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NOTE

From:	Presidency
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN)
No. prev. doc.:	14898/16
Subject:	Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties - Draft forms and explanatory memorandum

At its meeting on 16 December 2016, the COPEN Working Party discussed draft standard forms concerning Framework Decision 2005/214/JHA on financial penalties, which had been prepared by a group of experts of DE/NL/PL/FI, together with the Commission (doc. 14898/16). These forms, which will be translated in all languages, have as objective to facilitate the procedure of enforcement of the (cross-border) decisions on financial penalties under the Framework Decision.

Following the discussions in the Working Party (see doc. 15714/16, point 2) and written input by some Member States, the expert group has revised the draft forms, see [Annexes 1-5](#).

The draft agreement as proposed by PL, which was set out in 14898/16 (annex 6), has not been modified by the experts group; for convenience, it has again been set out in [Annex 6](#).

[Annex 7](#) contains a memorandum, which aims at explaining the purpose of each form in detail in order to facilitate their correct usage by practitioners in their day-to-day work. The memorandum also explains the methodology followed by the expert group.

The revised forms, together with the memorandum, as well as the draft agreement, will be discussed at the COPEN meeting on 21 June 2017.

In order to facilitate proceedings at this meeting, Member States who already have comments on the draft forms as they stand in the Annexes are kindly invited to inform the general secretariat thereof by cob on Tuesday 13 June 2017, via steven.cras@consilium.europa.eu

Draft Form 1

Information on a decision of a financial penalty

based on Article 11, 12 and 15 of Framework Decision 2005/214/JHA¹

Information from the issuing State to the executing State

<p>a)</p> <p><u>Authority of the issuing State (Sender)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p> <p><u>Authority of the executing State (Addressee)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p>
<p>b)</p> <p>File reference of the issuing State:.....</p> <p>File reference of the executing State:.....</p>
<p>c)</p> <p>Name of the person concerned:</p> <p>Date and place of birth:</p> <p>Place of residence:</p> <p>OR</p>

¹ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Name of the legal person concerned:

Registered seat:
.....

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

— amount in euro:

if applicable, in other national currency of the issuing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

— date:

In case of partial payment the financial penalty is to be enforced:

sum of money on conviction of an offence imposed in a decision -
amount of:.....

compensation imposed in the same decision for the benefit of victims -
amount of:.....

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

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

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

e.1) The decision:

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

has partially ceased to be enforceable or is partially withdrawn. The following part(s) of the financial penalty still remain to be enforced:

- amount in euro:

if applicable, in other national currency of the issuing state:

BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

- type of financial penalty to be enforced:

sum of money on conviction of an offence imposed in a decision -

amount of:.....

compensation imposed in the same decision for the benefit of victims -

amount of:.....

sum of money in respect of the costs of court or administrative proceedings

leading to the decision - amount of:.....

sum of money to a public fund or victim support organisation, imposed in

the same decision - amount of:.....

e.2) Date of decision, measure or withdrawal:.....

e.3) Reasons:

Decision is no longer enforceable because of:

amnesty (Art. 11(1)).

pardon (Art. 11(1)).

review of sentence (Art. 11(2)).

other decision or measure as a result of which the decision (partially) ceases to

be enforceable or is (partially) withdrawn from enforcement of the executing

State (Article 12(1)).

Execution of the decision is statute-barred as of

(date).....

Withdrawal for other reason:

.....

f) Other relevant additional information for the executing State:

.....

g) Signature of the authority of issuing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 2

Full recognition of the decision on a financial penalty

based on Framework Decision 2005/214/JHA²

Information from the executing State to the issuing State

<p>a)</p> <p><u>Authority of the executing State (Addressee)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p> <p><u>Authority of the issuing State (Sender)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p>
<p>b)</p> <p>File reference of the executing State:.....</p> <p>File reference of the issuing State:.....</p>
<p>c)</p> <p>Name of the person concerned:</p> <p>Date and place of birth:</p> <p>Place of residence:</p> <p>OR</p>

² Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Name of the legal person concerned:

Registered seat:
.....

d) Recognition

full recognition of the decision on financial penalty on
(date):.....

