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THE EUROPEAN UNION**

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**NOTE**

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from: General Secretariat of the Council

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to: Working Party on Cooperation in Criminal Matters

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No. prev. doc.: 16539/10 COPEN 259 EUROJUST 132 EJN 66

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Subject: - Framework decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties  
- Follow up of the mutual recognition instruments

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Delegations will find in the Annexes the questionnaire on the implementation of the framework decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (doc. 16539/10) and the answers received by the Member States to this questionnaire.

**Questionnaire on the implementation of the framework decision 2005/214/JHA  
On the application of the principle of mutual recognition to financial penalties**

Note: All Member States are invited to answer this questionnaire. For the Member States where the Framework decision has not yet been implemented into national law, please indicate as far as possible how you intend to answer on a provisional basis.

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?
2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

**Competent authorities**

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?
4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

**Scope – types of procedures concerned**

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.
7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

#### Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?
9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

#### Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

#### Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
  - a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
  - b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.
  - c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
  - d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

## Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?
  14. What could be done at European level in order to facilitate its application (legislative or practical measures)?
  15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?
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**ANSWERS RECEIVED BY THE GENERAL SECRETARIAT IN REPLY TO THE**  
**QUESTIONNAIRE ON**  
**"THE IMPLEMENTATION OF THE FRAMEWORK DECISION 2005/214/JHA**  
**ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO**  
**FINANCIAL PENALTIES"**

(16539/10)

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## BELGIUM

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

The Framework decision is not yet implemented into Belgian law. The draft legislation was about to be brought before the National Parliament in May 2010 but the legislative work was interrupted due to governmental issues. Belgium has currently the intention to implement this instrument in the course of 2011. All answers related to its legal implementation should therefore be seen as provisional.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

The Framework Decision should apply to financial penalties imposed both before and after the entry into force of our implementing legislation.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

According to the draft legislation, the local Public Prosecutor of the residence or the domicile of the concerned person will be the competent authority to decide on the execution of the financial penalty. Each authority competent to impose a financial penalty under the criteria set by the Framework Decision would be considered as a competent issuing authority.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The draft legislation has foreseen the involvement of a central authority for some limited tasks:

- Judicial authorities have an obligation to inform the Ministry of Justice (SPF Justice) when they have refused the execution on the grounds that they have serious reasons to believe that the execution of the decision would affect the fundamental rights of the concerned person.
- All difficulties related to the application of the Framework Decision should be reported to the Ministry of Justice.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Yes.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Such procedures exist under Belgian national law, for instance:

- Administrative fines imposed by a local authority/municipality (legislation of 13 May 1999)
- Administrative fines imposed in the context of the legislation of 21 December 1998 on security during football games.

The financial penalties imposed following these procedures may be appealed before a jurisdiction competent in criminal matters.



7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

As the Framework decision is not yet implemented into Belgian law, Belgium cannot provide any information on that matter.

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes, in case of non payment of a financial penalty, alternative sanction may be applied under Belgian law. Two forms of alternative sanctions are allowed:

- Subsidiary imprisonment;
- Withdrawal of driving licence.

With regard to **subsidiary imprisonment (Article 40 of the Criminal Code)**: in case of non payment within the two months from the date of the judgment or from the notification in case of judgment in absentia, Article 40 of the Criminal Code provides for the possibility to replace a fine by a subsidiary custodial sanction. The length of this subsidiary custodial sanction shall be indicated in the initial judgment or in the initial decision of conviction and shall not exceed 6 months in case of conviction for crime, 3 months in case of conviction for offence and 3 days in case of conviction for minor offence.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes. When it is not possible to enforce a decision, the draft legislation provides for the possibility to apply alternative sanctions if it is provided for under Belgian law and if the issuing State has indicated this possibility in the initial decision and has allowed the application of such alternative sanctions in the certificate referred to in Article 4 of the Framework Decision.

#### Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

On the basis of the draft legislation, compensation imposed for the benefit of victims, where the victim may not be a civil party to the proceedings will be covered and will have to be enforced in Belgium, although this concept is not known under Belgian law.

Money obtained from the enforcement of decisions shall in principle accrue to the executing State. However, as an exception, the possibility will be provided that both States otherwise agree, notably in the case of Article 1, b) ii) of the Framework Decision, so that compensation payments may be transferred to the issuing state for the benefit of the victim.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

It is envisaged that this ground for refusal will be transposed as optional.

The threshold of 70 € seems well balanced.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State?
- c. Acting as executing authority, what is the number of financial penalties recognized and executed on the basis of this framework decision by the competent authorities of your Member State?

- d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

As the Framework decision is not yet implemented into Belgian law, Belgium cannot provide any statistics on that matter.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

In our opinion, the Framework Decision is a very useful instrument as it covers a new field of mutual assistance.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

No suggestions.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

No

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## BULGARIA

### Question 1:

Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

On 11.02.2010 the Bulgarian national assembly has passed the Recognition, Execution and Transmission of Confiscation and Seizure Orders and Decisions Imposing Financial Penalties Act (RETCSODIFPA), promulgated, SG, No. 15/23.02.2010. The RETCSODIFPA has entered into force on the third day after its promulgation in the State Gazette of the Republic of Bulgaria.

It introduces the requirements of two FDs, and namely::

1. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and
2. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

### Question 2:

What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

The RETCSODIFPA does not hamper the execution of financial penalties imposed before its entry into force.

The Republic of Bulgaria has already received and accepted requests for execution of decisions, imposing financial penalties, which were imposed before the implementation of the cited FD into our national legislation.

## Competent authorities

### Question 3:

With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The Information contained in doc. 9226/09 COPEN 77 in regard to Bulgaria is not correct.

The correct information on the Bulgarian competent authorities should read as follows:

#### **1/ When Bulgaria is executing state:**

The District Court (for Sofia district – the Sofia City court) of the domicile or habitual residence of the person, and for legal entities - of their registered seat, management address or address for correspondence.

If the domicile or habitual residence of the person, and for legal entities - their seat, registered office or address for correspondence in the territory of the Republic of Bulgaria are not stated in the certificate, the decision imposing a financial penalty shall be recognised by the District Court of the location of the property or the place of the source of the income of the person concerned.

#### **2/ When Bulgaria is issuing state the competent authorities are:**

a) Court decisions: The Regional or District Court which has ruled the decision at first instance.

b) Penal decrees (decisions, issued by an authority other than a court in respect of infringements of the rules of law): The National Revenue Agency

*NATIONAL REVENUE AGENCY*

*Address: Dondukov boulevard 52, Sofia, Bulgaria,*

*Information centre – 0700 18 700, e-mail: [infocenter@nra.bg](mailto:infocenter@nra.bg)*

A list of the district and regional courts in the Republic of Bulgaria was originally contained in the Notification, drawn up by the Ministry of Justice to the Secretariat. However this list is not contained in document 15219/10 COPEN 228 EUROJUST 115 EJM 54.

### **3/ Central authority:**

In cases where direct contact between the competent authorities is not possible, the authority responsible for the administrative transmission and receipt of decisions on the enforcement of financial penalties in the Republic of Bulgaria, shall be the Ministry of Justice.

*MINISTRY OF JUSTICE*

*Address: 1040 Sofia, "Slavyanska" Street 1*

*Fax: + 359 2 980 92 22, Tel.: + 359 2 9237 545, + 359 2 9237 466*

*e-mail: n\_hringova@justice.government.bg*

#### Question 4:

If a central authority has been designated under this framework decision in your Member State, could you explain its role?

See point 3 of the answer of the previous question.

#### Scope – types of procedures concerned

Question 5:

For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

*Article 1*

*For the purposes of this Framework Decision:*

*(a) "decision" shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:*

*...*

*(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters; - **NO***



*(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters; - YES*

*(iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii); - YES*

Question 6:

If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

The Bulgarian law provides for an administrative-punitutive responsibility which is imposed to persons, who have committed infringements of the rules of law through penal decrees. There is a variety of punishable acts, which are contained in different separate laws. The procedure for imposing such penalties is contained in the Law on the administrative offences and sanctions (LAOS).

Question 7:

From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

The Republic of Bulgaria has no practical experience with financial penalties imposed in the framework of such procedure so far.

## Alternative sanction (Article 10 )

### Question 8:

May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes, Article 12 of RETCSODIFPA prescribes for the possibility that alternative sanctions, including custodial sanctions or any other measure limiting the concerned person's freedom, are imposed in the executing state if its legislation allows this and the competent bulgarian authority has marked this option in the certificate.

### ***RETCSODIFPA***

#### ***Alternative Penalties***

***Article 12. (1) The competent authority of the executing State may impose measures alternative to the confiscation, seizure or financial penalty, including custodial sanctions or any other measure limiting the concerned person's freedom, in the events where the confiscation or seizure order or the decision imposing a financial penalty cannot be fully or partially executed, the issuing State has explicitly stated this in the certificate, and the legislation of the executing State allows the imposing of alternative penalties.***

***(2) The gravity of the alternative measure shall be determined in accordance with the legislation of the executing State but it cannot exceed the maximum stated in the certificate.***

### Question 9:

Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Under the current Bulgarian legislation, there is no option for applying alternative sanctions.

## Compensation to victims

### Question 10:

According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

#### Conditions for Transmission

Yes, Article 39, para 3 RETCSODIFPA stipulates the possibility for the victim to request the court to transmit the decision, imposing the financial penalty to other EU countries.

Article 42 provides for the possibility to conclude an agreement with the competent authority in other member states of the EU for transfer of a financial penalty, imposing compensation for the victim/sum for the victim support organisation back to the issuing state ( e.g. Bulgaria).

### ***RETCSODIFPA***

#### **Article 39.**

...

(3) Where in the decision imposing a financial penalty a compensation is imposed for the benefit of victims of a crime, at the request of the victim the court shall transmit the decision to a competent authority in another Member State of the European Union for recognition and execution pursuant to the conditions of paragraph 1.

**Article 42.** (1) Monies obtained from the enforcement of decisions imposing financial penalties shall accrue to the Republic of Bulgaria and shall be disposed of in accordance with the Bulgarian legislation, unless otherwise agreed, in particular in the cases of compensations to victims of a crime.

(2) In the events where the Republic of Bulgaria is the issuing State, the manner in which the monies obtained from the execution of the decision imposing a financial penalty is disposed of shall be agreed with the executing State.

(3) Competent authorities for concluding agreements under paragraphs 1 and 2 on behalf of the Republic of Bulgaria shall be the authorities referred to in Articles 6 and 7.

### Threshold

#### Question 11:

Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Yes, the 70 euro threshold has been foreseen as an optional ground for refusal in art.35, item 6 of the cited law. So far it has not been applied in practice. The road traffic offences could be often punishable with financial sanctions (fines) which are lower than the 70 Euro threshold.

### Statistics

#### Question 12:

If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

Up to 01.12.2010 the Ministry of justice, acting as central authority has received and forwarded for recognition and execution to other EU countries 1 decision imposing financial penalties. It should be taken into account that the competent Bulgarian authorities (Regional and District courts, plus the National revenue agency) could have forwarded also other request directly to the competent authorities of other member states of the EU.

The average sum that is expected to be collected as result of the execution of the decision is approx. BGN 100 000 (one hundred thousand Bulgarian levs), which is approx. 50 000 Euro. The imposed financial penalties are a fine and a sum of money in respect of the costs of court proceedings leading to the decision.

The field of criminality is illicit trafficking in narcotic drugs and psychotropic substances (crime, listed under article 5, p.1, fifth suggestion of Framework decision 2005/214/JHA).

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

We can not make any general conclusions at this stage since there is still no sufficient practice.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

Up to 01.12.2010 the Ministry of justice, acting as central authority has received and forwarded for recognition and execution 4 decisions imposing financial penalties. Three of them have already been recognised and submitted for execution to the National Revenue Agency. It should be taken into account that the competent bulgarian authoroties (District courts) could have dealth with other reuqest directly directly forwarded to them by other member states of the EU.

The average sum that is expected to be collected as result of the execution of all the 4 decisions imposing financial penalties is approx. 966 Euro. The imposed financial penalties are sums of money in respect of the costs of court or administrative proceedings leading to the decision.

The fields of criminality are smuggling of goods and trafficking in human beings.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

There are no refusals so far.

## Conclusion

### Question 13:

What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

Yes.

### Question 14:

What could be done at European level in order to facilitate its application (legislative or practical measures)?

No suggestions.

### Question 15:

Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

No.

## CZECH REPUBLIC

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

The provisions of the Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition of financial penalties have been transposed in the Czech Republic into the Code of Criminal Procedure (Act No. 141/1961 Coll., as amended). The transposed legal provisions entered into force on 1 January 2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

Financial penalties that were imposed before the implementation in our national law may be also transferred.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

In the event that the Czech Republic is the Executing State the competent authorities are the locally competent regional courts and the Prague Municipal Court (the Prague Municipal Court is in fact one of the regional courts, it only has a different name due to the specific internal division of Prague). These courts are also responsible for receiving a decision together with a certificate from other Member States. High Courts are deciding on the legal remedies.

