed by Framework Decision 2008/909. As the Court has pointed out, when the execution of a European arrest warrant issued for the purposes of criminal proceedings is subject to the condition set out in Article 5(3), the executing Member State must, in order to enforce a custodial sentence or a detention order imposed in the issuing Member State on the person concerned, comply with the relevant rules of Framework Decision 2008/909 (see, to that effect, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191, paragraph 68).

51 In the same way as in the situation referred to in Article 5(3) of Framework Decision 2002/584, it must be held that, where an executing judicial authority intends to refuse, on the basis of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584,

the execution of a European arrest warrant issued for the purposes of enforcing a custodial sentence, the recognition of the sentencing judgment and of the assumption of responsibility for the enforcement of that sentence are governed by Framework Decision 2008/909.

52 A refusal, based on Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant presupposes an actual undertaking on the part of the executing Member State to enforce the custodial sentence imposed on the requested person (see, to that effect, judgment of 6 June 2023, *O.G. (European arrest warrant issued against a third-country national)*, C-700/21, EU:C:2023:444, paragraph 48 and the case-law cited). In so far as that person has been sentenced in the issuing State, that necessarily implies that the authorities of the executing State recognise the sentencing judgment handed down in respect of that person in accordance with the provisions of Framework Decision 2008/909.

53 It is true that the Court has inferred from Article 25 of Framework Decision 2008/909 that no provision of that framework decision can affect either the scope of the ground for optional non-execution stated in Article 4(6) of Framework Decision 2002/584 or the way in which it is applied (judgment of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 48).

54 That finding does not mean, however, that the conditions for recognition and enforcement of judgments in criminal matters laid down by Framework Decision 2008/909 are not applicable where a Member State undertakes to enforce a sentence in accordance with Article 4(6) of Framework Decision 2002/584, even if the application of Framework Decision 2008/909 would not lead to any incompatibility or inconsistency in the combined application of those two acts. As the Advocate General observed in point 63 of his Opinion of 13 June 2024, the conditions for recognition and enforcement of judgments in criminal matters laid down by Framework Decision 2008/909 are applicable when implementing the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, in so far as, as expressly provided for in Article 25 of Framework Decision 2008/909 and as the Court itself noted in paragraph 48 of the judgment of 13 December 2018, *Sut*, (C-514/17, EU:C:2018:1016), those conditions are compatible with the provisions of Framework Decision 2002/584. This makes it possible to ensure the proper functioning of the simplified and effective system for the surrender of requested persons established by that framework decision.

55 It should be noted in that regard that, in accordance with Article 26(1) of Framework Decision 2008/909, that framework decision replaced, from 5 December 2011, the corresponding provisions of the European Convention on the transfer of sentenced persons and the Additional Protocol thereto of 18 December 1997.

56 As noted in particular by the French Government at the hearing on 14 October 2024, Article 3(1)(f) of that convention provided that the sentencing State and the administering State must have agreed on the transfer of a sentenced person.

57 Article 3(1)(f) was replaced, following the adoption of Framework Decision 2008/909, by the requirement for the issuing State's consent to the assumption of responsibility for the enforcement of the sentence imposed in that State. That consent takes the form of the forwarding, in accordance with the procedures laid down in Article 4 of that framework decision, to the executing State of the sentencing judgment handed down by a court of the issuing State, together with the certificate, the specimen of which is set out in Annex I to that framework decision.

58 It is clear from Part (f) of the specimen certificate set out in Annex I to Framework Decision 2008/909 that, specifically in the context of the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, the provisions of Framework Decision 2008/909 may apply, since that certificate must refer to that ground when it is relied on.

59 The need to obtain the consent of the issuing State as regards the assumption of responsibility for the enforcement of the sentence imposed is also apparent from Article 13 of Framework Decision 2008/909. It follows from that article that, as long as the enforcement of that sentence in the executing State has not begun, the issuing State may withdraw the corresponding certificate from the executing State and that, upon that withdrawal, the executing State is no longer to enforce that sentence.

60 The application, in the context of the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, of the conditions laid down by Framework Decision 2008/909 as regards the recognition, in the executing State, of the sentence which justified the issue of the European arrest warrant and that executing State's assumption of responsibility for the enforcement of the sentence imposed, in particular the requirement of consent on the part of the issuing State to such assumption of responsibility, is compatible with the objective of increasing the requested person's chances of social rehabilitation upon expiry of that sentence, pursued by that provision.