- the decision has been recognized for the amount in euro:

if applicable, in other national currency of the executing State:

BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

if applicable, payment in instalments:

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

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

.....

e) Signature of the authority of executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 3

Full execution of the decision on a financial penalty

based on Article 14(d) and (e) Framework Decision 2005/214/JHA³

Information from the executing State to the issuing State

<p>a)</p> <p><u>Authority of the executing State (Addressee)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p> <p><u>Authority of the issuing State (Sender)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p>
<p>b)</p> <p>File reference of the executing State:.....</p> <p>File reference of the issuing State:.....</p>
<p>c)</p> <p>Name of the person concerned:</p> <p>Date and place of birth:</p> <p>Place of residence:</p> <p>OR</p>

³ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Name of the legal person concerned:

Registered seat:

d) Full execution

full completion of the execution of the decision on the financial penalty by

payment (Article 14(d))

 — amount in euro:

 if applicable, in other national currency of the executing State:
 BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

 — date:

and/or

application of alternative sanction (Article 14(e))

 — type of sanction:.....

 — date of termination of the alternative sanction:.....

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

e) Signature of the authority of executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 4

Information on partial recognition or full non-recognition of the decision on a financial penalty

(apart from full recognition and full execution)

Article 4, 7, 14 and 20 of Framework Decision 2005/214/JHA⁴

Information from the executing State to the issuing State

<p>a)</p> <p><u>Authority of the executing State (Sender)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p> <p><u>Authority of the issuing State (Addressee)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p>
<p>b)</p> <p>File reference of the executing State:.....</p> <p>File reference of the issuing State:.....</p> <p>.....</p>
<p>c)</p> <p>Name of the person concerned:</p> <p>Date and place of birth:</p> <p>Place of residence:</p> <p>OR</p>

⁴ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Name of the legal person concerned:

Registered seat:
.....

d.1) Decision about recognition and execution under Article 7

refusal of recognition and execution.⁵ Date:.....

partial recognition and partial refusal of execution.⁶ Date:

Prior consultation on refusal and/or partial recognition between the issuing and executing States took place:

no

yes – date:.....

d.2) Partial recognition of the decision

- the decision has been recognized for the amount in euro:

if applicable, in other national currency of the executing State:
BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

- type of financial penalty the recognition applies for

sum of money on conviction of an offence imposed in a decision -
amount of:.....

compensation imposed in the same decision for the benefit of victims
-
amount of:.....

⁵ If choosing this option, please fill out point d.3)
⁶ If choosing this option, please fill out point d.2) and d.3)

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

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

d.3) Ground for full or partial non-recognition, refusal

Certificate provided for by Article 4 is * ⁷

not available (Art. 7(1))

incomplete (Art. 7(1))

manifestly does not correspond to the decision (Art. 7(1)).

Decision against the sentenced person in respect of the same act

was given in the executing State (Art. 7(2)(a))

was given in another state than the issuing or the executing State and has been executed (Art. 7(2)(a)).

In the case referred to in Article 5(3), the decision relates to an act which, under the law of the executing State, would not constitute an offence (Art. 7(2)(b)).

The execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law (Art. 7(2)(c)).*

The decision is related to acts which

under the law of the executing State were committed in whole or in part in the territory of the executing State or in a place treated as such (Art. 7(2)(d)(i)).

⁷ * means Prior consultation between the executing State and the issuing State is obligatory before referring to such ground of refusal.

