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NOTE

From: Czech Delegation
To: Working Party on Cooperation in Criminal Matters

Subject: COPEN Meeting - Mutual Recognition experts
- Question regarding double criminality under Framework Decision
2005/214/JHA and Framework Decision 2008/909/JHA

The Czech delegation would like to discuss the following issues:

1/ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties – double criminality issue

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties states in its Article 5(1) that conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods if they are punishable in the issuing State and as they are defined by the law of the issuing State, give rise to recognition and enforcement of decisions without verification of the double criminality of the act.

But the question is, what acts can be subsumed under the notion/concept of "*conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.*"

In practice, on several occasions, the Czech courts have been sent certificates and decisions for recognition and enforcement of decisions from other Member State, by which Czech citizens were found guilty of conduct which **infringes road traffic regulations, namely driving a vehicle without a proper vehicle insurance or driving a vehicle without payment of highway fee** (these acts were identified in the certificate in the letter g), para. 3 for which dual criminality should not be reviewed).

The CZ is of the view that non-payment of administrative fee for the use of roads or driving without proper vehicle insurance **cannot be interpreted as the conduct which infringes road traffic regulations where double criminality is excluded** according to Article 5(1) of the Framework Decision. Traffic regulations entail compliance with certain road-traffic safety rules and according to our opinion this term does not include obligations or restrictions associated with the payment or non-payment of certain fees. If the court has to decide on recognition of a decisions from other Member State affecting a person for violation of traffic rules, it should certainly concern a breach of obligations of a road-traffic safety nature and not of obligations related to administrative fees, such as insurance or highway fee.

CZ would like to ask other Member States to express their opinion on the above mentioned issues.

2/ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union – double criminality issue

Article 5 (1) of the Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences of measures involving deprivation of liberty for the purpose of their enforcement in the European Union states, that the judgment and the certificate, shall be sent to the executing State.

Pursuant to the Article 7(3) of the FD and in accordance with declaration notified to the General Secretariat (Article 7(4)) the Member States may make the recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State.

In practice, there are cases where the judgment as presumed by the FD does not consist of one comprehensive document (judgment) where a **detailed description of the circumstances of the criminal behaviour committed** is included. Also, the certificate does not include this information, which is crucial for the court to consider double criminality condition and corresponding legal qualification under the law of the executing state. Instead of this, the certificate refers to **general legal description of the offence, which is insufficient for the court to make a double criminality check**.

CZ proposes that **detailed description of the circumstances of criminal behaviour** (including details of a caused damage or health injuries etc.) of the person should **always be included in the certificate in its part h), point 1**, especially in cases where the executing state has made a declaration in accordance with the Article 7(4) of the FD. For the court, which decides on the recognition and execution of decision of another Member State is also necessary to have not only an accurate description of facts in the certificate, but as well as all relevant documents, on the basis of the "judgment" is made, and on the basis of which the certificate was filled (*the court does not recognize the certificate, but the decision of another Member State by which the person was convicted*)

Therefore, CZ proposes that Member States shall express their experiences with quality and extent of description of the circumstances of the criminal act committed in cases where due to different legal tradition **detailed description of the criminal act is missing in the judgment or the description of the act committed is spread into various documents provided by the issuing state** and not always suffice to bring together coherent description of the act.

It is also a matter for discussion, whether a court in the executing state by itself is entitled to summarize description of the act from several supporting documents (not judgment) provided by the issuing state in order to gain a comprehensive description of the act. In some cases this could result in wrong conclusions of the executing authority about circumstances of the act committed, which can lead to the adaptation of the sentence pursuant to Article 8(2), especially by reduction of the sentence if the court of the executing State due to the lack of adequate description of the act cannot establish elements justifying a higher sentence.
