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NOTE

From:	Presidency
To:	Delegations
Subject:	Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties - Discussion on selected issues regarding the application of the Framework Decision

Introduction

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, hereafter "FD Financial penalties" or "FD") has by now been implemented by all Member States but one.

The importance of the FD financial penalties has grown over the years. It started out to address the non-payment of fines for road traffic offences that EU citizens commit when they are in another Member State. However, the FD is quite rightfully not limited to this type of offences, and it has indeed been used as regards many other types of offences. The FD financial penalties can serve as an alternative for the more intrusive measure of a European arrest warrant in the situation where a person is convicted to pay a fine and he or she has left the Member State of conviction. A relatively recent development is the judgment of the Court of Justice of the European Union (CJEU) of 14 November 2013 in case C-60/12, Baláž.

The Presidency is well aware that the FD financial penalties has been subject of discussions in 2010 under the Belgian presidency[1] and in 2013 under the Latvian presidency[2]. Now, five years later, the Presidency would like to give a follow-up to those debates and to the developments described above by raising issues that could further improve the application of the FD.

1. FD financial penalties can serve as an alternative to the FD European arrest warrant

On the basis of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, a European arrest warrant may be issued for the purpose of executing a custodial sentence of at least four months. In practice, European arrest warrants were also issued where the person concerned had been sentenced to pay a financial penalty, and such penalty, due to lack of payment, had been converted or substituted into a custodial sanction.

Question A: The Presidency would like to hear from delegations whether the said practice still exists after the FD financial penalties came into force, given that the latter instrument allows to execute a financial penalty through mutual recognition in another Member State.

2. Identification / determination of the competent authority

Pursuant to Article 2(1) of the FD financial penalties, the Member States have determined their competent authorities. While some Member States have named one authority, other Member States have opted for two or more authorities.

In Member States with more than one competent authority, the transmission of a decision and certificate on the basis of the FD may lead to difficulties as regards the identification of the authority that is competent for mutual recognition in the case concerned. While the European Judicial Atlas of the EJN is a significant aid in determining the authority competent in the executing State, the use of said Atlas does not in all cases result in the proper contact being established.

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1 See docs 17205/1/10 and 17998/10.
2 See doc 17427/13.

This may cause delays in the transmission of decisions and certificates: when documents have been sent to the wrong authority, they must first be forwarded, within the executing State, to the competent authority, before they can be processed. This means not only an inefficient transmission, but it may also endanger the process of mutual recognition, since in many Member States the prescription period for execution will continue running also during this time; hence, the time left for the actual execution of the decision may be seriously reduced.

Question B: The Presidency invites Member States to submit practical suggestions for improving the situation mentioned above.

3. Requirements to be met by the certificate and the decision

Article 4(2) FD refers to the standard form of the certificate, which is attached to the FD. The Presidency proposes to focus on point g(2) of the certificate, which asks to provide a summary of facts and a description of circumstances in which offences have been committed.

Question C1: The Presidency suggests having an exchange of views on how detailed these explanatory remarks need to be.

Article 4(3) concerns the forwarding of the decision, or a "certified copy" of it, together with the certificate.

Question C2: The Presidency considers it helpful for the application of this provision to share experiences and exchange views regarding the question as to what constitutes a "certified copy", and the requirements that apply in this respect.

4. Administrative offences

In its judgment of 14 November 2013 in case C-60/12, Baláž, the Court of Justice extended the scope of the FD financial penalties in relation to administrative offences.

Indeed, while the term "*a court having jurisdiction in particular in criminal matters*" used to be interpreted rather literally, the Court extended the interpretation of this term by deciding that "*the term 'court having jurisdiction in particular in criminal matters', set out in Article 1(a)(iii) is an autonomous concept of Union law and must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure*". Furthermore, the Court decided "*that a person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters in the situation where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure. Such a court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances*". The precise practical consequences of this judgment for the application of the FD financial penalties are still unclear.

Question D 1: The Presidency invites Member States to indicate whether they have transposed the FD financial penalties also for administrative offences, or are planning to do so.

Question D 2: It seems of importance to learn how, in the opinion of the Member States, the Court's judgment in Baláž affects the application of respectively article 5(1) (list offences) and of article 7(2)(b) (refusal due to lack of double criminality) of the FD.

5. Amended ground of refusal "*in absentia*"

The ground of refusal relating to "*in absentia*", as listed in article 7(2)(g), was amended by Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

It was brought to the attention of the Presidency that experience gained in practice has shown that a request based on a decision handed down in written proceedings might be classified in the executing State as a request filed on the basis of a decision taken *in absentia* and that its execution could subsequently be refused, because, in the view taken in the executing State, the pre-requisites for a decision taken *in absentia* had not been met.

Question E: The Presidency suggests having an exchange views on the application of the (renewed) provision of article 7(2)(g) of the FD.

6. Communications between the issuing State and the executing State, in particular the information pursuant to Article 14 of the Framework Decision

Article 14 indicates certain information, concerning e.g. the execution of a decision or a (partial) refusal to execute, which has to be provided by the competent authority of the executing State to the competent authority of the issuing State.

This provision has lead to a divergent practice. Sometimes, it is merely stated that the execution has been completed successfully or that recognition and execution are being refused, while in other cases an extensive document, written in the language of the executing Member State, will present every single procedural step from the forwarding of the request via its recognition to its enforcement. While in the first cases the information provided might not be sufficient enough, in the latter cases the information might not serve its purpose since it is written in a language that is not understood in the issuing Member State.

Accordingly, it is suggested to follow up on the proposal made under the Lithuanian Presidency (see doc 17472/13) and to prepare a standardised form for the information to be provided pursuant to Article 14 of the FD. Said form could in particular comprise the following:

- Information on the (partial) refusal to recognise and execute the decision, citing the reasons for such refusal that will allow the issuing State to understand the refusal;

- Information on the successful execution of the decision (providing the date of payment, the amount of the payment made, and any particular aspects such as the consent to payment being made in instalments).

Question F: The Presidency invites Member States to express their views on this suggestion.

7. Language regime for the decisions

Article 16 of the FD financial penalties requires that the certificate is to be translated into (one of) the official language(s) of the executing State, or in a language indicated by that State. No translation of the decision is required, however, see Article 4(3) of the FD.

In other EU legal instruments different translation requirements apply. In this regard, reference can be made to Article 5(3) of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, which provides an obligation for making translations of documents that are served across borders.

Reference can also be made to Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings. However, as stipulated in Article 1(3) and recital 16 of this Directive, it is applicable to administrative offences to a limited degree only (the same applies as concerns Article 6 of the ECHR).

It has been brought to the attention of the Presidency that this "divergence" in the language regime may give rise to problems. While the FD Financial penalties does not place Member States under an obligation to transmit translations of the decisions taken in the underlying proceedings, the Member States may nonetheless be required to translate such decisions on the basis of other provisions.

Question G: The Presidency invites Member States to express their views on this issue.

Concluding remarks

The Presidency is looking forward to a fruitful debate on the application of the FD Financial penalties on the basis of the issues and questions mentioned above. Member States who wish to discuss additional issues in relation to this subject are kindly invited to indicate this the Presidency and the General Secretariat, preferably in due time before the meeting of the COPEN Working Party, which is scheduled to take place on Wednesday 13 April 2016.