- committed outside the territory of the issuing State, and the law of the executing State does not allow prosecution for the same offences when committed outside its territory (Art. 7(2)(d)(ii)).
- Under the law of the executing State there is immunity which makes the execution of the decision impossible (Art. 7(2)(e)).
- The decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been criminally liable for the acts in respect of which the decision was passed (Art. 7(2)(f)).
- In case of a written procedure the person concerned was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law of his right to contest the case and of time limits for such a legal remedy (Art. 7(2)(g)).*
- The financial penalty is below EUR 70 or the equivalent to that amount (Art. 7(2)(h)).
- The person did not appear in person at the trial resulting in the decision, wasn't represented by a legal counsellor * (Art. 7(2)(i)) and:
 - was not summoned in person in due time or by other means did not receive official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, or
 - was not informed in due time that a decision may be handed down if he or she does not appear for the trial, or
 - had not been served with the decision and informed of the right to a retrial, or an appeal.
- Refusal of recognition on the basis of Article 20(3) because of: *

Violation of fundamental rights.

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

d.4) Other circumstances leading to non-recognition of the decision:

In accordance with the law of the executing State the decision cannot be recognised on any of the following grounds (Article 4 (1)) :

the person concerned has deceased (date)

the person concerned has moved to another (Member) State (place)..... (date) on

the person concerned has moved to unknown address.

the person, of whom the personal data were transmitted, cannot be determined/found.*

* means Prior consultation between the executing State and the issuing State is obligatory before referring to such ground of refusal.

e) As for the recognized financial penalty

e.1) Payment authorized in instalments

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

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

.....

e.2) Deduction of payment (Article 14 (c))

— amount in euro:

if applicable, in other national currency of the executing State:

BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

— date:

recovered in whatever manner in the issuing State or other country (Article 9(2)).*⁸

e.3) Reduction of the amount of the financial penalty (Article 14 (c))- the decision relates to acts which were not carried out within the territory of the issuing State. The acts fall within the jurisdiction of the executing State. Therefore the executing State has decided that the maximum amount of the financial penalty is reduced in accordance with national law for acts of the same kind to the amount of (Article 8(1)):

in euro:

if applicable, in other national currency of the executing State:

BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

f) Closure of the file, if applicable

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

g) Other relevant additional information for the issuing State:

.....
.....

⁸ * Prior consultation between the executing State and the issuing State is obligatory before deducting the already paid amount.

h) Signature of the authority of executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Draft Form 5

Information on the enforcement of the decision on a financial penalty

(apart from full recognition and full execution)

Article 9, 11, 12 and 14 of Framework Decision 2005/214/JHA⁹

Information from the executing State to the issuing State

<p>a)</p> <p><u>Authority of the executing State (Sender)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p> <p><u>Authority of the issuing State (Addressee)</u></p> <p>Official name:.....</p> <p>Contact information:.....</p>
<p>b)</p> <p>File reference of the executing State:.....</p> <p>File reference of the issuing State:.....</p>
<p>c)</p> <p>Name of the person concerned:</p> <p>Date and place of birth:</p> <p>Place of residence:</p> <p>OR</p>

⁹ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)

Name of the legal person concerned:

Registered seat:
.....

d) Information about the ongoing enforcement of the case

Payment authorized in instalments of the recognized financial penalty

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

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

e) Information about the outcome of the enforcement of the case

e.1) Date of termination:.....

e.2) Result of the enforcement:

The enforcement was not successful.

The financial penalty has been partially enforced:

- amount in euro:

if applicable, in other national currency of the executing State:

BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

- the amount is enforced for :

sum of money on conviction of an offence imposed in a decision

- amount of:

compensation imposed in the same decision for the benefit of victims - amount of:.....

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

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

- application of alternative sanction

— type of sanction:.....

— date of termination of the alternative sanction:.....

e.3) Deduction of payment (Article 14 (c))

— amount in euro:

if applicable, in other national currency of the executing state:

BGN/HRK/CZK/GBP/HUF/PLN/RON/SEK

— date:

recovered in whatever manner in the issuing State or other country (Article 9(2)).*¹⁰

e.4) Reason for termination of the enforcement:

Termination of the enforcement based on the decision of withdrawal by the issuing State (Article 12(2)).

Termination of enforcement, for the reason of granting in the issuing or the executing State (Article 11(1)) of:

amnesty.

pardon.

