

## II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

**Initiative of the United Kingdom, the French Republic and the Kingdom of Sweden with a view to adopting a Council Framework Decision on the application of the principle of mutual recognition to financial penalties**

(2001/C 278/06)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(b) thereof,

Having regard to the initiative of the United Kingdom, the French Republic and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities.
- (3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition, giving priority to the adoption of an instrument applying the principle of mutual recognition to financial penalties (measure 18).
- (4) Decisions requiring financial penalties to be paid have to be taken in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,

(a) 'Judgement' shall mean a final decision requiring a financial penalty to be paid by a natural or legal person, where the decision was made either by:

(i) a court in respect of a criminal offence; or

(ii) an administrative authority in respect of an administrative offence or an offence against regulations, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; a list of such administrative offences is provided in Annex I;

(b) 'Financial penalty' shall mean the obligation to pay a sum of money on conviction of a criminal or administrative offence, including orders made in criminal proceedings to pay compensation for the benefit of victims of crime, and orders to pay sums in respect of the costs of court or administrative proceedings; however, it shall not include orders for the confiscation of instrumentalities or proceeds of crime or orders that are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters<sup>(1)</sup>;

(c) 'Issuing State' shall mean the State in which a judgement was delivered;

(d) 'Executing State' shall mean the State to which a judgement has been transmitted for the purpose of enforcement.

*Article 2*

**Transmission of judgements**

1. A judgement, together with a certificate as provided for in this Article, may be transmitted to a Member State in which the natural or legal person against whom such a judgement has been passed has property or income, is normally resident or, in the case of a legal person, has its seat.

*Article 1*

**Definitions**

For the purposes of this Framework Decision:

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

2. The certificate, the standard form for which is given in Annex II, must be signed, and its contents certified as accurate, by the competent authority in the Issuing State.

3. The judgement may be transmitted by the competent authority in the Issuing State directly to the competent authority in the Executing State.

4. No judgement may be transmitted if the penalty has already been paid.

5. If the competent authority in the Executing State is not known to the competent authority in the Issuing State, the latter shall make all necessary inquiries, including via the contact points of the European judicial network, in order to obtain the information from the Executing State.

6. Each Member State shall designate a central contact point for inquiries made under paragraph 5 and shall notify the General Secretariat of the Council of the contact point so designated.

#### Article 3

### Recognition and enforcement of judgements

A judgement which has been transmitted in accordance with Article 2 shall be recognised without any further formality being required and shall be enforced forthwith by the competent authority in the Executing State, unless the authority decides to invoke one of the reasons for non-enforcement provided for in Article 4. The judgement shall be enforced in the same way as a financial penalty imposed by a court or administrative authority of the Executing State.

#### Article 4

### Reasons for non-enforcement

1. The competent authority in the Executing State may decide not to enforce the judgement if the certificate provided for in Article 2 is not produced, or the particulars in that certificate are incomplete or manifestly incorrect.

2. The competent authority in the Executing State may also decide not to enforce the judgement if it is established that:

(a) judgement against the sentenced person in respect of the same acts has been delivered

— in the Executing State or

— in another Member State or a third State,

and that judgement has been enforced; or

(b) the judgement is exclusively related to acts which were carried out within the territory of the Executing State or a Member State, other than the Executing or Issuing State, and

— these acts do not constitute an offence within the law of that State; or

— enforcement of the decision is barred by statutory time limitations in that State.

3. Any decision not to enforce a judgement shall be taken and notified as soon as possible, together with the reasons for the decision, to the competent authorities of the Issuing State by any means which leaves a written record.

4. Before deciding not to enforce a judgement, the competent authority in the Executing State shall consult the competent authority in the Issuing State and shall ask it to supply the necessary supplementary information without delay.

#### Article 5

### Determination of the amount to be paid

1. The competent authority of the Executing State shall, if necessary, convert the penalty into the currency of the Executing State at the rate of exchange obtaining at the time when the penalty was imposed.

2. Where it is established that the judgement is exclusively related to acts which were carried out within the territory of the Executing State or a Member State other than the Executing or Issuing State, the Executing State may decide to reduce the amount of the penalty enforced to the maximum amount provided for acts of the same kind under the national law of the State where the acts were carried out.

#### Article 6

### Law governing enforcement

1. Subject to paragraph 3 and to Article 7, the enforcement of the judgement shall be governed by the law of the Executing State, and its authorities alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto.

2. Any part of the penalty recovered in whatever manner in the Issuing State or in another Member State or a third State, shall be deducted in full from the amount which is to be enforced in the Executing State.

