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COPEN 361
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NOTE

From:	Presidency
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN)
Subject:	Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties - Draft forms and agreement

As a follow-up to the COPEN meeting of March 2016, a group of experts of DE, NL, PL and FI has come together on 4 October and 22 November with a view to establishing standardized forms concerning Framework Decision 2005/214/JHA on financial penalties. These forms, which will be translated in all languages, have as objective to facilitate the procedure of enforcement of the (cross-border) decisions on financial penalties under the Framework Decision.

The results of the work carried out by the expert group, which are set out in Annexes 1-5 to this note, will be presented in detail at the COPEN meeting on 16 December 2016.

In addition, at the initiative of PL, a draft agreement has been prepared so as to allow Member States who so wish to agree on the transfer of (part of) the payment with a view to compensating the victim of the crime involved (see Art. 1(b)(ii) of the FD). According to Art. 13 of the FD, all monies obtained from the enforcement of decisions under the FD shall accrue to the executing State, unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Art. 1(b)(ii).

At present, there is no standard agreement of this kind. That means that a victim probably never receives compensation in application of the FD. In order to overcome this situation, the draft agreement set out in Annex 6 was elaborated.

The Presidency intends discussing the five draft forms and the draft agreement at the COPEN meeting on 16 December 2016.

Draft Form 1

**Information from the issuing State to the executing State on a decision of a
financial penalty**

based on Article 11, 12 and 15 of Framework Decision 2005/214/JHA¹

a)

SENDER (Authority of the Issuing State)

Official name:.....

Address:.....

ADDRESSEE (Authority of the Executing State)

Official name:.....

Address:.....

b)

File reference in the Issuing State:.....

**File reference in the Executing
State:.....**

¹ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

c)

Name of the person concerned:

Date and place of birth:

Place of residence:

OR

Name of the legal person concerned:

Registered seat:
.....

Information from the Issuing State to the Executing State on:

d) Voluntary payment

voluntary payment (s) in the issuing State (Article 15(3)):

— amount in euro:

if applicable, in other national currency of the issuing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

— date:

In case of partial payment the financial penalty is to be enforced:

sum of money for the offence - amount of:.....

victim compensation linked to offence - amount of:.....

cost of court or administrative proceedings - amount of:.....

sum for public fund or victim support organisation - amount of:.....

e) (Partial) Termination of enforcement (Art. 12 (1))

e.1) The decision:

has ceased to be enforceable in full or hereby is withdrawn in full.

has partially ceased to be enforceable or is partially withdrawn. The following part(s) of the financial penalty still remain to be enforced:

- amount:

in euro:

if applicable, in other national currency of the issuing state:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

- type of financial penalty to be enforced:

sum of money for the offence - amount of:.....

victim compensation linked to offence - amount of:.....

cost of court or administrative proceedings - amount of:.....

sum for public fund or victim support organisation - amount of:.....

e.2) Date of decision, measure or withdrawal:.....

e.3) Reasons:

Decision is no longer enforceable because of :

amnesty (Art. 11(1)).

pardon (Art. 11(1)).

review of sentence (Art. 11(2)).

other decision or measure as a result of which the decision (partially) ceases to be enforceable or is (partially) withdrawn from enforcement of the executing State (Article 12(1)).

Execution of the decision is statute-barred as of (date).....

Withdrawal for other reason:
.....

f) Other relevant additional information for the Executing State:

.....
.....

g) Signature of the authority of Issuing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 2

Recognition of the decision on a financial penalty

based on Framework Decision 2005/214/JHA²

a)

SENDER (Executing State)

Official name:.....

Address:.....
.....

ADDRESSEE (Issuing State)

Official name:.....

Address:.....
.....

b)

Reference number of the Executing State:.....

File reference in the Issuing State:.....

c)

Name of the person concerned:

Date and place of birth:

Place of residence:

OR

Name of the legal person concerned:

Registered seat:

² Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Information from the Executing State to the Issuing State on:

d) Recognition

- full recognition of the decision on financial penalty on (date):.....
- the amount:
 - in euro, and if applicable:
 - in other national currency: BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK
- if applicable, payment in instalments:
 - date of the decision on authorizing payment in instalments:.....
 - payment plan (details on the dates and amounts):
 -

e) Signature of the authority of Executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 3

**Full execution of the decision on a financial penalty
based on Article 14(d) and (e) Framework Decision 2005/214/JHA³**

a)

SENDER (Authority of the Executing State)

Official name:.....

Address:.....

ADDRESSEE (Authority of the Issuing State)

Official name:.....