Termination of enforcement, in accordance with the law of the executing State on the following ground (Article 9(1)):

no assets.

insolvency.

all national possibilities for execution have been exhausted.

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

the person concerned has moved to another (Member) State

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

(place)..... on (date)

the person concerned has moved to unknown address.

the person, of whom the personal data were transmitted, cannot be determined/found.

other reasons:

f) Closure of the file, if applicable

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

g) Other relevant additional information for the issuing State:

.....
.....

h) Signature of the authority of executing State and/or its representative.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

(Draft)

**Agreement based on article 13 of the Framework Decision of 24 February 2005 on
2005/214/JHA the application of the principle of mutual recognition
to financial penalties**

Hereby,

[name Member State]	represented by:
Name of the institution	
Name of the person undersigned	

and

[name Member State]	represented by:
Name of the institution	
Name of the person undersigned	

agree to transfer mutually money obtained from the execution of the decisions on financial penalties, in the way settled between Executing and Issuing Authorities,

To:

- 1. **The victim/s** (art. 1 b/ item ii)

- 2. **Public Fund or a victim support organization** (art. 1 b/ item iv)

- 3. **Issuing State** (art. 1 b/ item i and/or iii)

after deduction of the costs of their execution

Signature

.....

Signature

.....

Place and date

.....

Place and date

.....

Explanatory memorandum

Framework Decision 2005/214/JHA (FD) dates from 24 February 2005. The prescribed date of implementation of the FD was 22 March 2007. As of today, almost all Member States have implemented the FD and hundreds of thousand cases are being transferred between the different Member States.

Every case leads normally to at least two follow-up letters, namely a message that the case has been received/accepted and a message with the end result of the enforcement.

With the FD a standard form (certificate) has been established via which all relevant information for the procedure of recognition and enforcement can be given to the Executing State. One of the principles of the FD is that cases are being transferred directly from a competent authority in one Member State to a competent authority in another Member State, in order i.a. to facilitate direct contact between these authorities when additional information is needed for the procedure. The FD prescribes in several cases that these competent authorities need to consult or inform each other (e.g. Art. 7, 9, 11, 12 and 15 of the FD). However, the FD arranges nothing about the form or language in which this contact should take place.

In practice we experience that i.a. the language differences within the EU make the further communication under the FD a costly and time-consuming procedure. Firstly because of translation costs and secondly because it often takes a lot of time to determine what is meant by certain communications and the time that might be needed for the translation of documents.

This is why we propose a set of 5 standard forms in order to be able to communicate the most common messages, prescribed by the FD, to each other so that these can be quickly interpreted without further translation.

Establishing these 5 standard forms can also be the first step in electronically exchanging (and dealing with) these messages, because without a common standard this is not possible at all.

The Approach

The approach the expert group chose is based on the inner logic/the scheme of the FD and the experience gained in five or more years of practical work on the basis of the FD. The main starting point was: what kind of information is needed in our daily work? And, what information should be given in a letter/form in order for the different receiving countries/authorities being able to link the letter to the prior case that was sent to them?

Why are there five forms?

The five forms were created to meet different needs for information. The suggestion has been made to merge these five forms to three. The advice from the expert group is not to do so. In our opinion the use of the forms will be more simple for the competent authorities if the two most used messages both have a separate (short) form and thus not to merge it with other forms.

Draft Form 1

According to Article 11, 12 and 15 of the FD, the competent authority of the issuing State has to give certain information to the competent authority in the executing State. To make this communication easier the expert group suggests to use Form 1. The two main points are voluntary payment (part d) and full or partial termination of enforcement (part e).

Draft Form 2 (full recognition) and Draft Form 3 (full execution)

Draft Form 2 and 3 cover the two most used messages under the FD, namely full recognition and full execution. This is also why these two forms come before the other two forms (Draft Forms 4 and 5) which cover all other possible cases.