The locally competent court is a court in whose district the property of the convicted is situated. If the property of the convicted is located in the districts of more courts, the competent court for the procedure is the court which has received the decision whose recognition and execution is requested as the first of them. In case of absence of a property of the convicted in the territory of the Czech Republic, the competent court for the procedure is the regional court in whose district the convicted has an ordinary place of residence.

The competent regional court decides about all related matters of the execution procedure.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The Czech Republic has not determined a central authority according Article 2(2) of the FD.

However, according to our transposing law in the procedure on the recognition and execution of the decision of another European Union Member State on financial penalties and fulfilments and in the course of transmission of the decision on financial penalty and fulfilments to another European Union Member State for the purpose of its recognition and execution, the regional court may ask the Ministry of Justice for cooperation in determining the necessary information, especially for determination of the competent authority of another Member State to which the decision on financial penalty and fulfilments shall be sent or for the verification of the conditions provided by the legal order of that other Member State for the recognition and execution of the decision on financial penalty and fulfilments.

The Ministry of Justice is also entitled to conclude the agreement concerning accrual of monies obtained from enforcement of decisions under Article 13 of the FD. The court may submit a proposal for the conclusion of such agreement to the Ministry of Justice



Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Article 1, letter a)

- (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;

Financial penalties may be imposed and a certificate may be issued to another Member State.

- (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

Financial penalties may not be imposed and a certificate may not be issued to another Member State.

- (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

Financial penalties may not be imposed and a certificate may not be issued to another Member State.

- (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);

Financial penalties may not be imposed and a certificate may not be issued to another Member State.

The relevant provisions of the Czech Criminal Code shall apply to the procedure for the recognition and the execution of a final conviction for a criminal offence or another infringement or decision issued on its basis, provided that it was issued in compliance with the legal regulation of the European Union,

- a) by which a financial penalty or fine was imposed,
- b) by which a compensation against the convicted was awarded to the injured,
- c) by which a decision was made about the duty of the convicted to compensate the costs of procedure leading to the conviction for a criminal offence or for another infringement or
- d) by which the convicted was imposed to pay a sum of money to a public fund or for the benefit of a victim support organization,

if it was issued by a court of the Czech Republic in criminal proceedings, or by a court of another European Union Member State in criminal proceedings, or an administrative authority of such state, provided that against the decision of the administrative authority on the criminal offence or another infringement, a legal remedy, upon which a court competent also in criminal matters decides, is admissible.

But due to the absence of the administrative criminal law the Czech Republic will not send to other Member States any non-judicial decision for recognition and execution.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Not applicable.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Generally, the main problem concerns determination of the locally competent authorities in the Executing State. We experience wide range of cases where the request for recognition and execution under the Framework Decision is sent to an authority which is not competent. Such practice is very undesirable as it leads to significant delays in the whole procedure and is burdening for the authorities as well. We understand that the establishment of the correct local competence may be very difficult for authorities of other Member States and therefore, the Czech Republic strongly supports as early creation of new Atlas for this Framework Decision at the website of the European Judicial Network as possible. As the number of cases under the Framework Decision has been steadily rising, the creation of the new Atlas should be considered as a priority.

Czech authorities also experience situations where the language regime is not correct, i. e. the certificate is not translated into the Czech. Though the Czech authorities invite in these cases authorities of other Member States to remedy this shortcoming, these authorities often do not react in any way on such requests and the procedure under the Framework Decision cannot continue.

When acting as the Executing State, the Czech authorities also experience cases when the persons concerned were not found on the territory of the Czech Republic (though being search with the assistance of the Police); further when the persons concerned when informed by a Czech authority of the possible procedure under the Framework Decision they in several cases rather immediately paid voluntarily the respective sum of money (as a consequence the procedure under the Framework Decision did not even started and the sum of money was paid to the account of the authority of the Issuing State).

In case the Czech Republic acts as executing state and recognition and execution of decisions for non-judicial decision is requested, following problems were noticed by Czech judicial authorities:

- Very poor quality of certificates issued by non-judicial authorities. Only certain parts of certificates are filled in, others are left blank. In other cases though the form of the certificate is correctly in the Czech, the data are filled in in the language of the Issuing State. The judicial authorities also very often face the problem (among others) that the box g) point 2 (*A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place*) is not filled in or is filled in incorrectly – very often is simply set :” *see attached decision*”. However, the attached decision is not translated into the Czech. And sometimes it is not possible to find out the facts and description of the circumstances under which the offence has been committed even from the attached decision issued by non-judicial authorities (this problem relates probably to the fact that requirements for decisions issued by non judicial authorities are not so high as for decisions issued by judicial authorities).
- In many cases the certificates are transmitted by non-judicial authorities even if the person concerned already paid the imposed penalty (non-judicial authority does not check in all cases before transmitting the certificate if the penalty was already paid or not) – so judicial authorities are unnecessarily overloaded; such situations are very undesirable also from the point of view of persons concerned.
- Communication with non-judicial authorities is considered in most cases as not really good – it happens that non-judicial authorities do not react to explanations given by the Czech authorities, e. g. when asked for corrections of the certificate, and still repeatedly request the procedure under the Framework Decision.

## Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes, the Czech legal order provides for the possibility to apply alternative but only the sentence of imprisonment may apply. If the court imposes a pecuniary penalty, it shall also determine an alternative punishment of imprisonment of up to four years, in case that the pecuniary penalty should not be paid within the fixed time-limit. The alternative punishment, together with a previously imposed term of imprisonment, may not exceed the maximum statutory limit stipulated for such crime.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes, the Czech legal order provides for the possibility to apply alternative penalties according to the Article 10 of the FD, but of them only the sentence of imprisonment may apply. The substitute sentence of imprisonment for the non-executed financial penalty may be determined by the court only in case that the state that requested the recognition and execution of the decision admits such possibility in the sent certificate on the issue of the, provided that the duration of the imposed substitute sentence of imprisonment does not exceed the length that is specified in the certificate by that state, and at the same time, the longest duration of the substitute sentence of imprisonment.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

The recognized claim to compensation of damage and to compensation of the costs of procedure awarded to the injured or to another person by the recognized decision of another European Union Member State on financial penalties and fulfilments is claimed by the injured or another person in a civil procedure.

### Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

According to the Czech legislation, the regional court shall decide about the refusal of the recognition and execution of the decision of another European Union Member State on financial penalties if the imposed financial penalty or fulfilment does not exceed the amount of EUR 70; the amount specified in another currency shall be converted from the foreign currency to Euro according to the rate of the foreign currency market declared by the Czech National Bank at the day of the issue of such decision.

As regards € 70 threshold, the issue of proportionality has to be carefully taken into account and therefore, the Czech Republic is not in favour of deleting the limit; the set level seems well balanced.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
  - b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.
  - c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
  - d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Due to the fact that the Czech Republic has not determined a central authority according to the Article 2 of the FD, no centralized statistics are available (however, in amendment of the respective legislation whose draft has already been prepared, the competent authorities should have a notification duty to the Ministry of Justice) .

However, considering that our implementing legislation has been in force for two years it follows from the discussions with our practitioners that CZ judicial authorities have been acting as executing authorities; we are not aware of any case when the Czech Republic is the issuing State. Only the recognition (and execution) of decisions issued by non-judicial authorities imposing the penalty for conduct which infringes road traffic regulations have been requested so far.

## Conclusion

### 13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA?

#### Do you think it is a useful instrument?

Due to the fact that our implementing legislation has been in force for two years only and no centralized statistics are available it is difficult to duly assess the effectiveness of the Framework Decision.

As described above, when acting as the executing State, the Czech authorities experience a large number of deficiencies which very often result in the unsuccessful application of the Framework Decision.

On the other hand the Czech Republic believes that the use of the Framework Decision has led and could further lead to the increase execution of the fines imposed by the administrative authorities for the commitment of road infringements. However, also the fact that the judicial authorities of the Executing Member States are being more and more overloaded due to the increase of these minor cases should be taken into account.

Furthermore, the Czech Republic would like to point out to the significant imbalance resulting from the application of the Framework Decision. Within the scope of the Framework Decision judicial authorities of Member States who do not know the concept of administrative punishment (as e.g. the Czech Republic) have to recognize and execute large number of fines imposed by the administrative authorities of other Member States for the road infringements but cannot request authorities of other Member States for the procedure under the Framework Decision with respect to the same offences if they are not considered criminal offences and are dealt with by the administrative authorities within the “pure” administrative proceedings. Such imbalance is considered by the Czech Republic as unwelcome and should be subject to further discussions at the EU level.



From the practical point of view we consider missing an overall information whether procedure in the Member States whose authorities request recognition and execution of penalties for the road infringements fulfill the criteria in Article 1 (a) ii), iii) and iv) of the Framework Decision. In our view an official overview (e. g. in the form of a table of the GS Council or Commission) stating whether procedures in Member States comply with the above-mentioned criteria would be very useful and could speed up the whole procedure under the Framework Decision (it would not be necessary to request additional description of the procedure concerned).

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

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## DENMARK

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, the framework decision 2005/214/JHA has been implemented into Danish law by act no 1434 of 22 December 2004.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

The Act came into force on 1 January 2005 and financial penalties imposed before this date can also be transferred under the framework decision.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The information contained in doc. 9226/09 COPEN 77 regarding Denmark is correct.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

No central authority has been designated under this framework decision in Denmark.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.
6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Under Danish law financial penalties may be imposed and a certificate may be issued to another Member State regarding decisions made under proceedings as listed under Article 1 (a) ii), iii) and iv). For example certain types of financial penalties in traffic cases are imposed by the police under administrative procedures, but the person concerned has the opportunity to have the case tried by a court. Under Danish law no distinction is made between criminal and civil courts since all courts have jurisdiction in criminal matters.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

So far Denmark has not experienced any difficulties regarding the recognition and execution of financial penalties imposed under proceedings as listed under Article 1 (a) ii), iii) and iv).

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

As an issuing state Denmark will allow the executing states to apply deprivation of liberty as an alternative sanction provided that alternative sanctions would be applicable under the Danish Criminal act. This would be indicated in the certificate.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

As an executing state Denmark will not apply alternative sanctions.

Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Under Danish law claims for compensation of the victim are being treated as civil claims in connection with the criminal case. The courts can sentence the offender to pay compensation to the victim. If the offender does not pay the victim can apply for compensation from the Criminal Injuries Compensation Board and the Danish State will be subrogated to the victim's claim against the offender to the extent that the Board decides that compensation is to be paid to the victim.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

The 70 € threshold has been implemented into Danish legislation as a mandatory ground for refusal. Denmark has refused a number of requests for execution of financial penalties that did not meet the 70 € threshold.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

So far 1 request has been issued by Denmark under this framework decision.

- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

The practical experience is still too limited to answer this question.

- c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

So far no financial penalties have been recognized and executed on the basis of this framework decision. There are some pending cases that have not been concluded yet. Some of these cases are awaiting further information from the issuing state since the requests were incomplete.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

So far Denmark has refused the execution of financial penalties under this framework decision in 34 cases. The ground for refusal in all the cases was the 70 € threshold.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

We expect the framework decision to be a useful instrument when it has been implemented in all Member States.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

On-line information on the implementation on the EJM-website would be a great help for the practitioners.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

At the moment there are no other issues that we would like to raise in relation to this framework decision.

## GERMANY

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes. The Framework Decision has been implemented into German law by the act of 18 October 2010 which was promulgated on 27 October 2010 and which entered into force on 28 October 2010 (Federal Law Gazette 2010 I page 1408). Germany has notified the Council Secretariat accordingly.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

The implementing Act contains a provision (§98 IRG) according to which court decisions may only be recognized and executed if they have become final and unappealable after 27 October 2010 (= date of promulgation of the implementing Act). In the case of other decisions, they may only be recognized and executed if the decision at stake was made after 27 October 2010 (= date of promulgation of the implementing Act).

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The information is inaccurate because Germany has implemented the FD in the meantime (question I). Under the implementing Act, the Federal Office of Justice (in Bonn) has been declared as competent authority. Germany has notified the Council Secretariat accordingly.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

Under the implementing Act, the Federal Office of Justice (in Bonn) has been declared as competent authority. The Federal Office of Justice is responsible for the decision-making process both for incoming and outgoing cases. Other Member States authorities will only need to cooperate with the Federal Office of Justice. Germany has notified the Council Secretariat accordingly.

No central authority in the sense of Art. 2 para 2 of the FD has been designated in Germany.

Scope – types of procedures concerned

5: For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Financial penalties in the sense of Art. 1(a) (iii) and (iv) may be imposed in Germany, and therefore a certificate under the FD may be issued to another Member State.

Financial penalties imposed by other authorities than courts in respect of a criminal offence (Art. I (a) (ii)) are unknown under German law. Accordingly, no certificate under the FD may be issued to another Member State.



