

EXPLANATORY MEMORANDUM

TO THE

**FIVE STANDARDISED FORMS FOR ACCOMPANYING THE PROCEDURE FOR
ENFORCEMENT OF CROSS-BORDER FINANCIAL PENALTIES AS LAID DOWN
BY FRAMEWORK DECISION 2005/214/JHA**

Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties¹ (FD) dates from 24 February 2005. The instrument enables a judicial or administrative authority to transmit a financial penalty directly to an authority in another EU country and to have that penalty recognized and executed without any further formality. The procedure applies mainly to situations where a fine is imposed on a person who is not a resident of the EU country where the offence was committed, fails to pay the fine and then leaves the territory of that country. The prescribed date of implementation of the FD was 22 March 2007. As of 2017, almost all Member States have implemented the FD and hundreds of thousand cases on a yearly basis are being transferred between the different Member States.

When transmitting the decision imposing the financial penalty, the issuing State must transmit a Certificate (in Annex to the Framework Decision) in the language of the Member State executing the decision. The Certificate should contain all relevant information enabling the executing State to recognize and execute the decision. One of the principles of the FD is that cases are being transferred directly from a competent authority in one Member State to the competent authority in another Member State. The FD prescribes in several cases that these competent authorities need to consult or inform each other during the process (e.g. Art. 7, 9, 11, 12 and 15 of the FD). However, the FD does not provide rules for the language regime in which this contact should take place.

Experience in recent years has shown the need for other types of standardized forms in order to facilitate the exchange of information on individual cases between the responsible authorities. Every cross-border financial penalty request leads normally to at least two follow-up letters from the executing State to the issuing State, namely a message that the case has been received/accepted and a message with the final result of the enforcement. Some cases require more exchange of information between the concerned States.

The language differences within the EU make the extensive 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.

On the initiative of Germany a group of experts has been created to draft certain standardized forms that could be used in cases of cross-border financial penalties in order to facilitate the recognition and enforcement process, without the need for further translation.

The five standardised forms do not have any impact on the substantive content of the Framework Decision, and they have no legislative effect. The use of the forms by the respective national authorities is on a strict voluntary basis. Nevertheless, Member States

¹ OJ L 76, 22.3.2005, p. 16

are encouraged to promote the use of the forms as they would facilitate the mechanism for the execution of cross-border financial penalties as laid down by the FD and would lead to reduce the financial and administrative burden linked to the procedure.

The future electronic exchange of the information contained in the forms could also be envisaged at a later stage.

THE METHODOLOGY OF THE EXPERT GROUP

The Approach

The European Council Working Group COPEN at its meeting of 13 April 2016 on the basis of the initiative of Germany suggested that some Member States form an expert group to discuss and draft standardized form(s) to facilitate the procedure for cross-border enforcement of financial penalties. The European Commission has agreed to get involved in the drafting work and to coordinate the process.

Experts from Poland, Finland, Germany and the Netherlands have volunteered to participate in the drafting group. Two meetings of the experts took place - 16 October 2016 and 22 November 2016 - at DG JUST premises. These meetings served to discuss ideas and draft different forms. The result of the expert group was presented to all Member States at the COPEN meeting of 16 December 2016². On the basis of the written comments of Member States the experts re-drafted the texts of the 5 forms. This *Memorandum aims at explaining the reasoning behind the creation of the forms and at describing each form in detail. It should allow practitioners to apply the forms correctly in their day-to-day work.* The 21 June 2017 COPEN meeting discussed and adopted the text of the forms³.

The approach the expert group chose is based on the inner logic/the scheme of the FD and their experience gained in five or more years of practical work on the basis of the FD. The starting point for drafting the forms was the procedure for enforcing a cross-border financial penalty with particular attention to the information needed for a successful execution, the required exchange of information between the issuing and the executing States.

Why are there five forms?

The five forms were created to meet the different needs for information that emerges during the enforcement process. Although some Member States invited the experts to consider lowering the number of forms, merging some of the aspects of the different forms, after reconsideration given by the experts it was decided to maintain 5 different forms. The argument is that the 5 forms targets different aspects of the procedure. Form 1-3 are intended to be the most commonly used forms. Not putting all related information, in particular on the payment procedure, in one form will simplify the daily work of the competent authorities. In addition, as the use of the forms is not mandatory, Member States are free to refer to the forms as they wish, as need arise.

In order to further facilitate the daily work of case-handlers and the use of the forms, it was decided to have the forms available in 23 EU languages.

DESCRIPTION OF THE FORMS

² Doc. 14898/16 JAI 1007 COPEN 361 EJN 83

³ Doc. 9610/17 JAI 540 COPEN 177 EJN 39

Form 1

According to Articles 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).

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

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 (Forms 4 and 5) which cover all other possible scenarios.

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 practical experience in most of the cases decisions are fully recognized (in the Netherlands, for example, about 97% of the cases are fully recognized.). Therefore a separate and above all short form was created. 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 it has received, even if it is in the language of the executing State.

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, as experience show, the majority of the cases are fully paid. Therefore to cover this high number of cases a separate and short form was drafted. 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.

Form 4 (partial recognition and full non-recognition) and 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).

Form 4

The Form is linked to the recognition phase and covers all other outcomes 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 or 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 about the financial penalty which has been recognized. Such information can be provided if 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 highly valuable information for those issuing States where the authorization of payment in instalments has an impact on the limitation period. Part e.1 serves this purpose.
- 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.

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 – to be included in Form 5.

There are some executing States where the payment in installments is not authorized in the same decision as the recognition is pronounced but is dealt with at a later stage of the execution process. The information that payment in installments has been authorized can be a highly 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 Articles 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’.