

## ANNEX to the PANEL DISCUSSIONS

51<sup>st</sup> Plenary Meeting of the European Judicial Network  
on 22 - 23 November 2018 in Vienna

### **Analysis of the replies to the EJN Questionnaire on the Application of European Legal Instruments Based on Mutual Recognition in Criminal Matters and Problems Related thereto)**

I 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

#### **1. How often have you been concerned with the application of the FD 2008/909/JHA as contact point or in any other function on average per year?**

98 CPs were able to reply to this question. Nearly 2/5 stated that they deal with this FD often and nearly ¼ rarely, while the remaining CPs (less than 2/5) have not dealt with it at all. The CPs from EE, GR, HU, LU, LV and RO and most of the CPs from CZ and SK have dealt with it often. The CP from LT has rarely been concerned with this FD, the CP from LT not at all. The CPs from AT, SE and UK have dealt with this FD either rarely or not at all. There are different experiences ranging from often to not at all in BE, DE, DK, ES, FI, FR, HR, IT, NL, PL, PT, SI.

#### **2. Imprisonment in Lieu of a Fine – FD Custodial Sentences or FD Financial Penalties?**

*Case:* A court in Member State A sentences X to a fine or a prison term of seven months in case the fine cannot be recovered. X does not pay the fine in due course. The court of Member State A orders the execution of the seven months of imprisonment. Member State A requests the enforcement of the imprisonment from your Member State in accordance with the FD 2008/909/JHA.

- a. Would your Member State enforce the imprisonment? (Assumption: the formal requirements set out by the FD are met) – If no, please give reasons:

72 CPs were able to reply to this question. Most of the CPs (over 4/5), including all responding CPs from AT, CZ, EE, ES, FR, GR, HR, LT, LU, LV, NL, PL, PT, RO, SE, SI and SK answered that they would be able to recognize and enforce such a sentence under the FD Custodial Sentences. The CPs of BE and HU stated that they could not enforce the sentence under this FD. In DE, DK, FI, IT and UK there seem to be different interpretations on the scope of this FD. While some CPs of these Member States were of the view that such a sentence could not be enforced under this FD, others responded that it could.

CPs from BE, DE, DK, FI and UK who answered that the FD Custodial Sentences is not applicable did not state whether they would apply the FD 2005/214 Financial Penalties instead, but it can be assumed that this is possible. The CP from HU and some CPs from IT and UK are of the opinion that the FD Financial Penalties applies. This means only the executing state can convert the fine into imprisonment under Art 10 FD 2005/214.

Several Italian CPs mentioned that their national law/constitution does not allow imprisonment for not paying a fine, but it might be possible to adapt the sentence to a measure provided for by their national law under Art 8/3 of the FD Custodial Sentences. CPs from BE and FI argue that enforcement is prevented by their national law which limits the length of imprisonment in lieu of a fine. A CP from PT warned of unnecessary procedures, as they can easily be stopped by the payment of the fine.

- b. Which problems have you encountered related to the enforcement of an imprisonment in lieu of a fine as i. executing state / ii. issuing state? - Please give examples:*

A CP from FI mentioned that as fines are normally imposed for petty crimes requests can often be refused because there is no double criminality or less than 6 months imprisonment. A CP from SE stated that it is often unclear how much of the prison sentence is left to enforce if a part of the fine has been paid. FR refused a request from RO on the ground of ECtHR jurisprudence. GR mentioned problems with the translation of comments. All the other CPs either did not answer, had no experience or did not encounter any problems.

### **3. "Minor" Custodial Sentences Summing up to a Custodial Sentence Exceeding a Duration of Six Months**

*Case: Z has committed three different crimes in Member State A. In the course of three different proceedings, he is sentenced to three different custodial sentences in Member State A, each of which amounts to less than six months. In total, the custodial sentences imposed on X sum up to more than six months.*

- a. Would your Member State enforce the total of the imposed custodial sentences upon request by Member State A? (Assumption: the formal requirements set out by the FD are met; more than six months of the total of the three sentences remain to be served) – If no, please give reasons:*

68 CPs were able to reply to this question. 4/5, including all from AT, CZ, DE, EE, ES, FI, FR, GR, LT, LU, LV, PL, RO, SE, and SI stated they could enforce the total sentence, while 1/5 stated its not possible.

There were mixed views in BE, DK, HR, IT, NL, PT and SK. The only responding CP from HU and UK stated they could not.

Most of CPs who would refuse the execution were of the view that the 6 months minimum period for the ground of refusal in Art 9/1/h FD 2008/909 is calculated for each sentence separately. Apparently this ground of refusal was implemented as obligatory in these states. The CPs from CZ also favoured the separate calculation, but it is for the consideration of the courts to recognize shorter sentences. A CP from IT stated their national law does not allow custodial sentences of less than six months. CPs from LU, PT and UK stated that execution is only possible under certain conditions where the sentences are joined/connected with each other.