6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Please refer to answer 5.

As executing State, Germany will in full compliance with the FD recognize and execute all decisions which fall under Art. I (a) and (b).

As issuing State, Germany can only forward certificates to other Member States on the basis of decisions imposed under German law. These are decisions within the meaning of Art. I (a) (i) , (iii) and (iv), (b) (i) and (iv).

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

So far, Germany has no practical experiences. The implementing Act entered into force only on 28 October 2010.

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

As issuing State, Germany will not allow the executing State to apply alternative sanctions.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

As executing State, Germany will not apply alternative sanctions.

## Compensation to victims

10: According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

As issuing State, Germany will not issue a certificate for victim compensations in the sense of Art. 1 (b) (ii). Such victim compensations are unknown in German law.

As executing State, Germany will recognize and execute such victim compensations. Provision has been made to allow for the transfer of the money to the victim (Art. 13).

## Treshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

The 70 € - threshold has been implemented into German law as a mandatory ground of refusal as the procedural effort for the execution should be in adequate proportion to the fine. So far, Germany has no practical experiences at all (answer. 7).

In general, for Germany there is no direct relationship between the 70 € threshold and traffic/road safety offences as long as minor amounts are not subject to the execution.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.
- c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
- d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Germany can provide no statistics. The implementing Act entered into force only on 28 October 2010. So far, Germany has issued no certificates under the FD, and Germany has not received any certificates from other Member States (see also answer 2).

## Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

Yes

14: What could be done at European level in order to facilitate its application (legislative or practical measures)?

As practical experience couldn't be gained so far, Germany feels that bilateral meetings with other Member States, particularly neighbouring States, would be important to discuss the practical application of the FD. The competent German authority has already met with its counterparts in the Netherlands and in Finland. Currently, a meeting with our French colleagues is being planned. Such meetings have proven to be very useful.

In Germany, the competent authority has advocated the FD and its implementation in a number of presentations given to various German authorities. It has developed an electronic certificate to facilitate its completion ([www.bundesjustizamt.de](http://www.bundesjustizamt.de)).

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

Please refer to answer 14.

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## ESTONIA

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, it has been implemented into our national law in 2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

Such financial penalties should be transferred. Yet, it should be taken into consideration that following provisions have to be followed when executing penalties imposed in another MS:

### Code of enforcement procedure

#### **§ 202. Termination of enforcement proceedings concerning claim for payment of fine due to expiry of limitation period for enforcement of court judgment or decision of extra-judicial body**

(1) Enforcement proceedings concerning a claim for the payment of a fine imposed pursuant to a decision of an extra-judicial body or a court judgment made in a misdemeanour matter shall be terminated due to expiry of the limitation period if the fine has not been collected within the term provided for in § 82 of the Penal Code.

(2) A ruling made by a judge in charge of enforcement upon adjudicating an application of a bailiff or a debtor shall be the basis for the termination of enforcement proceedings due to expiry of the limitation period for enforcement of a fine.

Penal Code

**§ 82. Limitation period for execution of judgment or decision**

- (1) A judgment shall not be executed if the following terms have expired after the entry into force of the judgment:
- 1) five years from entry into force of a court judgment made in a matter concerning a criminal offence in the first degree;
  - 2) three years from entry into force of a court judgment made in a matter concerning a criminal offence in the second degree;
  - 3) eighteen months from entry into force of a judgment or decision made with regard to a misdemeanour.
- (2) The limitation period for the execution of a judgment is suspended:
- 1) for the period during which the person evades service or payment of the punishment imposed on him or her;
  - 2) for a period of probation imposed on the basis of the provisions of § 73 or 74 of this Code;
  - 3) for the period during which enforcement of the punishment imposed on the person is postponed or by which the term of the punishment has been extended;
  - 4) for the period during which the person is in a foreign state and is not or cannot be extradited.
- (3) The limitation period for execution of a conviction does not expire if life imprisonment has been imposed as punishment.

## Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The information concerning the competent authorities is correct, except the e-mail and city.

E-mail – [info@just.ee](mailto:info@just.ee)

City – Tallinn.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The central authority upon execution of a decision on pecuniary punishment or fine imposed in a foreign state is the Ministry of Justice who shall verify whether the certificate meets the requirements and shall forward the judgement together with the certificate immediately to Harju County Court and the Public Prosecutor's Office.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

In all of those mentioned cases, the certificate can be issued to another MS.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Main field of criminality: larceny, traffic offences, infringements of border regime.

Types of procedure: misdemeanour.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

According to our Code of Criminal Procedure § 477, we cannot provide assistance in recognition and execution of judgments of foreign courts and decisions of other authorities, if the judgment was made on default.

Yet, we are preparing amendments to the Code of Criminal Procedure, in order to implement framework decision 2009/299/JHA.



## Alternative sanction (Article 10)

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

### Estonian Penal Code

§ 70. Substitution of pecuniary punishment by imprisonment or community service

(1) If a convicted offender fails to pay the amount of the pecuniary punishment imposed on him or her, the court shall substitute the punishment by imprisonment or, with the consent of the convicted offender, by community service pursuant to the procedure provided for in § 69 of this Code.

(2) Three daily rates of a pecuniary punishment correspond to one day of imprisonment.

(3) In the case of substitution of a pecuniary punishment by imprisonment, the minimum term of the imprisonment shall be ten days.

### Code of Misdemeanour Procedure

§ 204<sup>2</sup> Requests for recognition and execution of Estonian fines imposed by decision of body conducting extra-judicial proceedings or by court.

(reference to the Code of Criminal Procedure § 488).

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes, Estonia, acting as an executing State, can apply an alternative sanction when so allowed by the issuing State.

**A. Criminal offence**

Penal Code

**§ 44. Pecuniary punishment**

(1) For a criminal offence, the court may impose a pecuniary punishment of 30 to 500 daily rates.

(2) The court shall calculate the daily rate of a pecuniary punishment on the basis of the average daily income of the convicted offender. The court may reduce the daily rate due to special circumstances, or increase the rate on the basis of the standard of living of the convicted offender. The daily rate applied shall not be less than the minimum daily rate. The minimum daily rate shall be fifty kroons.

(3) Average daily income shall be calculated on the basis of the income subject to income tax received by the convicted offender during the year immediately preceding the year in which criminal proceedings were commenced against the convicted offender or, if the data pertaining to such year are not available, during the year preceding such year, less the income tax.

(4) Daily rates shall be calculated in full kroons.

(5) If at the time of commission of an act, the person is less than 18 years of age, the court may impose a pecuniary punishment of thirty up to two hundred and fifty daily rates. A pecuniary punishment shall not be imposed on a person of less than 18 years of age if he or she does not have any independent income.

(6) A pecuniary punishment may be imposed as a supplementary punishment together with imprisonment unless imprisonment has been substituted by community service.

(7) A pecuniary punishment shall not be imposed as a supplementary punishment together with a fine to the extent of assets.

(8) In case of a legal person, the court may impose a pecuniary punishment of fifty thousand to two hundred and fifty million kroons on the legal person. A pecuniary punishment may be imposed on a legal person also as a supplementary punishment together with compulsory dissolution.

**§70. Substitution of pecuniary punishment by imprisonment or community service**

(1) If a convicted offender fails to pay the amount of the pecuniary punishment imposed on him or her, the court shall substitute the punishment by imprisonment or, with the consent of the convicted offender, by community service pursuant to the procedure provided for in § 69 of this Code.

(2) Three daily rates of a pecuniary punishment correspond to one day of imprisonment.

(3) In the case of substitution of a pecuniary punishment by imprisonment, the minimum term of the imprisonment shall be ten days.

Code of Criminal Procedure

**484<sup>1</sup>. Substitution of pecuniary punishment imposed in foreign state**

If a pecuniary punishment imposed in a foreign state cannot be executed, the court may substitute the punishment with the permission of the requesting state pursuant to the procedure provided for in § 70 of the Penal Code taking into account that the term of imprisonment or community service shall not exceed the maximum term prescribed in the requesting state.

**B. Misdemeanour**

Penal Code

**§ 47. Fine**

(1) For a misdemeanour, a court or an extra-judicial body may impose a fine of three up to three hundred fine units. A fine unit is the base amount of a fine and is equal to sixty kroons.

(2) A court or an extra-judicial body may impose a fine of five hundred kroons up to five hundred thousand kroons on a legal person who commits a misdemeanour.

Code of Misdemeanour Procedure

§ 204<sup>1</sup> Recognition and execution of fines imposed by decision of body conducting extra-judicial proceedings or by court judgment in foreign state.

Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

In Estonia, the compensation is paid to the victims from the state budget.

More precisely, according to the Victim Support Act § 7 the compensation is paid to victims of crimes of violence committed in the territory of the Republic of Estonia and to their dependants. Moreover, compensation is also paid to the victim of a crime of violence committed abroad if the victim is a permanent resident of Estonia or an Estonian citizen who does not reside permanently in Estonia and was abroad for reasons related to studies, employment or service duties or for other good reasons and if the victim is not entitled to similar compensation under the law of the country where the crime was committed.

In addition, the Code of criminal Procedure allows victims to file a civil action against the offender.

**§ 38. Rights and obligations of victims**

(1) A victim has the right to:

- 1) contest a refusal to commence or termination of criminal proceedings pursuant to the procedure provided for in §§ 207 and 208 of this Code;
- 2) file a civil action before termination of examination by court in the county court...

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Such ground for refusal has been implemented into our national legislation. It is mandatory ground for refusal.

Code of Criminal Procedure

§ 477. Scope of assistance

(1) In addition to the conditions provided for in § 436 of this Code, assistance shall not be provided to a requesting state in the execution of a punishment or any other sanction imposed in the requesting state if:

10) the pecuniary punishment or fine is equal to or less than one thousand Estonian kroons

\* 1000 EEK= 1000:15,64 ≈ 64 EUR'i

Most of the requests forwarded have been larger amount than 70 EUR. See answer to question number 12d.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

In 2009, there have been 37 requests from Estonia to other EU member states.

In 2010, 23 requests.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

Mostly these are the infringements of border regime.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

in 2009, there have been 7 cases discussed in court, average sum 302 EUR'i.

in 2010, there have been 12 cases discussed in court, average sum 533 EUR'i

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Court statistics:

There have been 6 cases where Estonian court has refused the execution. In one case the person lived in issuing state, in other cases the judgement was made in default.

Ministry of Justice statistics

\* judgement was made in default:

2009.a - 101

2010.a - 22

\* The description of an act was missing:

2009.a - 258

2010.a - 6

\*The sum was equal to or less than one thousand Estonian kroons:

2009.a - 1

2010.a - 2

## Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA?

Do you think it is a useful instrument?

Yes

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

Council of the EU home page could provide relevant information e.g list of member states who have implemented the Framework Decision 2005/214/JHA; central authorities; languages etc.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

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## SPAIN

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Sí, la decisión marco 2005/214/JAI fue transpuesta en España a través de la Ley 1/2008, de 4 de diciembre, para la ejecución en la Unión Europea de resoluciones que impongan sanciones pecuniarias y de la Ley Orgánica 2/2008, de 4 de diciembre, de modificación de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, complementaria de la Ley para la ejecución en la Unión Europea de resoluciones que impongan sanciones pecuniarias.

El objeto de la ley 1/2008 es:

- Por un lado, regular el procedimiento a través del cual se van a transmitir por parte de las autoridades judiciales españolas, aquellas resoluciones firmes por las que se exija el pago de una sanción pecuniaria a una persona física o jurídica como consecuencia de una infracción penal, a otros EEMM de la UE.
- Y en segundo lugar, establecer el modo en el que las autoridades judiciales españolas van a reconocer y a ejecutar tales resoluciones cuando le sean transmitidas por otro EEMM.

Por su parte, la Ley Orgánica 2/2008, modifica la Ley Orgánica del Poder Judicial con la finalidad de reconocer a los Juzgados de lo Penal la competencia para el cumplimiento de las resoluciones que impongan sanciones pecuniarias por la comisión de infracciones de acuerdo con el art. 4 de la Ley 1/2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

La Ley se aplica a las resoluciones que se transmitan o reciban con posterioridad a su entrada en vigor (25 de diciembre de 2008).

Así, la disposición transitoria de la Ley 1/2008 dispone lo siguiente:

1. Esta Ley será aplicable a las resoluciones que se transmitan o reciban con posterioridad a su entrada en vigor, con independencia de que hubieran sido dictadas con anterioridad.
2. Las resoluciones por las que se exija el pago de una sanción pecuniaria que se encuentren en ejecución a la entrada en vigor de esta Ley seguirán tramitándose conforme a las normas hasta entonces vigentes.

#### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

Sí, es correcto.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

No se ha designado autoridad central.

## Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

El artículo 1 de la Ley 1/2008 señala expresamente que la misma tiene por objeto regular el procedimiento que deben seguir las autoridades judiciales españolas para transmitir, a las autoridades correspondientes de los demás Estados miembros de la Unión europea una resolución firme por la que se exija el pago de una sanción pecuniaria a una persona física o jurídica como consecuencia de la comisión de una infracción penal.

El concepto de sanción pecuniaria se define en el artículo 3 y coincide con el establecido en la Decisión Marco 2005/214/JAI. Ahora bien, es preciso aclarar que la Ley 1/2008 no incluye la solicitud de ejecución por parte de España a otros Estados Miembros de resoluciones administrativas por la sencilla razón de que en nuestro Ordenamiento Jurídico las sanciones administrativas solo son recurribles en vía contencioso-administrativo y no “en vía penal”. Es decir, en España, la competencia para enjuiciar la comisión de una infracción de carácter penal reside exclusivamente en los órganos jurisdiccionales del orden penal (o, en el ámbito castrense, en los órganos de la jurisdicción militar) y la competencia para enjuiciar la comisión de una infracción administrativa reside exclusivamente en los órganos jurisdiccionales del orden contencioso-administrativo, sin que quepa recurso ante órganos pertenecientes a otro orden jurisdiccional. En consecuencia, ninguno de los supuestos previstos en los apartados ii), iii) ni iv) pueden producirse de acuerdo con el ordenamiento jurídico español.

Por lo demás, el procedimiento previsto en la Ley 1/2008 implica, de acuerdo con lo previsto en la Decisión Marco, la emisión de un certificado que debe acompañar a la resolución firme por la que se exige el pago de una sanción pecuniaria como consecuencia de la comisión de una infracción penal y cuya ejecución se solicita a otro Estado Miembro de la Unión Europea.

Los artículos 17 y siguientes regulan el procedimiento de transmisión.

Concretamente el art. 18 señala que la resolución que se pretenda ejecutar deberá ir acompañada de un certificado que deberá asimismo estar firmado por la autoridad judicial penal española competente para su ejecución en nuestro país. Esta autoridad transmitirá la resolución original o una copia testimoniada de la misma, junto con el certificado, directamente a la autoridad encargada de la ejecución, por cualquier medio que deje constancia escrita en condiciones que permitan a la autoridad a la que se dirige establecer su autenticidad.

La autoridad judicial penal española mantendrá comunicación de forma directa con la autoridad a la que se dirige la resolución.

También estipula el artículo que el certificado deberá traducirse a la lengua oficial o a una de las lenguas oficiales del Estado al que se dirige o, en su caso, a una lengua oficial de las instituciones comunitarias que hubiera aceptado dicho Estado.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

El procedimiento de ejecución se recoge en el artículo 13 de la Ley 1/2008, que establece lo siguiente:

Artículo 13. Reconocimiento y ejecución de las resoluciones.

1. El Juez de lo Penal competente estará obligado a reconocer y a ejecutar, sin más trámite, una resolución por la que se condene al pago de una sanción pecuniaria a una persona física o jurídica que posea propiedades, obtenga ingresos o tenga su residencia habitual o sede social en España, que haya sido debidamente transmitida por la autoridad competente del Estado de emisión, salvo en aquellos casos en que concurra alguno de los motivos para el no reconocimiento o la no ejecución que se contemplan en el artículo siguiente.

Cuando el certificado que acompañe a la resolución de ejecución de una sanción pecuniaria no venga traducido al español se remitirá inmediatamente a la autoridad judicial que lo hubiera firmado para que lleve a cabo la traducción correspondiente.

Los Jueces de lo Penal competentes admitirán las resoluciones de ejecución de las sanciones pecuniarias que regula esta ley que se efectúen mediante correo certificado, fax o medios informáticos o telemáticos cuando se trate de documentos firmados electrónicamente, que permitan verificar su autenticidad.

2. El Juez de lo Penal competente informará a la autoridad competente del Estado de emisión, por cualquier medio que deje constancia escrita, de la ejecución de la resolución tan pronto como ésta haya finalizado.
3. Cuando un Juez de lo Penal reciba una resolución para su reconocimiento y ejecución y no sea competente para ello, la transmitirá de oficio al que lo sea, si así se desprende de la documentación recibida, e informará de ello inmediatamente y por cualquier medio que deje constancia escrita a la autoridad del Estado de emisión.

EN CUANTO A LOS ACTOS PUNIBLES: La Ley 1/2008 recoge en su artículo 12 las infracciones penales previstas en la Decisión Marco. Prácticamente todas ellas pueden dar lugar a la imposición de sanciones pecuniarias. Los artículos 50 a 53 de nuestro Código Penal regulan la pena de multa.

Estas infracciones son: Pertenencia a una organización delictiva, terrorismo, trata de seres humanos, explotación sexual de menores y pornografía infantil, tráfico ilícito de estupefacientes y sustancias psicotrópicas, tráfico ilícito de armas, municiones y explosivos, corrupción, fraude (incluido el que afecte a los intereses financieros de las Comunidades Europeas), blanqueo del producto del delito, falsificación de moneda, incluida la del euro, delitos informáticos, delitos contra el medio ambiente (incluido el tráfico ilícito de especies animales protegidas y de especies y variedades vegetales protegidas), ayuda a la entrada y a la estancia irregulares, homicidio voluntario y agresión con lesiones graves, tráfico ilícito de órganos y tejidos humanos, secuestro, retención ilegal y toma de rehenes, racismo y xenofobia, robos organizados o a mano armada, tráfico ilícito de bienes culturales (incluidas las antigüedades y las obras de arte), estafa, chantaje y extorsión de fondos, violación de derechos de propiedad intelectual o industrial y falsificación de mercancías, falsificación de documentos administrativos y tráfico de documentos falsos, falsificación de medios de pago, tráfico ilícito de sustancias hormonales y otros factores de crecimiento, tráfico ilícito de materias nucleares y radiactivas, tráfico de vehículos robados, violación, incendio provocado, delitos incluidos en la competencia de la Corte Penal Internacional, apoderamiento ilícito de aeronaves y buques, sabotaje, conducta contraria a la legislación de tráfico (incluidas las infracciones a la legislación de conducción y de descanso y a las normas reguladoras de transporte de mercancías peligrosas), contrabando de mercancías, infracciones a los derechos de propiedad intelectual e industrial, amenazas y actos de violencia contra las personas (incluida la violencia durante los acontecimientos deportivos), vandalismo, robo, infracciones establecidas por el Estado de emisión en virtud de normas comunitarias.

Cuando el Juez de lo Penal competente reciba la resolución de una autoridad judicial de otro Estado miembro de la Unión Europea para que ejecute una sanción pecuniaria impuesta por una infracción no prevista en el apartado anterior, supeditará el reconocimiento y la ejecución de la resolución a la condición de que el hecho por el que la misma se haya dictado sea también constitutivo de infracción según el Derecho español.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Sería positivo profundizar en la formación de jueces, funcionarios y secretarios judiciales de forma que se garantice un mejor conocimiento de la ley y una más correcta aplicación.

También sería importante informar a los EEMM sobre qué países han incorporado el límite mínimo de cuantía de 70 euros, de forma que las autoridades competentes en otros Estados no remitan sanciones por debajo de ese límite a aquellos países que no las van a atender.

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Según la DM este extremo debe hacerse constar en cada caso en el certificado.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Sí, el artículo 17 de la Ley establece expresamente que, cuando sea imposible ejecutar total o parcialmente una resolución, el Juez de lo Penal competente podrá aplicar sanciones alternativas, incluida la privación de libertad, en los casos en que el Estado de emisión hubiera aceptado aplicar dichas sanciones alternativas en el certificado presentado. En ningún caso se aplicará como sanción alternativa la privación de libertad cuando la sanción pecuniaria cuya ejecución se solicite se hubiera impuesto por la comisión de una infracción administrativa, aún cuando hubiera sido recurrida ante un órgano jurisdiccional penal del Estado de emisión. El Juez de lo Penal competente informará inmediatamente y mediante cualquier medio que deje constancia escrita, de la aplicación de una sanción alternativa.

Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Este supuesto no existe en España, dado que la decisión marco exige que “la víctima no pueda ser parte civil en el procedimiento y que el órgano jurisdiccional actúe en el ejercicio de su competencia penal” y el ordenamiento jurídico español permite con carácter general a la víctima el ejercicio de la acción civil derivada de delito en el propio proceso penal conforme a los artículos 106 y siguientes de la Ley de Enjuiciamiento Criminal y, por tanto, la víctima siempre tiene la oportunidad de ser parte en el proceso.



## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Sí, con carácter obligatorio. El art 14.j) señala que el Juez de lo Penal competente denegará el reconocimiento y la ejecución de las resoluciones cuando la sanción pecuniaria sea inferior a 70 euros, o tratándose de otra divisa, a un importe equivalente. Por lo tanto en nuestro Ordenamiento Jurídico es obligatorio denegar cuando se de este supuesto.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

Ningún caso.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

54 casos.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Rechazados: 52 sanciones de menos de 70 euros.

Imposible ejecución: 15 sanciones por ser desconocidos la persona o el domicilio.

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

A excepción de las transmisiones de sanciones pecuniarias procedentes de Holanda, se han recibido muy pocas transmisiones de ejecuciones y se han emitido menos aún por los jueces españoles. Sólo Holanda ha remitido un número significativo de sanciones pecuniarias, superior al centenar. De los demás Estados prácticamente no se ha recibido ninguna, o al menos no se conoce ninguna.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

Agilizar la construcción del Atlas de sanciones pecuniarias para que esté accesible en la web de la Red Judicial Europea, garantizando los recursos materiales y humanos necesarios de la Secretaría General de la RJE para esta tarea, y difundir en esa misma web el estado de transposición en cada Estado miembro así como los límites mínimos de cuantía incorporados que determinan la denegación del reconocimiento y la ejecución de las resoluciones.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

## FRANCE

1. Has the framework decision 2005/214/JHA been implemented into your national law ? And if not, when do you expect this implementation will be done ?

Oui, la décision-cadre 2005/214/JAI a été transposée en droit français par la loi n° 2007-297 du 5 mars 2007 relative à la prévention de la délinquance (publiée au J.O. n° 56 du 7 mars 2007, page 4297 et suivantes) et par le décret du 3 mai 2007 (publié au J.O. n° 105 du 5 mai 2007, page 7963 et suivantes).

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases ?

La décision-cadre, ainsi que la loi et le décret transposant les dispositions de celle-ci, sont des « lois » relatives au régime d'exécution et d'application des peines, et sont en conséquence applicables immédiatement à la répression des infractions commises avant leur entrée en vigueur, donc aux condamnations non prescrites au jour de leur mise à exécution (cf. article 112-2 du Code pénal<sup>1</sup>).

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<sup>1</sup> En droit français, l'application de la loi dans le temps est précisée par l'article 112-2 du Code pénal qui dispose :

« Sont applicables immédiatement à la répression des infractions commises avant leur entrée en vigueur :

1° *Les lois de compétence et d'organisation judiciaire, tant qu'un jugement au fond n'a pas été rendu en première instance ;*

2° *Les lois fixant les modalités des poursuites et les formes de la procédure ;*

3° Les lois relatives au régime d'exécution et d'application des peines ; toutefois, ces lois, lorsqu'elles auraient pour résultat de rendre plus sévères les peines prononcées par la décision de condamnation, ne sont applicables qu'aux condamnations prononcées pour des faits commis postérieurement à leur entrée en vigueur ;

4° *Lorsque les prescriptions ne sont pas acquises, les lois relatives à la prescription de l'action publique et à la prescription des peines. »*

## Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

L'information mentionnée dans le document 9226/09 COPEN 77 est correcte

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

Aucune autorité centrale n'a été désignée en France.

## Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Aucune sanction pécuniaire au sens de ces trois dispositions ne peut être prononcée en France.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

La France n'a pas fait de déclaration relative au refus d'exécuter ce type de sanctions. Aucune difficulté n'a été signalée à ce jour.

Alternative sanction (Article 10)

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty ? Which types of alternative sanctions and under what conditions ?

La législation française ne prévoit aucune sanction alternative pour les peines d'amende.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State ? Under what conditions can such alternative sanctions be applied ?

Il est impossible d'appliquer des sanctions alternatives puisque la législation française n'en prévoit pas. Il convient de rappeler que la contrainte judiciaire est une mesure coercitive destinée à contraindre le condamné à s'acquitter du montant des condamnations pécuniaires mais non une sanction alternative. En particulier, la contrainte judiciaire ne constitue pas une modalité d'exécution de la peine et n'éteint pas la dette du condamné.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State ? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim ?

Afin d'être parfaitement conforme aux obligations de mise en œuvre de la décision-cadre 2005/214/JAI, la législation française prévoit la possibilité de recouvrer une somme mentionnée comme relevant de l'article 1<sup>er</sup> b) ii), dans un certificat. Toutefois, en application de l'article 13 de la décision-cadre, les sommes obtenues à la suite de l'exécution des décisions reviennent à l'État français. Il n'existe aucun accord entre la France et d'autres États de l'Union européenne permettant de faire exception pour transférer les sommes relevant de l'article 1<sup>er</sup> b), ii) aux victimes. Un tel accord, impliquant les finances de l'État serait soumis à ratification par le Parlement en application de l'article 55 de la Constitution.