61 First, it follows from Article 4(1)(c) of Framework Decision 2008/909, together with Article 4(2), read in the light of recital 8 of that framework decision, that it is only where the competent authority of the issuing State is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person that it may forward to the competent authority of the latter State the sentencing judgment and the accompanying certificate, the specimen of which is set out in Annex I to that framework decision.

62 Second, it is apparent from the case-law of the Court that the objective of increasing the requested person's prospects of social reintegration on expiry of the sentence imposed on him or her, however important it may be, is not absolute, since it must be reconciled, in particular, with the essential rule laid down in Article 1(2) of Framework Decision 2002/584, according to which, in principle, Member States are to execute any European arrest warrant (see, to that effect, judgments of 6 October 2009, *Wolzenburg*, C-123/08, EU:C:2009:616, paragraph 62, and of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 46).

63 Thus, as the Advocate General observed in point 68 of his Opinion of 13 June 2024, in view of the various functions of the sentence within society, the Member State in which a person has been convicted may legitimately rely on its own criminal policy considerations in order to justify the sentence imposed being enforced on its territory, thereby refusing to forward the sentencing judgment and the accompanying certificate under Framework Decision 2008/909, even where considerations relating to the requested person's reintegration into society might militate in favour of enforcing that sentence on the territory of another Member State.

64 The discretion enjoyed by the issuing State with regard to the consent provided for in Article 4(1)(c) and (2) of Framework Decision 2008/909, as explained in paragraphs 61 to 63 of the present judgment, is moreover confirmed by paragraph 5 of that article, which provides that

where the executing State, on its own initiative, requests the issuing State to forward the judgment together with the certificate, such a request does not create an obligation on the part of the issuing State to grant that request.

65 Furthermore, no provision of that framework decision or of Framework Decision 2002/584 permits the inference that reliance by an executing judicial authority on the ground for optional non-execution provided for in Article 4(6) of the latter framework decision has the effect of calling into question that discretion of the issuing State.

66 In that regard, the issue by a Member State of a European arrest warrant for the purposes of enforcing a custodial sentence is evidence precisely of the fact that that State favours, in principle, enforcement of the sentence on its own territory over the implementation of the mechanism for the recognition and enforcement of judgments in criminal matters provided for by Framework Decision 2008/909, with a view to such enforcement in another Member State. In that context, the effectiveness of the system of surrender between the Member States established by Framework Decision 2002/584 would be compromised if, in such a case, the executing State could unilaterally derogate from the principle of the execution of the European arrest warrant, on the basis of the implementation of that ground for optional non-execution, without the conditions for recognition and enforcement of a sentencing judgment laid down in Framework Decision 2008/909 being satisfied.

67 It follows that, in the context of the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, the executing State's assumption of responsibility for the enforcement of the sentence imposed by the sentencing judgment handed down in the issuing State and which justified the issue of the European arrest warrant is subject to the consent of that issuing State, in accordance with the rules laid down in Framework Decision 2008/909.

68 That said, although the forwarding by the issuing State of the sentencing judgment and the certificate that must accompany it is thus conceived as a mere possibility, including where the executing State intends to assume responsibility for enforcing the sentence using that ground for non-execution, it must be borne in mind that, in order to ensure, inter alia, that the operation of the European arrest warrant is not brought to a standstill, the duty of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU entails a dialogue between the executing and issuing judicial authorities. It follows in particular from that principle that the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 48 and the case-law cited).

69 Therefore, the issuing and executing judicial authorities must, in order to ensure effective cooperation in criminal matters, make full use of the instruments provided for in Framework Decisions 2002/584 and 2008/909, such as the consultations preceding the forwarding of the sentencing judgment handed down by a court of the issuing State and of the certificate, the specimen of which is set out in Annex I to Framework Decision 2008/909, in order to foster mutual trust on the basis of that cooperation (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 49 and the case-law cited). It should be recalled, in that regard, that, in accordance with Article 4(3) of the latter framework decision, such

consultations are mandatory where, as in the present case, enforcement of the sentence is envisaged in a Member State other than that of the nationality of the person concerned, namely in the situation referred to in Article 4(1)(c) of that framework decision.

70 If it is not possible for the executing State actually to assume responsibility for enforcing the sentence, for whatever reason, including on account of non-compliance with the conditions and procedure laid down in Framework Decision 2008/909, it follows from the principle of mutual recognition that, in order to prevent the impunity of the requested person, a European arrest warrant must be executed. As noted in paragraph 41 of the present judgment, the execution of a European arrest warrant constitutes the rule, while refusal to execute that warrant is an exception which must therefore be interpreted strictly.

