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**NOTE**

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From :	The Belgian Presidency
To :	Delegations
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 – outcome of the discussions based on the results of the questionnaire on implementation 17205/10 COPEN 276 EUROJUST 75 EJN 144

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Following the Council conclusions and the methodology that were adopted at the meeting of the Council of Justice and Home Affairs Minister in October, one day meeting of the Cooperation in criminal matter Working Party was dedicated to the follow-up of the mutual recognition instruments.

The meeting focused on the Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties. Delegations will find in annex a summary of the outcome of the discussions and answers provided for by the delegations to the questionnaire on the practical application of this Framework Decision. Extensive answers from delegations can be found in doc. 17205/10 COPEN 276 EJN 75 EUROJUST 144 REV 1.

The Presidency would like to thank again the delegations for their answers and their contributions to the debate.

### Transitional period

A majority of Member States indicated that their national legislation implementing the Framework Decision is applicable to financial penalties imposed after and before the entry into force of their legislation, while in some Member States the implementing legislation only applies to financial penalties imposed after the entry into force of their legislation. No particular difficulties were raised in this respect, except that competent authorities encounter problems to find information on the state of play in the Member States.

It was agreed that the table on the state of play of the implementation will be supplemented by the specific date of entry into force of the implementing legislation in each Member State. The indication whether the Member State concerned apply the Framework Decision to financial penalties imposed before that date could be useful as well.

Another issue which arises with respect to transitional period concerns the deadline of implementation of the Framework Decision 2009/299 concerning decisions rendered in the absence of the person concerned at the trial which expires on 28 March 2011. This Framework Decision shall apply as from this date to the recognition and enforcement of decisions rendered in the absence of the person concerned at the trial. However it is likely that not all Member States would have transposed this obligation into their national legislation as on that date.

### Competent authorities

Some Member States have designated a Central Authority, other not. Difficulties have been reported by some Member States when finding out the competent authority and its contact details in the executing State. In this context, the European Judicial Network and its website would have to play a role as central point for reference. Following an initiative of the Netherlands, work has already begun in this respect within the EJM secretariat.

### Scope – Types of procedures concerned

The procedures referred to in Article 1 (a), ii), iii) or iv) are not known in all Member States. Few practical experiences were reported relating to the execution of financial penalties imposed following such procedures. However, at least 2 Member States have noticed a lower level of quality of the certificates issued by non-judicial authority as well as greater communication difficulties with the competent issuing authority. In principle, criminal proceeding should be the rule and the extension to administrative proceeding should remain exceptional.

One Member State has made the suggestion to develop an official overview (e.g. in the form of a table of the GSC or Commission), stating whether procedures in Member States comply with the legal criteria expressed in the Framework Decision in order to avoid request for additional information. However such an exercise would require an in-depth analysis of the legislations of the Member States. This issue and possible imbalance between the situations covered in the Member States will have to be further assessed in the implementing report of the Commission.

### Alternative sanction

Sanctions that can be applied as an alternative to financial penalties are not known in the legislation of all Member States. No particular difficulties were reported with respect to this issue. An overview of the existing alternative sanctions and the conditions thereof in the Member States could be useful.

### Compensation to victims

The procedure where compensation is imposed 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, only exists in a limited number of Member States. According to Article 1 (b) ii), such compensation is however covered by the scope of the Framework Decision. Nonetheless the Framework Decision does not foresee any legal mechanism in order to allow for the allocation of the sums obtained to the victims. Article 13 only refers to agreement between the executing and issuing States.

There is a great variety in the way the Member States are dealing with this issue. While certain Member States simply transfer the compensation to the victims concerned (with or even in the absence of specific legal provision), other consider necessary to conclude specific agreements between the issuing and executing States. A common approach on this matter would be more appropriate.

One Member State indicated that this form of compensation constitutes a separate issue to the enforcement of sentences and should be excluded from the scope of the Directive.

### Threshold

The threshold provided for by the Framework Decision is usually facultative within the Member States. A number of Member States have however converted the threshold as a mandatory ground for refusal. At least two Member States have indicated that this threshold was considered too high in comparison with the fines usually imposed for traffic/road safety offences. However it was also mentioned that the threshold seems well balanced taken into account the considerable administrative burden put on the competent authorities in the executing States.

One Member State expressed in its answer to the questionnaire strong reservation about the capacity of the Framework Decision to deal with a mass litigation such as road traffic fines for which a simpler system was needed.

It was concluded that the threshold was deemed necessary and could be later assessed with comparison to the average cost of the procedure (including translation cost of the certificate).

### Statistics

In general, Member States indicated that they had no or had only not very reliable statistical data available so far on the application of the Framework Decision. However, where statistics were provided, steady rise in the number of requests was noticeable.

The types of offences concerned relate mostly to traffic offences, followed by drug related offences. Theft, fraud and traffic of migrants were also mentioned.

Where execution has been refused, the most common grounds mentioned were the impossibility to execute (due to lack of assets or the fact that the person could not be found) and incomplete certificates. Appropriate training should be promoted within the Member States on how to fill in the certificates.

Member States were divided on the need to collect statistical data on the application of the Framework Decision, taking into account the considerable administrative burden of such an exercise. It has been concluded that the setting up of a questionnaire on statistics was not deemed necessary at this stage but that, in the future, collect of statistical data would be unavoidable in order to allow a proper evaluation of the application of the Framework Decision.

### Conclusion

In general, Member States deemed the Framework Decision to be a useful tool but at the same time it was indicated that more time is needed in order to develop practical experience about it. In particular, the instrument seems to suffer lack of knowledge of practitioners about its existence and possibilities. Regional seminars organised by the European Commission have had positive effect in raising awareness about the instrument.

Different suggestions have been put forward in order to facilitate its use within the Member States:

- raising awareness on the Framework Decision through the EJM website or organisation of workshops or seminars;
- conclusion of bilateral agreements on compensation (Article 13). Such initiatives could be supported at EU level;
- diffusion of information concerning the competent authorities, languages, state of play of the implementation (through the EJM Website);
- further clarification on the scope of application of the Framework Decision and / or official overview (e.g. in the form of a table of the GSC or Commission), stating whether procedures in Member States comply with the legal criteria expressed in the Framework Decision would be useful and avoid request for additional information;

- organisation of bilateral meetings with others Member States;
- keeping updated information on the European Judicial Network website about the contact details of competent authorities and central authorities;
- organisation of practical training for judges;
- setting up of guidelines on how to fill in the certificate, as well as a special form for the provision of information from the executing State under Article 14 of the Framework Decision;
- In long term an electronic data system should be developed if the number of the financial penalties to be recognised and enforced increases a lot;
- In particular simpler mechanism of execution should be developed in the frame of the enforcement of traffic road offences.

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