Au demeurant, il convient d'observer que la décision-cadre précise bien que les sanctions pécuniaires ne couvrent pas « *les décisions qui ont une nature civile et qui découlent d'une action en réparation de dommage ou d'une action en restitution, et qui sont exécutoires conformément au règlement (CE) n° 44/2001 du Conseil du 22 décembre 2000 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale* » (cf. article 1<sup>er</sup> b) alinéa 8 de la décision-cadre).

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how ? (Optional or mandatory ?) How is it applied in practice ? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences ?

Le motif de refus fondé sur un montant d'amende inférieur à 70€ a été transposé dans la législation française, et constitue un motif de refus facultatif laissé à l'appréciation des procureurs :

L'article dispose :

« Art. D. 48-22. - *L'exécution d'une sanction pécuniaire peut être refusée dans l'un des cas suivants :*

*1° Si le certificat n'est pas produit, s'il est établi de manière incomplète ou s'il ne correspond manifestement pas à la sanction pécuniaire ;*

*2° Si la sanction pécuniaire est inférieure à soixante-dix euros ou à un montant équivalent ;*

*3° Si la sanction pécuniaire concerne des actes qui ont été commis, en tout ou en partie, sur le territoire de la République ou en un lieu considéré comme tel. »*

En pratique, la France ne souhaite pas recevoir des sanctions pécuniaires relatives à des condamnations inférieures à 70 euros ou à un montant équivalent.

En ce qui concerne la sécurité routière, il convient d'observer que la plupart des amendes relatives aux infractions afférentes à la sécurité routière (excès de vitesse, franchissement de feux rouges, dépassements dangereux) sont supérieures à ce seuil de 70 euros. Seules les amendes relatives au stationnement (à l'exclusion du stationnement dangereux justement) sont inférieures à ce montant.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation ?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State ?

Il n'est pas possible de fournir des statistiques, car conformément aux souhaits de la Commission, des solutions décentralisées ont été mises en œuvre et l'administration centrale ne dispose pas de statistiques à ce sujet.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

L'administration centrale n'a pas connaissance du type des infractions qui font l'objet de transmission aux parquets.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

L'administration centrale n'a pas connaissance du type du nombre de sanctions pécuniaires exécutées en France.



d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State ? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...) ?

L'administration centrale n'a pas connaissance des refus d'exécution de sanctions pécuniaires par les parquets.

### **Conclusion**

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument ?

La décision-cadre 2005/214/JAI est adaptée à la mise à exécution d'un petit nombre de sanctions pécuniaires d'un montant moyen ou élevé. Ainsi, elle contribue à l'efficacité des condamnations prononcées pour des infractions très graves ou graves et participe au système de la lutte contre l'impunité.

En revanche, elle est inadaptée au traitement d'un grand nombre de sanctions pécuniaires d'un montant faible, voire très faible. Ainsi, elle n'est pas adaptée au traitement des « contentieux de masse », en particulier pour le recouvrement des contraventions en matière de sécurité routière, sanctionnées d'amendes d'un montant de quelques dizaine d'euros ou quelques centaines d'euros. Il convient de rappeler que le nombre d'infractions d'excès de vitesse relevées sur les autoroutes françaises concernant des véhicules immatriculés dans un autre État de l'Union européenne dépasse le million.

Cette inadaptation résulte notamment de la nécessité d'établir pour chaque infraction un certificat de 8 pages, comprenant de très nombreuses mentions dont la description détaillée de l'infraction, signé d'un magistrat attestant de l'exactitude des informations contenues dans ce certificat et qui doit être traduit dans la langue du pays d'exécution. Cela résulte également des nombreuses obligations administratives d'informations de l'autorité compétente de l'État d'émission (avis de réorientation de la procédure, avis de mise à exécution, avis de recouvrement, etc.) difficilement compatible avec les contentieux de masse.

14. What could be done at European level in order to facilitate its application (legislative or practical measures) ?

Il conviendrait de rechercher des dispositifs d'exécution plus simples fondés sur la transmission de documents dématérialisés (échange via des réseaux Intranet ou équivalents) entièrement codifiés, ayant probablement une vocation moins générale mais parfaitement adaptés au traitement de ces contentieux spécifiques.

Ceci impliquerait la mise en place notamment des outils suivants :

- La définition d'un certificat électronique dispensé de signature ayant des dispositifs d'identification et d'authentification électronique remplaçant la signature ;
- La codification d'un nombre très restreint d'infractions au niveau européen (le code **NAT**ure d'**INF**raction dit « NATINF » relatif à l'excès de vitesse représente à lui seul plusieurs millions d'infractions constatées, une dizaine de natures d'infraction permettrait de codifier 99% des infractions routières constatées) ;
- La mise en place d'une description simplifiée de cette dizaine d'infractions (le franchissement d'un STOP, d'une ligne continue ou d'un feu rouge ne nécessite aucune autre description que le code nature d'infraction, l'excès de vitesse peut se limiter à deux paramètres, la vitesse limite autorisée et la vitesse constatée (ou retenue) ;
- La réduction des informations transmises à quelques éléments limités ne nécessitant aucune traduction (date et lieu des faits, montant de l'amende) ;

- La dispense de transmission de l'avis de condamnation (souvent moins détaillée que le certificat lui-même) ;
- D'autres simplifications à examiner (moins d'échanges en cas d'autorité incompétente saisie et de réorientation par exemple).
- La législation européenne devrait se limiter à fournir un « cadre » et un groupe d'expert devrait pouvoir ajouter des infractions en déterminant la codification de ces infractions et les quelques paramètres qui la caractérisent sans modification législative.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision ?

Il conviendrait de supprimer tout mécanisme de prise en compte des indemnités aux victimes, imposées dans le cadre de la même décision, pour lesquels la victime ne peut pas être partie civile à l'action, la juridiction agissant dans l'exercice de sa compétence pénale.

Plusieurs raisons justifient que ce mécanisme soit supprimé :

- Le fait que la décision-cadre prévoit une obligation pour les États membres de recouvrer les sommes de cette nature sans mettre en place de dispositif permettant le retour de ces sommes aux victimes soulève un problème de cohérence ;
- Le caractère mixte de l'indemnité, disposition de nature civile par sa dimension d'indemnisation et de nature pénale par son lien avec la sanction pénale, soulève de nombreuses questions juridiques (base juridique, prescription du recouvrement de cette indemnité, imputation des montants incomplètement recouverts, affectation des sommes, point de départ de la réhabilitation, etc.) ;

- Le recouvrement d'indemnités allouées aux victimes fait intervenir l'État dans des mécanismes où il n'intervient normalement pas (l'auteur d'une infraction doit indemniser la victime et l'État n'a ni comptes d'attente pour encaisser et reverser ces sommes, ni comptabilité pour gérer ces paiements entre particuliers) ;
- Ce mécanisme introduit des discriminations entre victimes, eu égard à sa mise en œuvre par un tout petit nombre d'États au sein de l'Union européenne.

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## IRELAND

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

The Framework Decision is being implemented by Ireland in the Criminal Justice (Miscellaneous Provisions) Bill which is at the draft stage. It is expected that this Bill will be considered by the Irish Parliament in the third quarter of 2011 with a view to being enacted by the end of the year.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

Financial penalties imposed in other jurisdiction before the implementation of the law will not be enforceable.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

Not applicable.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

Not yet determined in legislation. It is currently envisaged that the Irish Courts Service will perform the role of a central authority and will collect penalties imposed in other member states, alongside those imposed in Ireland. However, as the legislation evolves, this role might be altered.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

In the case of Ireland domestic proceedings are unlikely to include proceedings under Article 1 (a) (ii), (iii) or (iv), as such “authorities other than a court” do not operate in criminal cases in Ireland.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Ireland does not as yet have experience of recognition and execution of penalties imposed by another member state.

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

It is possible that our forthcoming legislation may allow seizure of property in lieu of unpaid fines, but this will be a matter for our parliament to determine.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

See 7 above.

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

It is envisaged that compensation to victims would be transferred to victims by the court, in accordance with existing procedures for transfer of compensation to victims in domestic criminal cases.

### Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

The €70 threshold is being implemented in the forthcoming legislation. Penalties below this threshold will not be recognized.

### Statistics

12 If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

There are no Irish statistics as the legislation is not yet implemented.

## Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

We envisage that the instrument will be useful, particularly where financial penalties for significant sums are concerned. However, we envisage that the very low threshold of €70 could, at times, result in significant resources being devoted to collecting very modest financial penalties.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

It would be helpful if the €70 limit were to be raised to a higher level.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision.

No further issue.

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## REPUBLIC OF CYPRUS

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, it has been implemented by the law no. 179 (I) of 2007 which was put into force on the 1st of January 2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

No, the Framework Decision only applies to fines imposed after 31.12.2007.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The competent authorities, when Cyprus is the issuing state are as follows:

- (a) The Assize Court or the District Court which issued the decision,
- (b) Any other Authority in the Republic designated by law or by administrative regulations as competent to issue a decision imposing a fine or administrative penalty.

The competent authority, when Cyprus is the executing state, is the District Court within whose local jurisdiction, the natural or legal person against whom the decision has been issued in another Member State, has his customary residence or, in the case of a legal person the place of business.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The Republic of Cyprus has designated the Ministry of Justice and Public Order as the Central Authority, which-

- (a) is responsible for submitting an application to the competent executing authority for the issuing of an for executing a decision,
- (b) is responsible for assisting the competent issuing and executing authorities during the transmission and receipt of a decision and of all other official correspondence.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

It is possible to issue a certificate in cases prescribed in Article 1 point a) of the Framework Decision.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Not applicable.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

The Republic of Cyprus has not so far any practical experience.

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

The same applies when acting as issuing and executing State.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes, when a decision is not possible to be executed in whole or in part, the competent executing authority may apply alternative sanctions allowed by the Cypriot law, including the sentence of imprisonment, where –

- (a) the issuing state has allowed the imposition of alternative sanctions as referred to in the article 4 certificate, and
- (b) the amount of penalty imposed shall not exceed the maximum amount of any state in the same certificate.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

The compensation imposed for the benefit of victims is covered by our national law. However, no legal mechanism has been foreseen in order to transfer the compensation to the victim.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Yes, the 70 euro threshold was transposed in Cypriot legislation as an optional ground for refusal. So far it has not been applied in practice.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
  - b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

- c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
- d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

No statistics available.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

Not any experience yet.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?
15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

In view of the lack of experience regarding the application of the Framework Decision, unfortunately we are not in a position to provide any comments.

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## LATVIA

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Latvia implemented Framework Decision 2005/214/JHA in year 2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

Latvia executes financial penalties that are imposed before the implementation of the Framework Decision in Latvian legislation, because there is a principle that execution of penalties is taking place in accordance with the legislation in force.

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The information provided in document Nr.9226/09 COPEN 77 with relation to issuing and executing authorities is correct.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

Latvia has chosen a central authority. It is the Ministry of Justice. The Ministry of Justice has a right to verify questions of administrative character, namely, if a complete certificate has been received and whether it corresponds to the content of the decision; if the *ne bis in idem* principle has not been violated; the person has reached the age when s/he becomes criminally liable; and if the financial penalty concerns the amount of not higher than 70 EUR.

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Latvia in accordance with Article 1 (1) ii) may send the decision and certificate, which was adopted by the prosecutor. In accordance with the Criminal Procedure Law prosecutor in specific cases has a right to impose financial penalty.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

The prosecutor may apply injunction for criminal violation (offence for which the Law provides deprivation of liberty for a term not exceeding two years) or a less serious crime (an intentional offence for which this Law provides for deprivation of liberty for a term exceeding two years but not exceeding five years, or an offence, which has been committed through negligence and for which the Law provides for deprivation of liberty for a term exceeding 2 years, but not exceeding 10 years) and only financial penalty, community service or limitation of rights.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

As the central authority the Ministry of Justice has noticed a problem for judges to complete the certificates. The phenomena have been noticed as regards both, foreign judges, as well as the local ones. The judges have not mastered properly to fill the certificate forms thus causing difficulties for the execution of financial penalties.

Problems also arise from the fact that a number of countries have not yet implemented Framework Decision.

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Latvia as issuing state allows executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty, because in accordance with Latvian legislation, if a fine is not paid within 30 days, then, in the cases where the amount specified does not exceed 30 times the minimum monthly wage, custodial arrest shall be substituted for it (calculating 1 minimum monthly wage as 4 days of custodial arrest, however, not exceeding 3 months of custodial arrest); if the fine has been set at an amount in excess of 30 times the minimum monthly wage, deprivation of liberty shall be substituted for it (calculating one minimum monthly wage as 4 days of deprivation of liberty, however, not exceeding 1 year of custodial arrest).

