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NOTE

From:	General Secretariat of the Council
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN)
No. prev. doc.:	15714/16
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 / Written contributions by Member States

At the COPEN meeting on 16 December 2016, the Working Party examined the draft forms and a draft agreement in relation to Council Framework Decision 2005/214/JHA (financial penalties), as prepared by a group of experts of DE, NL, PL and FI, together with the Commission (see doc. 14898/16 and doc. 15714/16, point 2).

Subsequently to the meeting, the Presidency invited Member States to present any comments in writing regarding these draft texts. Seven Member States (CZ, FR, LV, NL, AT, PT and SE) submitted such written comments, which are set out in the Annex to this note.

In view of these comments and the input provided during the said meeting, the Presidency has asked the experts group and the Commission to have a look again at the draft forms and draft agreement and submit, where appropriate, a revised version of these texts.

**WRITTEN COMMENTS BY MEMBER STATES REGARDING THE DRAFT FORMS
AND AGREEMENT IN RELATION TO FRAMEWORK DECISION 2005/214/JHA**

(Ref.: doc. 14898/16)

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CZECH REPUBLIC

Suggestions by CZ are indicated with track-changes and comments:

ANNEX 1

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)The authority which issued the decision imposing the financial penalty:

Official name:.....

Address:.....

ADDRESSEE (Authority of the Executing State)The authority of the Executing State

Official name:.....

Address:.....

Central authority responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grad and 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:

Comment by CZ: Unnecessary to repeat it, it is in the introduction to this form

d) Voluntary payment in the issuing State (Article 15(3))

~~— 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:..... *Comment by CZ: must be in conformity with Article 1 b) of the FD*

☐ sum of money on conviction of an offence imposed in a decision: – amount of

☐ compensation imposed in the same decision for the benefit of victims: – amount of

☐ sum of money in respect of the costs of court or administrative proceedings leading to the decision: – amount of

☐ sum of money to a public fund or a victim support organisation, imposed in the same decision – amount of:.....

e) ~~(Partial)~~ Termination of enforcement (Art. 12 (1)/ Art. 11)

e.1) The decision:

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

☐ has partially ~~seased~~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:..... *Comment by CZ: must be in conformity with Article 1 b) of the FD*

☐ sum of money on conviction of an offence imposed in a decision: – amount of

☐ compensation imposed in the same decision for the benefit of victims: – amount of

☐ sum of money in respect of the costs of court or administrative proceedings leading to the decision: – amount of

☐ sum of money to a public fund or a victim support organisation, imposed in the same decision – 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

Information on rRecognition/non recognition **of the decision on a financial penalty**
based on Framework Decision 2005/214/JHA²

a) a)**The authority which issued the decision imposing the financial penalty:**

Official name:.....

Address:.....

The authority of the Executing State

Official name:.....

Address:.....

Central authority responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grad and name):

Address:

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:.....

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)

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:

Comment by CZ: unnecessary to repeat it, it is in the introduction to this form

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: *Comment by CZ: a problem can occur if payment in instalments is authorized subsequently to the recognition*

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

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

.....

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

☐ partial recognition/partial refusal and enforcement. Date:

- 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:

☐ 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:.....

Comment by CZ: Must be in conformity with Article 1 b) of the FD

☐ sum of money on conviction of an offence imposed in a decision: – amount of

☐ compensation imposed in the same decision for the benefit of victims: – amount of

☐ sum of money in respect of the costs of court or administrative proceedings leading to the decision: – amount of

☐ sum of money to a public fund or a victim support organisation, imposed into same decision – amount of:.....

☐ Grounds for total or partial non-recognition

☐ decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;

☐ in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;

☐ 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.

☐ the decision relates to acts which:

☐ are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or

☐ have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;

☐ there is immunity under the law of the executing State, which makes it impossible to execute the decision;

☐ 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 held criminally liable for the acts in respect of which the decision was passed;

☐ according to the certificate provided for in Article 4, the person concerned, in case of a written procedure, was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his/her right to contest the case and of the time limits for such a legal remedy

☐ according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in

accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

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

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

or

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

or

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

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

or

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

☐ according to the certificate provided for in Article 4, the person did not appear in person, unless the certificate states that the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

☐ the financial penalty is below EUR 70 or the equivalent to that amount

☐ Violation of fundamental rights.

☐ Infringement of the fundamental legal principles as enshrined in Article 6 of the Treaty

☐ Certificate provided for by Article 4

☐ not available

☐ incomplete

☐ obviously does not correspond to the decision

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

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

a)

The authority which issued the decision imposing the financial penalty:

Official name:.....

Address:.....

The authority of the Executing State

Official name:.....

Address:.....

Central authority responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grad and name):

Address:

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:.....