Draft Form 2 (full recognition)

Form 2 and 4 deal with the information that is to be given by the executing State to the issuing State about the decision to recognize and enforce the decision. According to our practical experience in most of the cases decisions are fully recognized. Therefore the expert group has created a separate and above all short form for these – most frequent – cases, Draft Form 2. In the Netherlands, for example, about 97% of the cases are fully recognized. In those cases the competent/central authority in the executing State can just take one form, tick one box, note the relevant amount and send the form to the issuing State. That is easily done and the person in charge doesn't have to deal with all the other possible outcomes of the procedure. Also the competent authority of the issuing State can see in one blink of an eye what the message is they have received. Even if it is in the language of the executing State.

Draft Form 3 (full execution)

Form 3 and 5 deal with the information the executing State has to give to the issuing State about (the outcome of) the enforcement procedure. After recognition, in our experience, the majority of the cases are fully paid. Therefore also for these cases the expert group has created a separate and short form, Draft Form 3. Just like in the case of full recognition, the competent authority in the executing State can just take one form, tick one box, note the relevant amount and send the form to the issuing State. The form is simple and short to fill out, which is easily done for the person in charge in the executing State, but also simple to read for the person in charge at the issuing State, even without translation of the form.

Draft Form 4 (partial recognition and full non-recognition) and Draft Form 5 (outcome of the execution of the decision):

As full recognition and full payment are covered by Form 2 and 3 there is a need to cover all other possible outcomes. Therefore the expert group created two other forms, clearly distinguishing between the recognition phase (Form 4) and the execution process (Form 5).

Draft Form 4

Draft Form is linked to the recognition phase and covers all other cases except full recognition.

The first information (part d.1 and d.2) given is the most important: What was the outcome of the recognition procedure - full refusal of recognition or partial recognition? - and in the case of partial recognition: for which amount has the decision been recognized.

The next question is why has the decision not been fully recognized. Therefore Form 4 enumerates the different grounds for full or partial non-recognition:

- Form 4 starts with the grounds for refusal listed in Article 7 and Article 20 (3) of the FD (part d.3).
- Other reasons for refusal outside the grounds listed in Article 7 and Article 20 (3) of the FD, such as the death of the person concerned, are listed in part d.4. When one of these reasons apply there formally is no ground (residence of income in the executing State) to transfer the case to the executing State (Article 4 (1) of the FD).

Going beyond the information that the decision has only been partially recognized there might be further information on that part of the financial penalty which has been recognized. There is room to give that information if that kind of information is already available at the time of the decision (part e):

- Some executing States decide on the recognition of a foreign decision and the authorization of payment in installments in one act. The information that payment in installments has been authorized can be a very valuable information for those issuing States where the authorization of payment in instalments has an impact on the limitation period. Therefore the expert group introduced part e.1.
- In part e.2 and e.3 there are other aspects taken into account why the amount to be executed is smaller than the total amount of the financial penalty stated in the certificate.

Draft Form 5 (outcome of the execution of the decision)

As there are special forms for full recognition, full execution and full/partial non-recognition there is a need for one form that covers all the other possible outcomes of the enforcement. Therefore the expert group has created Form 5.

There are some executing States where the payment in installments isn't authorized in the same decision as the recognition is pronounced but they deal with this aspect during the execution process. The information that payment in installments has been authorized can be a very valuable information for those issuing States where the authorization of payment in instalments has an impact on the limitation period. Therefore this information is also included in Form 5 but under a different angle (part d).

Once the execution has been terminated the first information given concerns the date of the termination of enforcement and the outcome of the enforcement. This information is given in part e.1. and e.2.

If an amount has been deduced after the recognition of the decision there is room to give that information in part e.3.

Part e.4 states the reasons for the termination of enforcement (other than full execution). Part e.4 deals with the grounds for termination listed in Article 12(2), 11(1) and 9(1) of the FD. As Article 9 (1) of the FD refers to the grounds for termination of enforcement based on the law of the executing State this part of the form contains next to the most common reasons for termination also the possibility to name 'other reasons'. It would be impossible to cover all possible grounds of all Member States in this form.