If a fine or a part of it is paid during the time a convicted person is serving a sentence of deprivation of liberty or custodial arrest in place of a fine, the convicted person shall be released, or the term of deprivation of liberty or custodial arrest shall be reduced, according to the portion of the fine paid. In reducing the term of the sentence as indicated, the time of deprivation of liberty or custodial arrest is included in accordance with the proportions determined by a court.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

If the issuing state allows application of an alternative sanction, Latvia already now substitutes the penalty with arrest or deprivation of liberty, taking into account provisions and criteria of issuing state.



10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Yes, Latvian system recognizes compensation for victims. In accordance with the Criminal Procedure Law a court or prosecutor may send to the relevant EU Member State via the Ministry of Justice adjudication regarding recovery of a financial nature (decision on financial penalties, and in the same decision imposed compensation for the benefit of victim, compensation of procedural costs and payment to the support foundation or organisation of victims) together with certificate.

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Yes, Latvian national law provides for the 70 euro threshold. It is mandatory ground for refusal.

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

During 2010 Latvian competent courts have issued about 5-6 requests for execution of financial penalty.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

Usually financial penalty is issued for theft.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

In 2010 Latvian competent courts have recognised and executed about 6-7 requests for execution of financial penalty.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

During the year 2010 competent courts have refused about 6-7 requests issued by EU Member States. The main grounds for refusal are:

- the certificates are not completed properly;
- requests refer to the execution of financial penalty less than 70 EUR;
- lack of translation into English or Latvian.

If certificate will be properly completed or translation provided, the certificate will be sent for recognition and execution to the competent court. It is not prohibited to re send the certificate.

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

Taking into account that Framework Decision is a comparatively new instrument at this stage it is difficult to analyse its functionality in practice. However, as the central authority Ministry of Justice has noticed difficulties for judges to complete the certificates properly. It seems to be easier for judges to manage requests pursuant to the European Council Convention on the International Validity of Criminal Judgements.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

Ministry of Justice suggests organising more practical training for judges.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

At this stage there are no other issue Ministry of Justice would like to rise in relation to the practical implementation of Framework Decision.

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## LITHUANIA

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, the provisions of the FD are implemented under the Law on the amendments and additions to Article 342 and the Annex as well as on the insertion of Articles 17-2, 365-1 and 365-2 in the Code of Criminal Procedure of the Republic of Lithuania, which was adopted on 13 December, 2007, and entered into force on 1 March 2008, and the Resolution No. 219 "On the Adoption of Rules on the Transmission of Financial Penalties Imposed by Courts of the Republic of Lithuania to other Member States of the European Union for the Purpose of Enforcement", which was adopted on 5 March, 2008, by the Government of the Republic of Lithuania and entered into force on 21 March, 2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

The implementing legislation of the Republic of Lithuania does not exclude financial penalties that were imposed before the implementation of the FD in the national law of the Republic of Lithuania. In practise, such financial penalties are both transferred to other Member States for execution and executed in the Republic of Lithuania once received from the issuing State.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

Yes, the information contained in doc. 9226/09 COPEN 77 with respect to the Republic Lithuania is correct.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The Ministry of Justice is designated as the central authority under the FD. It is responsible only for the administrative transmission and reception of decisions and for providing assistance to the competent authorities.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

No.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

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7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

No.

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

With regard to Article 10 of the FD it is considered that the Republic of Lithuania allows for the executing State to replace the fine with arrest where a person evades voluntary payment of a fine and it is not possible to recover it (Point 8 of the Resolution of Government of the Republic of Lithuania No. 219 "On the Adoption of Rules on the Transmission of Financial Penalties Imposed by Courts of the Republic of Lithuania to Other Member States of the European Union for the Purpose of Enforcement"). It is to be noted that arrest shall not be imposed upon pregnant women and may not be imposed upon persons raising a child under the age of 3 years taking into consideration interests of the child. One day of arrest shall be held equivalent to a fine in the amount of 2 MSLs (2 MSLs = LTL 260 = EUR 75, 54). Arrest may be imposed for a maximum period of 90 days for a crime and 45 days for a misdemeanour.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes, there is a possibility under the Criminal Code of the Republic of Lithuania to replace the fine with either arrest or community service.

Where a person does not possess sufficient funds to pay a fine imposed by a court, the court may, in compliance with the rules stipulated in the Criminal Code of the Republic of Lithuania and subject to the convict's consent, replace this penalty with community service. A fine in the amount of 1 MSL shall be held equivalent to six hours of community service. A person would be under the obligation to work for the community without remuneration from 10 to 40 hours per month during the time period set by the court. The term of the penalty is counted in months. However, community service may be imposed for a maximum period of one year; this time also may not exceed 480 hours for a crime and 240 hours for a misdemeanour.

Where a person evades voluntary payment of a fine and it is not possible to recover it, a court may replace the fine with arrest. The conditions for the application of arrest were indicated in the answer to the previous question.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

According to Paragraph 3 Article 365<sup>2</sup> of the Code of Criminal Procedure, a financial penalty which was recognised, subject to its nature, either totally or in part shall be paid to the accounts of a territorial state tax inspectorate, of the Fund of crime victims or of the victim or the third party. Where necessary, the court sets by its ruling what part of the penalty shall be transferred to which account. So far the Ministry of Justice has not received any requests for execution of decisions imposing an obligation to pay compensation for the benefit of victims or a sum of money to a public fund or a victim support organisation.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Yes, it has been implemented as a mandatory ground for refusal. In practice, there was only one case when the court recognised the financial penalty under the € 70 threshold. In general, the minimum amount of a fine, which could be imposed in the Republic of Lithuania, is 1 MSL (1 MSL= LTL 130 = EUR 37, 77). Therefore, the Ministry of Justice of the Republic of Lithuania would not object to the reduction of EUR 70 threshold.



## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

There have been at least 18 decisions imposing financial penalties, which were transmitted to other Member States since the implementation of the FD up to 1 September 2010.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

Main fields of criminality: thefts, grafts, violations of the regulations governing road traffic safety or operation of vehicles.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

According to the data collected in June, 2010, the Ministry of Justice as the central authority received a total of 193 decisions for execution of financial penalties imposed in other Member States. 110 of those decisions imposing financial penalties were already recognised by the district courts. Information on the execution of such financial penalties is not available as it is not collected by the central authority. The Ministry of Justice does not have any data on the requests for execution of financial penalties sent directly to the competent district courts of the Republic of Lithuania.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Accurate statistics are not available, however, it is to be noted that several requests could not have been executed due to different reasons, e.g.:

- based on the FD: dual criminality; penalty being below EUR 70 threshold;
- other reasons: it was not possible to identify properly the sentenced person according to the data provided in the decision; it was established that the sentenced person on the dates of execution of the criminal offences was in a hospital in Lithuania and therefore could not commit the offences indicated in the certificate; the sentenced person could not be found; the sentenced person provided proof of payment of the financial penalty in the issuing State.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

In the opinion of the Ministry of Justice, the FD is a useful instrument, because it provides for a possibility of enforcement of financial penalties in other Member States. It is also quite easy and convenient to use.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

- I. The Ministry of Justice of the Republic of Lithuania would very much welcome future clarification on the scope of application of the FD (with regard to the words “in particular” in Article 1 (a) (iii-iv)) as it raises problems of implementation of the FD in the Republic of Lithuania. Article 1 (a) iii) and iv) of the FD were not implemented in the Republic of Lithuania, because in all cases when fines are imposed by the administrative authorities of the Republic of Lithuania such decisions can not be appealed to a court having jurisdiction in particular in criminal matters. However, there are administrative cases when fines are imposed by the district courts of the Republic of Lithuania which are also first instance courts for criminal (as well as other) cases. These decisions can be appealed to the Supreme Administrative Court which has no jurisdiction in criminal matters. Nevertheless, under the new draft law on the amendments to the Code of Administrative Offences, it is established that district courts would be appeal instances for decisions passed by the police and other authorized officials in cases of administrative offences. If the aforementioned draft law comes into force, technically it could be considered that the FD could be applied also in such cases, because district courts are also first instance courts for criminal cases, although administrative offences are dealt within the “pure” administrative proceedings.
- II. For the practitioners it would also be useful to have guidelines on the filling in of the certificate, as well as a special form for the provision of information from the executing State under Article 14 of the FD.
- III. It is necessary to update the website of the EJNI including all necessary information on the contact details of the competent authorities.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

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## HUNGARY

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

According to the Act No. XXXVI. of 2007. on legal assistance on administrative cases (hereinafter: Szjtv.) there is no possibility to use the provisions of this act in cases when the fine was imposed before the enactment of the Szjtv. So Hungary can't transfer the fine if the final decision had been made before the Szjtv's entering into force. It is also impossible to transfer financial penalties, imposed in criminal procedure before the implementation of the FD.

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

**Answers to question 3 and 4:**

The information concerning Hungary in Annex II needs to be supplemented incorrect. In the Hungarian legal system there are two areas where financial penalties/fines can be imposed. Criminal offences are regulated by the Act No IV of 1978 on the Criminal Code (hereinafter: CC) (rules on criminal procedure is regulated in the Act No XIX of 1998 on the Criminal Procedure, hereinafter: CPC), and the administrative offences fall under the Act No LXIX of 1999 on the Administrative Offences.

The Act No CXXX of 2003 on co-operation in criminal matters with the Member States of the European Union regulates the legal assistance in case of criminal offences (hereinafter: Nbjtv). Chapter V of the Act regulates the execution of financial penalties imposed in one Member State and executed in another. Regarding **criminal offences where financial penalties can be imposed Hungary has not designated any central authority.**

Acting as executing state, in Hungary the residence of the defendant, the headquarter of the legal person, or in absence of these the location of the property subject to execution substantiate the jurisdiction of the *local court located at the seat of the county court, or, in Budapest the Buda Central District Court*. These courts are responsible for the execution of the decision of a foreign Member State.

Acting as issuing state, the information contained in doc.9226/09 COPEN77 is correct.

**Regarding administrative offences where fine can be imposed the National Police Headquarters was designated by Hungary as the central authority for legal assistance** in execution, i.e. in receiving and forwarding the legally binding decision imposing the fine. Based on the provisions of Szjtv, foreign requests for legal assistance concerning administrative offences shall be sent to the central authority and – if legally binding conditions of fulfilling the request are met – it forwards them to the unit having the competence and jurisdiction. The enforcing of the sum imposed by the foreign decision is carried out by the town clerk/notary of the municipality competent on the basis of the residence or habitation of the perpetrator.

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

According to the Nbjtv and the Decree No. 36/2007 (VII. 4.) of the Minister of Justice and Law Enforcement, it is possible to issue a certificate, in all cases prescribed in Article 1. point a) of the FD.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

The punishable acts are regulated in the CC, or in the Third Part of the Act No LXIX. of 1999. on Administrative Offences or in the Government Decree No. 218/1999. (XII. 28.) on Certain Administrative Offences.

The procedures can be different in connection with the different types of punishable acts (offences). CPC must be applied when the offence is regulated by the CC, the First and Second Part of the Act No LXIX of 1999 on the Administrative Offences shall be applied if the offence is in the Third Part of the Act No LXIX of 1999 on the Administrative Offences or in the Government Decree No 218/1999 (XII. 28.) on the Certain Administrative Offences.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

There is no information available for the time being. Gathering information from one of the competent Hungarian authority is under process.

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Regarding **criminal offences**, the Hungarian courts acting as issuing authority may allow the executing state to apply alternative sanction in case it is not possible to enforce a financial penalty. In the certificate the court has to indicate explicitly this possibility declaring which alternative sanction can be used and in what measure (for example: how many days in custody). According to the Nbjtv. and the CC, alternative sanction can be custody or community service work.

There is no possibility to use alternative sanctions within the framework of legal assistance concerning **administrative offence** procedures where fine is imposed.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Provided the issuing judicial authority has indicated in the certification that it consents to conversion if payment of the financial penalty imposed in the issuing is unenforceable, the provisions of Section 52 and Section 114(2) of the CC and §563 of the CPC must be applied accordingly. The court notifies the issuing judicial authority of the Member State about conversion by sending the legally binding order.  
/Section 52 of CC

(1) If the sentenced person did not pay the financial penalty, or if failed to pay a monthly installment where payment by installment had been authorized, the financial penalty or the unpaid portion shall be substituted by the appropriate term of imprisonment.

(2) The term of imprisonment imposed in substitution of an unpaid financial penalty shall be determined where one day's worth of financial penalty shall correspond to one day of imprisonment. In this case the term of imprisonment may be less than two months.

(3) Where financial penalty had been imposed in addition to a term of executable imprisonment, or if a suspended sentence is ordered to be carried out, the degree of security of the imprisonment carried out in substitution of the financial penalty shall correspond to the original term.