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)

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:

Comment by CZ: Unnecessary to repeat it, it is in the introduction to this form

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) Partial execution

☐ 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 on conviction of an offence imposed in a decision: – amount of

☐ compensation imposed in the same decision for the benefit of victims: –
amount of

☐ sum of money in respect of the costs of court or administrative proceedings
leading to the decision: – amount of

☐ sum of money to a public fund or a victim support organisation, imposed into
same decision – amount of:.....

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

f) Non – execution

☐ decision of withdrawal by the issuing State

☐ amnesty

☐ pardon.

☐ in accordance with the law of the executing State on the following ground:

☐ no assets.

☐ insolvency.

☐ all national possibilities for execution have been exhausted

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

☐ other reasons:

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

f) 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

Comment by CZ: Information containing in this form goes beyond the obligations set out in the Framework Decision. Form is unnecessarily complicated and confusing. CZ cannot agree with it. Nevertheless, some information (about non recognition/partial recognition) should be incorporated into Form 2.

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

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).

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

Comment by CZ: Information containing in this form goes beyond the obligations set out in the Framework Decision. Form is unnecessarily complicated and confusing. CZ cannot agree with it. Nevertheless, some information contained in this Form 5 should be incorporated into Form 3.

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:

.....

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)

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

☐ 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:

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

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**

CZ does not agree with the wording of this proposal of the Agreement due to national legislation:

Finances acquired by execution of a recognized decision of another Member State referred to in Section 261 (1) (a), (c) and (d) will belong to the Czech Republic. Financial means acquired by execution of a recognized decision of another Member State referred to in Section 261 (1) (b) will belong to the victim of the criminal offense.

The Czech Republic may agree with the other Member State to share the finances acquired by execution of the recognized decision of this Member State. The Ministry of Finance will be competent to negotiate this agreement; the petition for entering such agreement may be filed by the court, which decided on recognition and execution of the decision of the other Member State in the first instance. The court will provide the Ministry of Finance upon its request the necessary cooperation for the purposes of reaching the agreement.

Costs of proceedings on recognition and execution of decisions of other Member States will be borne by the Czech Republic.

Article 261

(1) According to this Chapter will be proceeded in the course of recognition and execution of final and effective decisions of another Member State, by which

a) was imposed a financial penalty or fine,

b) was decided on compensation of a victim of crime,

c) was imposed an obligation to the person, against whom such decision is directed, to reimburse the costs of proceedings in which the person was sentenced for a criminal offense or penalized for another wrong, for the benefit of the state, or

d) the person, against whom such decision is directed, was imposed an obligation to pay a financial sum to a public fund or for the benefit of an organization supporting victims.

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
.....

FRANCE

France's comments on the draft agreement presented in document 14898/16 (Annex 6).

The comments accompanying the proposed form indicate that victims could receive compensation based on payments recovered. However, how this system applies would vary according to each Member State's national law.

Article 1 of Framework Decision 2005/214/JHA defines a financial penalty as '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'.

This concept has no equivalent in French law, where victims may always choose to be a civil party in criminal proceedings.

The process described in Article 1, which may result in compensation being paid to victims after recovery of monies and for which the draft form in question would be used, concerns certain Member States such as Ireland or the United Kingdom whose legal systems issue 'compensation orders' where a single sentence includes both a fine and compensation for the victim of the offence.

France points out that victims who are resident in France are not eligible to receive sums that might be recovered under this system, but they can be compensated through other mechanisms based on their status as a civil party. It may be possible for them to request redress from national compensation funds if direct recovery proves impossible.

We therefore think it would be helpful to attach to the draft agreement a list of countries, such as Ireland, which would be able to use this mechanism to compensate victims and those, such as France, where victims will never be eligible for payments recovered under this system.

Furthermore, the draft agreement allows money to be transferred to the country that issued the financial penalty. This option has nothing to do with the objective of compensating victims, contrary to what is said in the paragraph of document 14898/16 that describes the system.

France would like more information explaining the exact basis of the proposed form and the purpose of the option of transfer to the issuing State. If this concerns repayment of sums previously paid to the victim by the issuing State to make good their loss, then the draft agreement should say so.

LATVIA

With regard to the proposed improvement of forms Latvia provides the following recommendations:

1. We agree with the opinion provided by other member states in the Working Party on Cooperation in Criminal Matters of the Council of the European Union that the terminology used in the proposed forms should be aligned with the terminology used in the Framework Decision 2005/214/TI, for example, instead of the words “sender” and “addressee” to use only “authority of the issuing state” and “authority of the executing state”, or to specify “sender” and “addressee” in brackets as explanation.
2. In all sections of forms, where the address of the competent authority of the issuing state or executing state should be indicated, it is necessary to specify also other means of communication - at least telephone number, e-mail address, because during the execution of the request a need may appear to contact with any of the competent authorities, but fast and effective communication is practically impossible, when specifying only the address of the competent authority. It is particularly necessary to specify the alternative means of communication in Annex 4, because a remark is to be made in sub-paragraph d (1) of the Annex 4 regarding consultations with the issuing state.
3. It would be useful to combine forms included in Annex 4, and in each particular case to fill in only the relevant section - regarding complete execution, partial execution or non-recognition of the decision.