71 As regards the obligations of the issuing State, it should be pointed out that it is for that State to ensure that the prerogative conferred on it by Framework Decision 2008/909 not to forward to the executing State the sentencing judgment imposed by one of its courts and the certificate, the specimen of which is set out in Annex I to that framework decision, is exercised in such a way as to enable effective cooperation between the competent authorities of the Member States in criminal matters, and ensures that the operation of the European arrest warrant and the mutual recognition of judgments in criminal matters for the purposes of their enforcement in another Member State are not brought to a standstill.

72 Accordingly, where an executing judicial authority intends to refuse, on the basis of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant, the competent authority of the issuing State may refuse such forwarding if it considers, on the basis of objective circumstances, that the sentence will not actually be enforced in the executing State or that enforcement of that sentence in that State will not contribute to the objective of social rehabilitation of the requested person upon expiry of the custodial sentence imposed on him or her. The issuing judicial authority may still refuse that forwarding on the basis of considerations relating to the criminal policy of the issuing State.

The right of the issuing State to enforce a custodial sentence where the executing judicial authority has refused to execute a European arrest warrant issued for the purposes of enforcing that sentence, on the basis of Article 4(6) of Framework Decision 2002/584, without complying with the conditions and the procedure laid down in Framework Decision 2008/909, relating to the recognition of the sentencing judgment imposing that sentence and to the assumption of responsibility for enforcing that sentence

73 It is necessary to examine whether, in circumstances where, without complying with the conditions and the procedure laid down in Framework Decision 2008/909, the executing judicial authority has refused, on the basis of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence, the issuing State retains the right to enforce that sentence.

74 In the present case, it is apparent from the order for reference that, after receiving the European arrest warrant issued for the purposes of executing a custodial sentence against C.J., the executing judicial authority considered that it was appropriate, in order to increase that person's chances of social rehabilitation, to enforce that sentence in Italy. Thus, by the recognition and enforcement decision, that authority refused to surrender that person, recognised the sentencing judgment and ordered that that sentence be enforced in Italy. That decision was made even

though the referring court had sent that judgment to the executing judicial authority, but not the certificate, the specimen of which is set out in Annex I to Framework Decision 2008/909, and that court had expressed its disagreement with the recognition of that judgment and the assumption of responsibility for the enforcement of the custodial sentence imposed on C.J. in Italy.

75 In that regard, as is apparent from paragraphs 54 to 67 of the present judgment, in the context of the implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, the recognition of the judgment imposing a custodial sentence handed down by a court of the issuing State and the assumption of responsibility for enforcement of that sentence by the executing State must be carried out in accordance with the conditions and the procedure laid down in Framework Decision 2008/909, which entails, in particular, the agreement of the issuing State to that assumption of responsibility.

76 It must be stated that, where, as in the present case, the execution of a European arrest warrant issued for the purposes of enforcing a custodial sentence has been refused by the executing judicial authority in breach of the conditions and procedure laid down in Framework Decision 2008/909, that arrest warrant may be maintained by the issuing judicial authority. Similarly, the issuing State retains the right to enforce that sentence.

77 The Court has already had occasion to hold that the maintenance, by the issuing judicial authority, of a European arrest warrant may prove necessary, in particular where the refusal decision was not consistent with EU law, in order to complete the procedure for the surrender of a requested person and thus to promote the attainment of the objective of combating impunity pursued by that framework decision. Thus, the mere fact that the executing judicial authority has refused to execute a European arrest warrant cannot, as such, prevent the issuing judicial authority from maintaining that arrest warrant (see, to that effect, judgment of 29 July 2024, *Breian*, C-318/24 PPU, EU:C:2024:658, paragraphs 51 and 53).

78 Those considerations apply, *mutatis mutandis*, as regards the right of the issuing State to enforce the custodial sentence imposed on the person who is the subject of the European arrest warrant in circumstances such as those referred to in paragraph 76 of the present judgment and cannot be called into question in the light of Article 22(1) of Framework Decision 2008/909, which provides that the issuing State may no longer enforce the sentence imposed where the enforcement of that sentence has begun on the territory of the executing State.

79 It must be pointed out that that provision does not apply where, as in the present case, the refusal of surrender on the basis of Article 4(6) of Framework Decision 2002/584 by the executing State has not taken place in accordance with the rules set out in Framework Decision 2008/909. First, as the Advocate General stated in point 81 of his Opinion of 12 December 2024, to accept, in such a situation, that the issuing Member State can be denied its competence to enforce that sentence because enforcement of the sentence has begun in the executing Member State would open the door to circumvention of the rules laid down in that framework decision.