Address:.....

b)

File reference in the Executing State:.....

File reference in the Issuing State:.....

c)

Name of the person concerned:

Date and place of birth:

Place of residence:

OR

Name of the legal person concerned:

Registered seat:
.....

³ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Information from the Executing State to the Issuing State on:

d) Full execution

full completion of the execution of the decision on the financial penalty by

payment (Article 14(d))

— amount:
in euro:

if applicable, in other national currency of the executing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

— date:

and/or

application of alternative sanction (Article 14(e))

— type of sanction:.....

— date of termination of the alternative sanction:.....

Herewith, the executing State declares that the present case is closed.

e) Signature of the authority of Executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 4

Information on partial recognition or full non-recognition of the decision on a financial penalty

(apart from full recognition and full execution)

Article 4, 7, 14 and 20 of Framework Decision 2005/214/JHA⁴

a)

SENDER (Authority of the Executing State)

Official name:.....

Address:.....

ADDRESSEE (Authority of the Issuing State)

Official name:.....

Address:.....

b)

File reference in the Executing State:.....

File reference in the Issuing State:.....

⁴ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

c)

Name of the person concerned:

Date and place of birth:

Place of residence:

OR

Name of the legal person concerned:

Registered seat:
.....

Information from the Executing State to the Issuing State on:

d.1) Decision about recognition and enforcement under Article 7

refusal of recognition and enforcement.⁵ Date:.....

partial recognition and partial refusal of enforcement.⁶ Date:

Prior consultation on refusal and/or partial recognition between the Issuing and Executing States took place:

no

yes – date:.....

d.2) Partial recognition of the decision

- the decision has been recognized for the amount:
in euro:

if applicable, in other national currency of the executing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

- type of financial penalty the recognition applies for

sum of money for the offence - amount of:.....

⁵ If choosing this option, fill out point e.1) and i).

⁶ If choosing this option please fill out point e.1) and e.2).

- victim compensation linked to offence - amount of:.....
- costs of court or administrative proceedings - amount of:.....
- sum for public fund or victim support organisation - amount of:.....

d.3) Ground for full or partial non-recognition, refusal

- Certificate provided for by Article 4 is * ⁷
 - not available (Art. 7(1))
 - incomplete (Art. 7(1))
 - obviously does not correspond to the decision (Art. 7(1)).
- Decision against the sentenced person in respect of the same act
 - was given in the executing State (Art. 7(2)(a))
 - was given in another state than the issuing or the executing State and has been executed (Art. 7(2)(a)).
- In the case referred to in Article 5(3), the decision relates to an act which, under the law of the executing State, would not constitute neither a crime nor an infringement (Art. 7(2)(b)).
- The execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law (Art. 7(2)(c)).*
- The decision is related to acts which
 - under the law of the executing State were committed in whole or in part in the territory of the executing State or in a place treated as such (Art. 7(2)(d)(i)).
 - committed outside the territory of the issuing State, and the law of the executing State does not allow prosecution of the same offences and infringements committed outside its territory (Art. 7(2)(d)(ii)).
- Under the law of the executing State there is immunity which makes the execution of the decision impossible (Art. 7(2)(e)).
- The decision has been imposed on a natural person who under the law of the Executing State due to his or her age could not yet have been criminally liable for the acts in respect of which the decision was passed (Art. 7(2)(f)).

⁷ * means Prior consultation between the Executing State and the Issuing State is obligatory before referring to such ground of refusal.

- In case of a written procedure the person concerned was not, in accordance with the law of the issuing State, personally informed or via a representative, competent according to national law of his right to contest the case and of time limits of such a legal remedy (Art. 7(2)(g)).*
- The financial penalty is below EUR 70 or the equivalent to that amount (Art. 7(2)(h)).
- The person did not appear in person at the trial resulting in the decision, wasn't represented by a legal counsellor* (Art. 7(2)(i)) and:
 - was not summoned in person in due time or by other means did not receive official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, or
 - was not informed in due time that a decision may be handed down if he or she does not appear for the trial, or
 - had not been served with the decision and informed of the right to a retrial, or an appeal.
- Refusal of recognition on the basis of Article 20(3) because of: *
 - Violation of fundamental rights.
 - Infringement of the fundamental legal principles as enshrined in Article 6 of the Treaty.

d.4) Other circumstances leading to non-recognition of the decision:

- In accordance with the law of the executing State the decision cannot be recognised on any of the following grounds (Article 4 (1)) :
 - the person concerned has deceased (date).....
 - the person concerned has moved to another (Member) State (place)..... (date) on
 - the person concerned has moved to unknown address.
 - the person, of whom the personal data were transmitted, cannot be determined/found.*

e) As for the recognized financial penalty

e.1) Payment authorized in instalments

— date of the decision on authorizing payment in instalments:.....