NETHERLANDS

The Netherlands wish to compliment the drafters of the forms.

While the Member States cannot be obliged to use the forms, we would strongly recommend that the forms should be used, so as to foster the application of the Framework Decision (FD).

We would also recommend to inquire periodically with the Member States what their experiences with the forms are, in order to allow making improvements to the forms.

We further wish to make the following comments:

- a) The e-justice portal: we recommend to establish contacts with the working group responsible for e-justice in order to be in line with their ideas. Within the e-justice programme, there is a project e-codex, which aims to facilitate the exchange of the certificate and other forms in a digital way. France and the Netherlands take part in this project for the exchange of data on this FD. Therefore we welcome the idea to have a connection with e-Justice and e-Codex. We want to avoid, however, that these contacts could lead to further delaying the necessary improvement of the application of the FD or the use of the forms.
- b) As regards the possibility to merge draft forms 2 and 4 into one, our experts were satisfied with the forms as they stand. However, if the content of the forms is not changed we do not object to fewer forms, unless it would lead to further delaying the use of the forms.
- c) As the objection that the draft forms would go beyond the scope of the FD and its grounds for refusal or non-execution, we consider that this should be scrutinized carefully, since the certificate is the basis for refusal or non-execution.

AUSTRIA

Following the invitation of the Slovak Presidency in the COPEN meeting on December 16th, 2016 the Austrian Delegation takes the opportunity to present the following comment to the draft forms and agreement, as elaborated out by a group of experts together with the Commission (see Doc. 14898/16):

In practice the mutual recognition of financial penalties is characterized by a high number of requests that have to be dealt with in due time. The Austrian Delegation therefore fully welcomes the idea of non-binding forms facilitating the communication between the issuing and the executing authorities when applying the FD 2005/214/JAI and wants to express its gratitude for the work of the expert group and the Commission when drafting the forms. The rather high number of five different forms, however, could lead to confusion among practitioners, so the idea of merging some of the forms – as expressed by several delegations during the meeting on December 16th, 2016 – should be supported. From a logical point of view there are two groups of forms, one regarding the recognition phase (forms 2 and 4) and the other regarding the outcome of the execution (forms 3 and 5). As a consequence forms 2 and 4 could be merged as well as forms 3 and 5.

There are no further comments as to the proposed content of each form.

The Federal Ministry of Justice avails itself of the opportunity to renew the expression of its highest consideration.

PORTUGAL

DRAFT FORMS

We recognise the importance of the use of forms that are translated in all the languages of the European Union. They can facilitate and thus improve cooperation between judicial authorities and reduce translation costs.

However, the forms must be as clear as possible and easy to fill out. The less forms, the better.

Keeping in mind the importance of the forms, we suggest making the following changes:

FORM 1 (THIS SHOULD BECOME FORM 3)

We think that we must use this form when there are some changes on the first request, that is to say, something happened and the **Issuing State** must inform the **Execution State**.

FORM 2

Merged within Forms 4 and 5

FORM 3 (THIS SHOULD BECOME FORM 4)

This document should be the closure form, where the **Execution State** returns the process and explains the reasons for the closure.

Thus, in addition to point d), shall appear in this form the points e.1), e.2), e.3), e.4), f) and g) of FORM 5.

FORM 4 (THIS SHOULD BECOME FORM 1)

This form should be the first form that the **Executing State** should use to inform reception of the file.

Thus, shall appear in this new form the point d) of FORM 2 and points d.1), d.2), d.3), d.4) of FORM 4.

Form 5 (THIS SHOULD BECOME FORM 2)

This should be an intermediate form which can be used by the **Execution State** to inform the **Issuing State**: the state of play of the execution

Thus, shall appear the point e.1) of FORM 4 (in fact, this point is repeated in Forms 2 and 5), point e.2) and point e.3, of FORM 4.

As to the Agreement based on Article 13 of the Framework Decision

We have same doubts in relation to the proposed agreement (form 6), since this form seems to be an instrument to be concluded between the judicial authorities of two Member States within a specific case, whereas it seems that the purpose of Article 13 of the Framework Decision is to allow agreements between Member States, general and abstract.

Thus the proposed agreement seems to be away from the rule.

SWEDEN

First of all we wish to thank the working group for their work.

A general remark from our competent authority is that the information asked for in the forms should be kept to a minimum. The forms should not inflict any new obligations to provide information or details that does not follow from the framework decision or that is not necessary for the other member state. For instance should it be sufficient to only refer to name and reference nr – all other information (address, place of birth etc.) have already been sent over at an earlier stage. Another example is the detailed information on how and when payment has been made, payment plan etc. (form 1, 2 and 5) that is asked for. In the majority of cases the total amount is sufficient. Further it should be considered if some of the forms could be merged together (eg. 2 and 4).

Please do not hesitate to contact us should you have any further questions.