(4) Apart from what is contained in Subsection (3), where imprisonment is ordered in substitution of a financial penalty it shall be served in a correctional institution./

/Section 11 of CC

(2) The financial penalty shall be changed into imprisonment if it cannot be collected./

Section 563 of CPC

(1) If the sentenced person failed to pay the financial penalty, the court either ex officio or on the motion of the prosecutor decides on the substitution of the financial penalty by the appropriate term of imprisonment.

(2) The decision on the substitution can not be subject to any appeal./



10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

The procedure for the execution of a financial penalty imposed in another Member State is the same procedure as if the penalty would have been imposed in Hungary. If the request for legal assistance concerns either the compensation for victim or the sum for victim support organisation, the court executes the request in the same way as it acts in a domestic case.

The Szjtv. only allows for the enforcement of the fine and the costs of proceedings, imposed in the legally binding decision concerning administrative offences. On the claim for compensation a civil court can decide.

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

This ground for non-recognition and non-execution is transposed into Hungarian national legislation as mandatory ground for refusal. The Hungarian authorities are only entitled to initiate legal assistance for execution or to execute legal assistance when the financial penalty exceeds this sum of 70 €, both concerning criminal and administrative offences.

*/Enforcement of the order of the Member State must be refused if the amount stated in the order of the Member State, or the amount when converted into euros at the prevailing central exchange rate of the Hungarian National Bank on the date the order was issued, does not exceed 70 euros.!*

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.
- c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
- d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

There is no statistics available for the time being. Gathering information from one of the competent Hungarian authority is under process.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

There is no statistics available for the time being. Gathering information from one of the competent Hungarian authority is under process.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

There is no statistics available for the time being. Gathering information from one of the competent Hungarian authority is under process.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

There is no statistics available for the time being. Gathering information from one of the competent Hungarian authority is under process.

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## THE NETHERLANDS

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

We accept cases from before and after implementation of the Framework Decision.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The competent authority under FD 2005/214/JHA is the Public Prosecutor's office in Leeuwarden, the central authority is the Centraal Justitieel Incassobureau, Afdeling Europese geldelijke sancties (Department of Cross-border Enforcement), P.O. Box 185, 8900 AD Leeuwarden, tel. +31 (0)58 2533700. This is also valid for FD 2006/783/JHA.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The Central Authority is the CJIB in Leeuwarden. The CJIB is part of the ministry of Justice and in 2005, the Minister of Justice appointed the CJIB as central authority for the framework decisions on the mutual recognition of financial penalties (2005/214/JHA) and on confiscation orders (2006/783/JHA). Within the CJIB, the department of Cross-border Enforcement is responsible for fulfilling this role of central authority.

The CJIB set up a department of Cross-border Enforcement to deal with the incoming and outgoing financial penalties and confiscation orders. The CJIB and the department are more than an administrative portal to transmit and receive financial penalties and confiscation orders. The department of Cross-border Enforcement assists the Public Prosecutor in examining the advisability and executability of incoming and outgoing cases.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Art. 1 (a) ii	yes
Art. 1 (a) iii	yes this could be possible
Art. 1 (a) iv	yes

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Art. 1 (a) ii      yes - i.e. traffic offences, administrative procedure

Art. 1 (a) iii      yes this could be possible - i.e. financial penalties imposed by an administrative authority. These include penalties imposed for an offence or an infringement of the rule of law of the issuing State, which are punished as offences against the public order.

Art. 1 (a) iv      yes - ibid.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Up to this point, we have not received any of the decisions listed above under the FD 2005/214/JHA. However, as issuing State we have had difficulties with acceptance by executing States of our requests under Article 1 (a) ii.

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes, up to now only substitutive imprisonment

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes, up to now only substitutive imprisonment

#### Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Yes. When the offender pays the compensation order, the state has to pay the victim from the state budget. To solve this issue, it is desirable and necessary to draw up official agreements (bilaterally) as mentioned under article 13 FD.

#### Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

No, we accept and issue all amounts. Due to the fact that in the Netherlands most traffic fines are below € 70, most of these offences will go unpunished if the threshold will also be applied to traffic/road offences. Upholding the threshold is contradictive to the notion of road safety.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

In 2009, we transferred a total of 217 cases and from January 2010 til the beginning of December, we transferred 936 cases to other EU Member States.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

Traffic offences, drugs related offences, theft/burglary and drink-driving.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

We have received a total of 234 cases.

129 of those cases were sent to us by one Member State. Unfortunately these cases were incomplete and could not be processed. Most other received cases have been recognized and executed.



d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Next to the incomplete cases mentioned under c. there were 15 cases in which it proved impossible to execute, mostly because the person in question could not be found in the Netherlands, was deceased or had not committed the offence.

We refused one case, in which the offence was not indicated as a list-fact.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

It is useful, but its use need more time to develop and there are many central/competent authorities that are not familiar with its function/usage.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

Awareness through the EJM website, stimulate certain Member States to actively use the FD and inform their central/competent authority/authorities on the usage of the FD (circulaire/instructions).

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

We have noticed that Member States deal differently with the notion of mutual recognition. It will take some time for (all) Member States to be able to process cases under the FD's in an efficient and effective manner.

## ÖSTERREICH / AUSTRIA

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

In our opinion, the FD also applies to financial penalties that were imposed before its implementation into national law

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The information contained in the above-mentioned document is correct

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

No central authority has been designated

Scope - types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Financial penalties may be imposed and a certificate may be issued by the authorities mentioned in Art. 1 a) i), iii) and iv)

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Concerning Art. 1a) i): criminal proceedings with regard to criminal offences; concerning Art. 1 a) iii) and iv): administrative proceedings with regard to administrative offences

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Almost no practical experiences yet

Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes, in the form of imprisonment in default

8. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes, in case it is not possible to enforce the financial penalty imposed

#### Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Yes, the damaged person may either join the criminal proceedings against the person who caused the damage as so-called „partie civile“ or bring a civil action against that person. No specific legal mechanisms apply, the compensation will be transferred to the victim concerned.

#### Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Yes, as a mandatory ground for refusal. Almost no practical experiences yet. However, the threshold is considered necessary in view of the administrative burden put on the competent authorities in the executing State

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.
- c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
- d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

No statistics available

## Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

We do believe that the FD is a useful instrument. However, as there are unfortunately not a lot of cases yet, we don't have much practical experience with the FD yet.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

Practical measures like workshops or seminars in order to increase the knowledge about the FD could be helpful

15 Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

No

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## POLAND

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, it has been implemented since 18<sup>th</sup> December 2008.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

Polish law, implementing FD 2005/214, is applicable also to the financial penalties imposed before the implementation.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

No, doc. 9226/09 COPEN 77 is not up to date any longer – it does not contain the information on Polish implementation.

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

Poland has not designed any central authority until now.



Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

1(a)(ii) – yes

1(a)(iii) – no

1(a)(iv) - no

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

In Poland petty offences may be punished with financial penalties by an authority other than a court. In such case, a criminal court appeal is always provided. The criminal procedure is applicable as well.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

No. It is almost the same procedure as the one concerning regular offences and crimes. Moreover, the same level of the safeguards is provided.

Alternative sanction (Article 10)

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes.

Generally, the fines in Poland are imposed using daily rates, not sums. One rate is from 10 to 2.000 PLN, which makes circa 2,5 to 500 €.

When the execution of the fine is, or is likely to be inefficient, a court may replace the fine up to 120 daily rates with a social service, where 10 daily rates is equivalent to one month of a social service. Further, while still inefficient, an alternative imprisonment up to 12 months may be imposed (up to 6 months when deprivation of liberty is not provided for an offence, for which a fine was imposed). One day of an alternative imprisonment is equivalent two daily rates of fine. All sums paid by perpetrator are taken into account and affect the period of an alternative sanction.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Yes.

The only condition is conformity with Polish law, as presented in point 8. An alternative sanction exceeding Polish upper threshold must be adopted to its level.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Aforementioned compensation procedures exist in Polish legal system.

No mechanism for transfer of executed compensation abroad is foreseen in Polish law. It means that all sum executed is transferred to the State budget, according to FD Article 13.

Poland is of opinion that conclusion of separate agreements between Ministries of Justice within UE framework, covering at least compensation, is needed.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

This threshold has been transposed as non – obligatory (optional) one. The relationship between this threshold and traffic/road safety offences has not been discussed until now.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?
- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?
- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.
- c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?
- d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

There are no reliable statistics available at the moment. The practical use of the mechanism in question has been just commenced. Low number of cases makes any statistical approach counterproductive.

## Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA?

Do you think it is a useful instrument?

Yes. This instrument meets real needs of administration of justice, so it will be doubtlessly very useful.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

The conclusion of agreements on compensation, provided for in Article 13 FD, is absolutely required. Maybe, such initiatives could be supported from the EU level.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

No.

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## ROMANIA

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

The Framework Decision was implemented by Law no. 222/2008 which amended Law no. 302/2004 on judicial cooperation in criminal matters and entered into force on the November 13, 2008;

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

Romanian law does not provide limitations concerning financial penalties issued before the implementation of the FD;

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The Romanian authorities that have the competence to issue a decision are the courts. The Romanian authorities that have the competence to execute a decision are the courts (where the person in question resides / has its headquarters). If the direct contact is not possible, the request can be send to the Romanian Ministry of Justice — Directorate for International Law and Judicial Cooperation (phone 0040 37.204.1077, fax: 0040 37. 204.1079).

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The Ministry of Justice, as central authority provides assistance to the law courts and transmits and receives decisions whenever direct contact is not possible.

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

According to the Romanian law the fines imposed by an authority (not a court) can be appealed only in front of a civil court, so provisions of article 1 (a) ii), iii) and iv) can not be applied by the issuing Romanian authorities.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

Do not apply.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Lack of the sentence / act which is the base for the certificate and proper translation can make difficult for the judge to understand the offence committed. Also, insufficient information concerning the identity of the person in question can led to difficulties in executing such request.

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

According to the Romanian Criminal Code, if the person sentenced elude in bad faith the payment of the fine, the court may replace this penalty by the penalty of imprisonment within the limits<sup>1</sup> provided for the offence committed, while taking into account any parts of the fine that have been paid.

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<sup>1</sup> According to the provisions article 63 of the Romanian Criminal Code

- (1) The penalty of fine consists of the sum of money that an offender is obliged to pay.
- (2) Whenever the law provides solely the penalty of fine for an offence, while not showing its limits, its special minimum shall be 150 lei and its maximum shall be 10.000 lei.
- (3) When the law provides the penalty of fine without showing its limits, as an alternative for the penalty of imprisonment of up to one year, the special minimum of the fine shall be 300 lei, and the special maximum shall be 15.000 lei, and when it provides the penalty of fine in alternation with the penalty of imprisonment of more than one year, the special minimum shall be 500 lei and the special maximum shall be 30.000 lei.



9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

Where it is impossible to enforce a decision, either totally or in part, alternative sanctions may be applied by the executing Romanian judicial authority according to the provision of the Romanian Criminal Code.

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Monies obtained from the enforcement of decisions by the executing Romanian judicial authorities shall accrue to the State budget of Romania unless otherwise agreed with the issuing State, in particular in the cases referred to in Art. 187<sup>34</sup> para. (2) b). – „*compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction*’. The issuing authority must mention, in its request a bank account for the transfer of the compensation to the victim.

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

The 70 euro threshold was transposed in Romanian legislation as an optional ground for refusal. The execution of those requests will be decided by the judge in a case by case situation. Also, we consider the 70 euro as a reasonable threshold. For less than 70 euro, it may prove to be less profitable comparing with the administrative procedures and the human resources involved.

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a) Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

12 certificates were sent to Bulgaria, Hungary and France (3 already executed);

b) In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

those certificates were usually issued for traffic of migrants and fraud;

c) Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

so far, 6 requests issued by the Dutch and Hungarian authorities were executed;

d) Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

in 4 cases the execution was refused. The grounds for refusal were:

- 1 based on the FD: lack of double criminality;
- 3 not mentioned by the FD: the person was not found, the issuing authority withdrew the request, the person in question resides in other state.

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA?  
Do you think it is a useful instrument?

This instrument is useful but it will proof his entire efficiency when all the MS will transpose it and apply it.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

In order to facilitate the direct contact, the website of the EJM must be updated and provide all necessary information about the contact details of the competent foreign authorities. The notification of the MS (concerning the competent authorities) which transposed this FD are published on the Council's web page, but not always can be done the link between the place of residence of the person in question and the authorities concerned.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

As we already mentioned, the lack of the sentence / act which is the base for the certificate and proper translation can make difficult for the judge to understand the offence committed if the certificate does not provide a clear / full description of the facts.

On the other hand, in the last half of 2010 we received a larger number of requests than during November 2008 – June 2010. Only recently this legal instrument began to show its efficiency. So far we do not have enough practical cases in order to identify specific problems.