— payment plan (details on the dates and amounts):.....

.....
.....

e.2) Deduction of payment (Article 14 (c))

— amount:
in euro:

if applicable, in other national currency of the executing state:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

— date:

recovered in whatever manner in the issuing State or other country (Article 9(2)).*⁸

e.3) Reduction of the amount of the financial penalty (Article 14 (c))- the decision relates to acts which were not carried out within the territory of the issuing State. The acts fall within the jurisdiction of the executing State. Therefore the executing State has decided that the maximum amount of the financial penalty is reduced in accordance with national law for acts of the same kind to the amount of (Article 8(1)):

in euro:

if applicable, in other national currency of the executing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

f) Closure of the file, if applicable

Herewith, the executing State declares that the present case is closed.

⁸ Prior consultation between the Executing State and the Issuing State is obligatory before deducting the already paid amount.

g) Other relevant additional information for the Issuing State:

.....
.....

h) Signature of the authority of Executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 5

**Information on the enforcement and the outcome of the enforcement of the decision
on a financial penalty**

(apart from full recognition and full execution)

Article 9, 11, 12 and 14 of Framework Decision 2005/214/JHA⁹

a)

SENDER (Authority of the Executing State)

Official name:.....

Address:.....

ADDRESSEE (Authority of the Issuing State)

Official name:.....

Address:.....

b)

File reference in the Executing State:.....

**File reference in the Issuing
State:.....**

⁹ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

c)

Name of the person concerned:

Date and place of birth:

Place of residence:

OR

Name of the legal person concerned:

Registered seat:

.....

Information from the Executing State to the Issuing State on:

d) Information about the ongoing enforcement of the case

authorized payment in instalments of the recognized financial penalty

— date of the decision on authorizing payment in instalments:.....

— payment plan (details on the dates and amounts):.....

.....

e) Information about the outcome of the enforcement of the case

e.1) Date of termination:.....

e.2) Result of the enforcement:

The enforcement was not successful.

The financial penalty has been partially enforced:

- amount:

in euro:

if applicable, in other national currency of the executing state:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

- the amount is enforced for :

- sum of money for the offence – amount of:.....
- victim compensation linked to offence – amount of:.....
- costs of court or administrative proceeding – amount of:.....
- sum for public fund or victim support organisation – amount of:.....

- application of alternative sanction

— type of sanction:.....

— date of termination of the alternative sanction:.....

e.3) Deduction from the decision on financial penalty (Article 14(c)) for the reason that it has been recovered in whatever manner in the issuing State or other country (Article 9(2)).*¹⁰

the amount of
in euro:

if applicable, in other national currency of the executing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

e.4) Reason for termination of the enforcement :

Termination of the enforcement based on the decision of withdrawal by the issuing State (Article 12(2)).

Termination of enforcement, for the reason of granting in the issuing or the executing State (Article 11(1)) of:

amnesty.

pardon.

Termination of enforcement, in accordance with the law of the executing State on the following ground (Article 9(1)):

no assets.

insolvency.

all national possibilities for execution have been exhausted

¹⁰ * Prior consultation between the executing State and the issuing State is obligatory before deducting the already paid amount.

the person concerned has deceased (date).....

the person concerned has moved to another (Member) State (place).....
on (date)

the person concerned has moved to unknown address.

the person, of whom the personal data were transmitted, cannot be
determined/found.

other reasons:

f) Closure of the file, if applicable

Herewith, the executing State declares that the present case is closed.

g) Other relevant additional information for the Issuing State:

.....

.....

.....

h) Signature of the authority of Executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)



**Agreement based on article 13 of the Framework Decision of 24 February 2005 on
2005/214/JHA the application of the principle of mutual recognition
to financial penalties**

Hereby,

[name Member State]	represented by:
Name of the institution	
Name of the person undersigned	

and

[name Member State]	represented by:
Name of the institution	
Name of the person undersigned	

agree to transfer mutually money obtained from the execution of the decisions on financial penalties, in the way settled between Executing and Issuing Authorities,

To:

- 1. **The victim/s** (art. 1 b/ item ii)

- 2. **Public Fund or a victim support organization** (art. 1 b/ item iv)

- 3. **Issuing State** (art. 1 b/ item i and/or iii)

after deduction of the costs of their execution

Signature

.....

Signature

.....

Place and date

.....

Place and date

.....