3. A judgement imposed on a legal person shall be enforced even if the Executing State does not recognise the principle of criminal liability of legal persons.

*Article 7***Imprisonment by way of substitution for non-recovery of the financial penalty**

Where it is not possible to enforce a judgement, either totally or in part, an alternative custodial sanction may be applied by the Executing State if its laws, and those of the Issuing State, so provide in such cases. The length of the custodial sanction shall be determined in accordance with the law of the Executing State, but may not exceed any maximum term stated in the certificate transmitted by the Issuing State.

*Article 8***Amnesty, pardon, commutation and review of sentence**

1. Only the Issuing State may grant an amnesty, pardon or commutation of a financial penalty or determine any application for review of the judgement.

2. The Executing State may however decide not to enforce all or part of the penalty if there is clearly no prospect of recovering it, due to the offender's lack of means, serious illness or death.

*Article 9***Termination of enforcement**

The Executing State shall terminate enforcement of the judgement as soon as it is informed by the Issuing State of any decision or measure as a result of which the judgement ceases to be enforceable.

*Article 10***Accrual of monies obtained from enforcement of judgements**

Monies obtained from the enforcement of judgements shall accrue:

- in the case of compensation payments or orders to pay court costs, to the Issuing State;
- in all other cases to the Executing State, unless otherwise agreed upon between that State and the Issuing State.

*Article 11***Information**

The competent authority of the Executing State shall without delay inform the competent authority of the Issuing State:

(a) of the enforcement of the judgement as soon as it has been completed;

(b) of the total or partial non-enforcement of the judgement.

*Article 12***Consequences of transmission of a judgement**

1. The Issuing State may not proceed with enforcement of a judgement after it has been transmitted to the Executing State to undertake enforcement.

2. The right of enforcement of the judgement, including for the purpose of converting the financial penalty into a custodial sanction, shall revert to the Issuing State upon its being informed by the Executing State of the total or partial non-enforcement of the judgement.

3. If, after transmission of a judgement in accordance with Article 2, an authority in the Issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the judgement, that authority shall inform the competent authority in the Executing State thereof without delay.

*Article 13***Languages**

Documents to be produced shall be translated into the official language or one of the official languages of the Executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Union.

*Article 14***Costs**

Member States shall not claim from each other the refund of costs resulting from the application of this Framework Decision.

*Article 15***Relationship with other agreements and arrangements**

This Framework Decision shall not affect the application of more favourable provisions concerning the enforcement of financial penalties in bilateral or multilateral agreements or arrangements between Member States.

*Article 16***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by [...].

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information by the General Secretariat of the Council, the Council shall, no later than [...], assess the extent to which Member States have complied with this Framework Decision.

3. The General Secretariat of the Council shall notify the Member States of the declarations made pursuant to Article 13, and of the contact points designated under Article 2(6).

*Article 17***Entry into force**

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at ...

*For the Council*

*The President*

...

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**ANNEX I**

(This Annex will provide a list of administrative offences as defined in Article 1(a)(ii) and shall be completed during the negotiations on the basis of information to be provided by those Member States which have such offences.)

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## ANNEX II

## CERTIFICATE

(under Article 2 of the Council Framework Decision adopted on [...] on the application of the principle of mutual recognition to financial penalties)

## 1. Issuing State

## 2. Competent authority issuing the judgement

2.1. Name

2.2. Address

2.3. Telephone/fax/e-mail (including international dialling code)

2.4. Language(s) in which it is possible to communicate with the issuing authority.

## 3. Details of the sentenced person

3.1. Name

3.2. Last known address

3.3. Location of property (if known)

3.4. Source of income (if known)

## 4. Details of the judgement

4.1. Type and amount of the financial penalty

4.2. Brief details of the offence

4.3. Relevant legal provisions

## 5. Status of the judgement

Confirm that:

5.1. the judgement is a final decision; 5.2. enforcement of the judgement is not barred by statutory time limitations. 

## 6. Notification of proceedings

Confirm that the sentenced person has been duly notified of:

6.1. the proceedings against him; 6.2. any procedures and deadlines for appeal. 

## 7. Partial payment of penalty

State whether:

7.1. any part of the penalty has already been paid in the issuing State;

7.2. if so, the amount which has been paid.

## 8. Alternative custodial sanction

8.1. Do the laws of the issuing State allow an alternative custodial sanction to be applied?

8.2. If so, what is the maximum term which could be imposed in respect of this judgement?

Done at ... date ...

Signature and/or stamp ...  

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