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NOTE

from:	General Secretariat of the Council
to:	Working Party on Cooperation in Criminal Matters
No. prev. doc.:	16539/10 COPEN 259 EUROJUST 132 EJN 66
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

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?

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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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

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-punitive 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 reuquest 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?

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)

7. 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.

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?

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).

Threshold

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).

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.

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 pénal¹).

¹ 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^{er} 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^{er} 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^{er} 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.

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.

HUNGARY

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?

Yes.

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?

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.

Questions 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?

Questions 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.

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.

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.

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 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.

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?

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

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?

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.

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?

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./

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?

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.

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?

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.!

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?
- 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

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?

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

Question 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.

Question 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.

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

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 EJN 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

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, 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

ROMANIA

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?

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;

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?

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

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 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).

Question 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.

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.

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.

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.

Do not apply.

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?

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.

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?

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 limits¹ provided for the offence committed, while taking into account any parts of the fine that have been paid.

¹ 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.

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?

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

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?

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. 187³⁴ 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.

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?

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.

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?

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.

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?

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

Question 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.

Question 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.

SWEDEN

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?

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

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 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

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?

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

Question 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

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 (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.

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.

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.

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 Swedish competent authority has not yet received any such cases.

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?

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

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?

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

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?

No such procedure exist in Sweden.

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?

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

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?

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.

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?

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).

Question 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.

Question 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

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

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.