80 Second, the fact that, in such a situation, the issuing State loses its competence to execute that sentence would have the consequence not only of infringing the rules on recognition and enforcement of the judgment of the issuing State laid down by Framework Decision 2008/909 but also of undermining the operation of the simplified and effective system for the surrender of requested persons established by Framework Decision 2002/584 by, in particular, making it possible to call into question the objective of combating impunity pursued by that framework

decision (see, to that effect, judgments of 6 July 2023, *Minister for Justice and Equality (Request for consent – Effects of the original European arrest warrant)*, C-142/22, EU:C:2023:544, paragraph 51, and of 29 July 2024, *Breian*, C-318/24 PPU, EU:C:2024:658, paragraph 51 and the case-law cited].

81 Admittedly, it is apparent from the case-law that the coordination provided for by the EU legislature between Framework Decision 2002/584 and Framework Decision 2008/909 must contribute to achieving the objective, referred to in paragraph 46 of the present judgment, of facilitating the social rehabilitation of the person concerned (judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191, paragraph 51 and the case-law cited).

82 However, if the executing State could, on the basis of that objective, refuse to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence, without the consent of the issuing State to its assumption of responsibility for that enforcement, that could create a high risk of impunity for persons who attempt to evade justice after being convicted in a Member State and would ultimately jeopardise the effective functioning of the simplified system of surrender between the Member States established by Framework Decision 2002/584.

83 It should be added that the interpretation of Article 22 of Framework Decision 2008/909 set out in paragraph 79 of the present judgment, which makes the possibility of applying the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584 subject to the issuing State's consent to the enforcement of the sentence in the executing State, is supported by the fact that, as stated in paragraph 57 of that judgment, that consent is specifically expressed by the forwarding of the sentencing judgment and the certificate, the specimen of which is set out in Annex I to Framework Decision 2008/909. Those documents, and in particular that certificate, contain essential information for the actual enforcement of the sentence imposed. To that end, Article 23(1) of Framework Decision 2008/909 provides, moreover, that that certificate must be translated into the official language or languages of the executing State.

84 It follows that, in circumstances such as those at issue in the main proceedings, Framework Decisions 2002/584 and 2008/909 do not preclude the European arrest warrant issued against C.J. from being maintained and the sentence imposed on him from being enforced in the issuing State, namely Romania.

85 However, given that such maintenance is liable to affect the personal freedom of the requested person, it must also be stated that it is for the issuing judicial authority to examine whether, in the light of the specific features of the case, that maintenance is proportionate. In the context of such an examination, it is for that authority, inter alia, to take account of the consequences for that person of the maintenance of the European arrest warrant issued against him or her and of the prospects of execution of that arrest warrant (see, to that effect, judgment of 29 July 2024, *Breian*, C-318/24 PPU, EU:C:2024:658, paragraph 54 and the case-law cited).

86 In the event that the issuing State decides, following that examination, to maintain the European arrest warrant, it would be for that State, as the case may be, where the requested person is surrendered to that State or when he or she voluntarily returns to its territory, to take account of Article 26(1) of Framework Decision 2002/584. That provision, in so far as it requires account to be taken of any period during which that person was detained in the executing Member State, ensures that that person is not required to serve a period of detention the total length of which –

both in the executing Member State and in the issuing Member State – would ultimately exceed the length of the custodial sentence imposed on him or her in the issuing Member State (see, to that effect, judgment of 28 July 2016, *JZ*, C-294/16 PPU, EU:C:2016:610, paragraph 43).

87 In the light of all the foregoing considerations, the answer to the first to third questions is that Article 4(6) of Framework Decision 2002/584 and Articles 4, 22 and 25 of Framework Decision 2008/909 must be interpreted as meaning that:

– first, the refusal by the executing judicial authority, based on the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, to surrender a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence presupposes that that judicial authority has complied with the conditions and the procedure laid down in Framework Decision 2008/909 as regards the recognition of the judgment in respect of that sentence and the assumption of responsibility for the enforcement of that sentence and,

– second, the issuing State retains the right to enforce that sentence and therefore to maintain the European arrest warrant in circumstances where the executing judicial authority, without having complied with the conditions and the procedure laid down in Framework Decision 2008/909 as regards the recognition of that judgment and that assumption of responsibility, has refused, on the basis of that ground, to execute that European arrest warrant.

The fourth question

88 It should be borne in mind that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the Court to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 25 February 2025, *Alphabet and Others*, C-233/23, EU:C:2025:110, paragraph 33 and the case-law cited).