## FINLAND

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, Finland has implemented the Framework Decision by an Implementation Act, which came into force 22 March 2007.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

According to section 16 of the Implementation Act, the Act is applied to decisions which have been transmitted after the entry into force of the said Act. This is the main rule also in other fields of international cooperation in criminal matters.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

As to the notification on competent authorities (Article 2(1), the information is correct. As to the notification on languages (Article 16), Finland accepts certificates in Finnish, Swedish, or English, as correctly stated in 9226/09. However, Finland may also accept certificates in another language, if there is no obstacle for acceptance (section 7 of the Implementation Act, this information seems to be missing from the original notification).

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

In Finland the Legal register Centre is the only competent authority to execute financial penalties in domestic cases. Therefore it is the only competent authority also to apply the FD on financial penalties. There is no central authority within the meaning of Article 2(2) of the FD.

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

So called penal order fines issued by public prosecutors and petty fines issues by police authorities are considered financial penalties mentioned in Article 1(a)(ii) of the FD.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

These types of procedures are mostly applied when traffic offences are concerned. a “penal order fine” may be imposed for a criminal offence, which is punishable by fines or maximum six months of imprisonment. There are also other conditions for such procedure, such as e.g. that the injured party has to give his/her consent for such procedure. “A petty fine” can be imposed for certain minor offences, which are listed in law. The amount of such petty fine can be 200 euros in maximum. Concerning these procedures, there is always an opportunity to have the case tried before a court having jurisdiction in criminal matters, as provided for by Article 1(a)(ii).

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

By so far there have been no problems concerning recognition and enforcement of the financial penalties in accordance with Article 1(a)(ii) and (iii). Finland has received several financial penalties as meant in Article 1(a)(ii) and (iii) from the Netherlands.

## Alternative sanction (Article 10 )

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

See answer to question 9.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

According to the Government Bill, due to technical difficulties in converting foreign fines to imprisonment, it has been considered not to apply such alternative sanctions when Finland is an executing State. For reasons relating to reciprocity, such alternative sanctions are excluded also when Finland is an issuing State.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

In Finland there is no mechanism to enforce compensation for victim support organisations. There are other means to safeguard rights of victims in criminal procedure. For instance, victims are entitled to claim for damages in the context of criminal proceedings. Thus they are not required to start separate civil law proceedings. Public prosecutors also have duties relating to safeguarding rights of victims. At the enforcement stage compensation for damages in cross-border cases is currently based on civil law instruments, such as Brussels I Regulation.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

According to the Implementation Act the ground for refusal related to the 70 € threshold is an optional ground for refusal. In practice Finland has received financial penalties which have not met the 70 € threshold, but Finland has recognised and enforced those financial penalties as well.

In Finland traffic/road safety offences do not have any special status and financial penalties imposed for such offences can be recognised and enforced as fines imposed for other kind of offences.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

- a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

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- b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

In most cases Finland has sent “penal order fines” to other Member States (see answers to questions 5 and 6).

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

Finland has recognized 20 financial penalties, 7 of them have been executed, and the procedure is pending in 13 cases.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

Finland has refused the execution in 7 cases, due to missing information in the certificate, or for the reason that the certificate has not been signed by a correct competent authority.

#### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA ? Do you think it is a useful instrument?

Finland considers that the FD 2005/214/JHA is an useful instrument.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

The procedure should be made as simple as possible in every Member State. For instance, the system of competent authorities should be clear for practitioners. The language regime also should be improved. For instance, it would facilitate the application of the FD, if decisions and certificates could be sent in English. At least not all details of information should be subject to translation.



15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

It could be worth considering whether an electronic data system should be developed, if the amount of the financial penalties to be recognised and enforced increases a lot.

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## SWEDEN

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, the Framework Decision has been implemented into Swedish law. The Swedish legislation has entered into force 1 January 2010.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

The Swedish legislation implementing the Framework Decision does not exclude financial penalties that were imposed before the Swedish legislation entered into force from being executed in Sweden.

### Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

Competent authority when Sweden is executing and issuing State is the Swedish Enforcement Authority. Information is found in document 16720/10, the Swedish notification to the Framework Decision. However, the e-mail address is not correct in that document. The correct e-mail address is: [kronofogdemyndigheten@kronofogden.se](mailto:kronofogdemyndigheten@kronofogden.se)

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

No central authority has been designated in Sweden. Direct contact between judicial authorities is used in the dispatch and reception of decisions.

## **Scope – types of procedures concerned**

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

Article 1 (a) ii: Yes, public prosecutors and police officers may impose financial penalties. The Swedish Enforcement Authority is the competent authority to issue the certificate in order for the decision to be executed in another Member State.

Article 1 (a) iii and iv: These types of financial penalties may not be imposed in Sweden.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

In Sweden, penalties issued by authorities other than courts are provided for in our legal system (public prosecutors and police officers). Most fines are issued by these authorities. It concerns minor offences such as traffic offences. A prerequisite for issuing a fine under these circumstances is that the suspect approves of it and confesses to the act. The approval of a fine has the same effect as a judgement that has entered into final force. The person concerned always has a right to have the case tried by a court with jurisdiction in criminal matters instead.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

The Swedish competent authority has not yet received any such cases.

#### **Alternative sanction (Article 10)**

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

The executing State may not, under any conditions, apply imprisonment or any other alternative sanctions when enforcing a Swedish financial penalty.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

As executing State, Sweden will not apply imprisonment or other alternative sanctions by way of substitution for non-recovery of the financial penalty.

## Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

No such procedure exist in Sweden.

## Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Sweden has not transposed the ground for refusal based on financial penalties below the 70 euro threshold into the Swedish Act.

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a. Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

The competent Swedish authority has, to this date, transferred 27 decisions to other Member States.

b. In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

Traffic offences.

c. Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

To this date, 22 decisions have been recognised and executed in Sweden.

d. Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

The Swedish competent authority has refused to recognize and execute a financial penalty in one case. The ground for non-recognition was that the certificate did not manifestly correspond to the decision (article 7.1). This was made after due consultation in accordance with article 7.3. Above that, three cases have been reported back due to lack of assets.

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

The Framework Decision is in our opinion a very useful instrument.

However, we have experienced some practical problems. In some cases, when Sweden was the executing State, it have been difficult to identify the person against whom a decision has been passed due to imprecise information in the certificate, e.g. no information concerning the first name (only initial) or the sex of the person.

In a couple of cases, when Sweden was the issuing State, the executing authorities have refused to recognise and execute the decisions without prior consultation in accordance with article 7.3. In one case recognition was refused with reference to that the Swedish decision was not translated into the official language of executing State, and in another due to lack of double criminality (even though it was an offence included in the list in article 5.1).

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

We appreciate that updated information concerning the competent authorities in the different Member States will be distributed.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

The Swedish competent authority has in some cases had problems finding the right competent authority in other Member States, sometimes leading to discussions with several different authorities before finding the correct competent authority. There have also been problems in these contacts due to language issues.

**UNITED KINGDOM**  
**(this reply covers England and Wales)**

1. Has the framework decision 2005/214/JHA been implemented into your national law? And if not, when do you expect this implementation will be done?

Yes, on 1 October 2009.

2. What is the position of your Member State regarding financial penalties that were imposed before the implementation in your national law? Should such financial penalties also be transferred, or does the framework decision only apply to new cases?

No. The FD only applies to fines imposed after 1 October 2009.

Competent authorities

3. With respect to the competent authorities designated as issuing or executing authorities under this framework decision, could you please check whether the information contained in doc. 9226/09 COPEN 77 is correct?

The competent authorities, when the United Kingdom is the issuing and executing state, will be the criminal courts as follows:

- e. A magistrates' court (England and Wales)
- f. A Sheriff Court or JP Court (Scotland)
- g. A court of petty sessions (Northern Ireland)

4. If a central authority has been designated under this framework decision in your Member State, could you explain its role?

The United Kingdom has set up central authorities responsible for the administrative transmission and reception of decisions in accordance with Article 4 (7). A decision, together with an extract from the Court Register, may be sent to the following addresses, depending on whether the sentenced person is resident, or has property or income, in the following jurisdictions of the United Kingdom:



**England and Wales:**

London Central Accounts Office  
Her Majesty's Courts Service  
65 Romney Street  
LONDON  
SW1P 3RD  
Tel: 020 7805 1890

**Scotland:**

The Sheriff Clerk  
Sheriff Court House  
27 Chambers Street  
EDINBURGH  
EH1 1LB  
Tel: 0131-2252525  
Fax: 0131-2254422  
Email: [Edinburgh@scotcourts.gov.uk](mailto:Edinburgh@scotcourts.gov.uk)

**Northern Ireland:**

Business Development Group  
Northern Ireland Court Service  
Laganside House  
23-27 Oxford Street  
BELFAST  
BT1 3LA  
Telephone: 028 90328554  
Email: [businessdevelopmentgroup@courtsni.gov.uk](mailto:businessdevelopmentgroup@courtsni.gov.uk).

Scope – types of procedures concerned

5. For each of the types of proceedings listed under Article 1 (a) ii), iii) and iv), please indicate whether, in accordance with the national law of your Member State, financial penalties may be imposed and a certificate be issued to another Member State.

The UK will only send and received requests to enforce criminal fines, regarded as such in the UK, and those fines which are originally issued by Penalty Notices for Disorder and Fixed penalty Notices but which have remained unpaid after the statutory limit before transfer to the magistrates' courts.

Those fines which are civil penalties (eg some motoring and speeding offences) are excluded.

Fines under Euros 70 are excluded.

Fines imposed before 1 October 2009 (12 October 2008 in Scotland) are excluded.

6. If the answer to the first question is yes, please provide additional information concerning the types of procedure and the kind of punishable acts concerned.

7. From your experience as executing State, does the recognition and execution of financial penalties imposed in the framework of such procedure cause any difficulties? If yes, could you further explain them?

Yes. Magistrates' courts are not yet operating cross-border enforcement adequately.

Alternative sanction (Article 10.)

8. May your Member State, acting as an issuing State, allow, according to national law, the executing state to apply alternative sanctions in case it is not possible to enforce a financial penalty? Which types of alternative sanctions and under what conditions?

Yes – all.

9. Would your Member State, acting as an executing State, be willing to consider the option of applying an alternative sanction when so allowed by the issuing State? Under what conditions can such alternative sanctions be applied?

England & Wales & Scotland: yes, all. N Ireland: No – only imprisonment.

#### Compensation to victims

10. According to Article 1, b) ii), compensation imposed for the benefit of victims is covered by the scope of the framework decision 2005/214/JHA. Does such a procedure exist in your Member State? What legal mechanisms would be applied in your Member State in order to transfer the compensation to the victim?

Yes. Compensation to be paid direct to victim or via Central Authority (by arrangement if necessary) and not to be retained by enforcing state.

#### Threshold

11. Has the ground for refusal related to the 70 € threshold been implemented into your national legislation and how? (Optional or mandatory?) How is it applied in practice? How does your Member State view the relationship between the € 70 threshold and traffic/road safety offences?

Yes mandatory. CA will not process requested for less than € 70. Most road traffic/road safety offences are civil in UK and therefore not applicable.

## Statistics

12. If the framework decision 2005/214/JHA has been implemented into your national legislation, could you provide us with relevant statistics on its implementation?

a) Acting as issuing authority, what is the number of financial penalties issued on the basis of this framework decision by the competent authorities of your Member State?

None to date been issued by CA covering England and Wales. We have nine financial penalties that are awaiting transmission, but we are in the process of trying to confirm contact details in the executing state before these are sent out.

b) In general, could you indicate for which types of offences is a financial penalty usually issued to another Member State.

General criminal matters

c) Acting as executing authority, what is the number of financial penalties recognised and executed on the basis of this framework decision by the competent authorities of your Member State?

England and Wales have had 40 from the Netherlands (no other state has sent in any to us), of which we have rejected 12 because of incomplete information and recommended acceptance of 28 and these are currently with the respective courts for a court date to be set.

d) Acting as executing authority, what is the number of financial penalties where the execution has been refused on the basis of this framework decision by the competent authorities of your Member State? If possible, could you indicate on which grounds the execution has been refused or whether it has been proved impossible to execute it for other reasons (person could not be found, ...)?

12 have been rejected by the CA on the basis of incomplete information. None as yet have been rejected by the court, as we are still waiting for court dates to be allocated.

### Conclusion

13. What is your opinion on the functioning in practice of the framework decision 2005/214/JHA? Do you think it is a useful instrument?

Yes but it has not yet taken off properly within the UK and efforts are being made in this regard to raise awareness in magistrates' courts.

14. What could be done at European level in order to facilitate its application (legislative or practical measures)?

Updating European judicial website on regular basis for Central Authority addresses, contact information.

15. Is there another issue that you would like to raise in relation to the legislative or practical implementation of this framework decision?

Proper Management Information systems have not been installed in the UK due to lack of funding. Some help with preliminary funding of these initiatives would assist at implementation stage.