89 In accordance with Article 4(5) of Framework Decision 2002/584, referred to in the fourth question, the executing judicial authority may refuse to execute a European arrest warrant if it is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country. In the present case, it is apparent from the order for reference that the recognition and enforcement decision was adopted by a court of a Member State of the European Union, namely the Italian Republic.

90 In those circumstances, only the ground for mandatory non-execution provided for in Article 3(2) of Framework Decision 2002/584, which gives specific expression to the principle *ne bis in idem*, compliance with which is for the Member States to ensure, is relevant.

91 Accordingly, it must be held that, by its fourth question, the referring court asks, in essence whether Article 3(2) of Framework Decision 2002/584 must be interpreted as meaning that a decision by which the executing judicial authority has refused, on the basis of Article 4(6) of that framework decision, to surrender a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence, recognised the sentencing judgment and ordered the enforcement of that sentence in the executing State is covered by the concept of ‘finally judged … in respect of the same acts’, within the meaning of that provision.

92 In accordance with Article 3(2) of Framework Decision 2002/584, if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts, that authority must refuse to execute a European arrest warrant provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.

93 In that regard, the Court has held that the requested person is considered to have been 'finally judged … in respect of the same acts' within the meaning of Article 3(2) of Framework Decision 2002/584 where, following criminal proceedings, further prosecution is definitively barred or where the judicial authorities of a Member State have adopted a decision by which the accused is finally acquitted in respect of the alleged acts (see, to that effect, judgment of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 45 and the case-law cited).

94 Furthermore, as regards, more specifically, a request for surrender, it follows from the case-law that a decision of an executing judicial authority to refuse to execute an arrest warrant cannot be regarded as falling within the concept of 'finally judged … in respect of the same acts' within the meaning of Article 3(2) of Framework Decision 2002/584. The examination of such a request does not entail the initiation of criminal proceedings by the executing State against the person whose surrender is requested and does not involve an assessment of the merits of the case (see, by analogy, judgment of 14 September 2023, *Sofiyska gradska prokuratura and Others (Successive arrest warrants)*, C-71/21, EU:C:2023:668, paragraphs 52 to 54).

95 The same is true of a decision, such as the recognition and enforcement decision, by which a sentencing judgment handed down in another Member State is recognised and by which enforcement of the sentence imposed by that judgment is ordered.

96 As is apparent from the case-law referred to in paragraph 94 of the present judgment, the examination carried out in that context does not entail the initiation of criminal proceedings against the sentenced person and does not involve an assessment of the merits of the case. Instead of resulting in a new sentence concerning the same acts, the purpose of such a decision is to enable the sentence imposed in the issuing State to be enforced in the executing State.

97 Accordingly, a decision by which the executing judicial authority has refused, on the basis of Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence, recognised the sentencing judgment imposing that sentence and ordered the enforcement of that sentence cannot be regarded as being covered by the concept of 'finally judged … in respect of the same acts' within the meaning of Article 3(2) of that framework decision.

98 In the light of all the foregoing considerations, the answer to the fourth question is that Article 3(2) of Framework Decision 2002/584 must be interpreted as meaning that a decision by which the executing judicial authority has refused, on the basis of Article 4(6) of that framework decision, to surrender a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence, recognised the sentencing judgment and ordered the enforcement of that sentence in the executing State is not covered by the concept of 'finally judged … in respect of the same acts', within the meaning of that provision.

The fifth question

99 In view of the answer to the fourth question, there is no need to answer the fifth question referred for a preliminary ruling.

Costs

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

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

1. **Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and Articles 4, 22 and 25 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union,**

   must be interpreted as meaning that:

   – **first, the refusal by the executing judicial authority, based on the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, to surrender a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence presupposes that that judicial authority has complied with the conditions and the procedure laid down in Framework Decision 2008/909 as regards the recognition of the judgment in respect of that sentence and the assumption of responsibility for the enforcement of that sentence and,**

   – **second, the issuing State retains the right to enforce that sentence and therefore to maintain the European arrest warrant in circumstances where the executing judicial authority, without having complied with the conditions and the procedure laid down in Framework Decision 2008/909 as regards the recognition of that judgment and that assumption of responsibility, has refused, on the basis of that ground, to execute that European arrest warrant.**

2. **Article 3(2) of Framework Decision 2002/584**

   must be interpreted as meaning that a decision by which the executing judicial authority has refused, on the basis of Article 4(6) of that framework decision, to surrender a person who is the subject of a European arrest warrant issued for the purposes of enforcing a custodial sentence, recognised the sentencing judgment and ordered the enforcement of that sentence in the executing State is not covered by the concept of 'finally judged … in respect of the same acts', within the meaning of that provision.

[Signatures]