- b. Which problems have you encountered related to the enforcement of a sum of sentences such as mentioned above as i. executing state/ ii. issuing state? - Please give examples:*

A CP from FI mentioned that as short sentences are normally imposed for petty crimes requests can often be refused because there is no double criminality. Furthermore, as the procedure in both the issuing and the executing state usually takes longer than 3 months, it is only practical to transfer long (several years) sentences, unless the person is not yet serving the sentence. CPs from BE and RO mentioned there are problems with different ways to calculate the penalty/release dates, as some MS require separate calculation for each sentence, while others calculate the total penalty. All the other CPs either did not answer, had no experience or did not encounter any problems.

#### **4. Measures Involving Deprivation of Liberty**

- a. Do you consider it useful to provide an overview of the different measures involving deprivation of liberty existing in each Member State on the EJN website? Please give reasons:*

85 CPs were able to reply to this question. Over 85 % of the responding CPs, including all from AT, BE, CZ, FI, HR, HU, IE, IT, LU, NL, PL, RO, SE considered this useful. Only the CP from LV and some CPs from DE, DK, ES, FR, GR, PT, SI, SK and UK did not. The CPs from SK stated they would always contact other CPs directly, while the CP from DE thinks the workload is too heavy for only very few cases.

The majority of the CPs is of the view that this would facilitate and speed-up cooperation between MS. Many also stated this information would be of a general interest for comparing the different systems. A CP from FI mentioned that this would be important for the adapting of sentences under Art 8 FD, as there seem to be different ways on whether the maximum penalty is calculated based on the particular crime of the case or all crimes falling in a category (e.g. drug crimes). Another CP from FI mentioned that information gathered by the Europris expert group on FD 2008/909 can be useful.

#### **5. Rule of Speciality – Application of the FD Custodial Sentences or the FD EAW**

*Case: X is serving a sentence in Member State A and shall be transferred to your Member State in accordance with the FD. Before the decision on the transfer is taken, it turns out that*

- i. there is an investigation pending in your Member State;*
- ii. X has already been convicted to a custodial sentence in your Member State.*

*The authorities of your Member State would*

- a. issue an EAW*
- b. submit a request for consent under the FD (Art 18 para 3) for the prosecution of X.*

*Please give reasons if you would issue an EAW:*

71 CPs were able to reply to this question. For both variations over 7/10 of the CPs, including all responding CPs from CZ, EE, FR, GR, HR, LV, PL, PT, SE, SI and UK would submit a request for consent under the FD Custodial Sentences, while nearly 3/10, including the CP from HU, would issue an EAW.

There were different opinions which FD would apply in BE, DE, DK, ES, FI, IE, IT (only 1 CP would apply the EAW), NL, RO and SK. CPs from DK, FI, HU and RO mentioned that it might be possible to use either FD.

Nearly all CPs did not distinguish between ongoing proceedings (i.) or conviction (ii.), but the CPs from AT and a CP from NL and RO would issue an EAW if an investigation is pending (i.), while they would apply the FD Custodial sentences if there is already a conviction (ii.). Two CPs from SK would apply the EAW in case of a conviction (ii.), but submit a request for consent if an investigation is pending (i.).

CPs from AT, FI, IT, RO, SI and SK are of the view that it is easier to use the EAW.

## II COUNCIL FRAMEWORK DECISION 2008/947/JHA of 27 November 2008

### on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions.

#### 1. How often have you been concerned with the application of the FD 2008/947/JHA as contact point or in any other function since its implementation?

97 CPs were able to reply to this question. Over 3/5 (all CPs from AT, IE, PL) have never been concerned with the application of the above FD as CP or in any other function, nearly 1/3 were rarely consulted and less than 1/10 (CPs from BE, HR, EE, FI, FR, LV, LU, NL, PT) more often.

#### 2. Conditional Suspension of the Execution of Sentences

##### a. Case:

*Y, who is a permanent resident of your Member State, has been sentenced to a custodial sentence of two years for drug trafficking by a court of Member State A. He is a drug addict and has primarily committed the crime to fund his addiction. According to the national law of Member State A, it is possible under those circumstances to suspend the execution of the sentence if Y agrees to subject himself to a health-related measure (drug rehabilitation). Y is examined by an expert who reaches the conclusion that it would be sufficient to i. treat Y as an out-patient / ii. hospitalize Y.*

*Y agrees to undergo this health-related measure. The court of Member State A suspends the sentence for a period of two years on the premise that Y takes part in the health-related measure suggested by the consulted expert. Member State A requests your Member State to enforce the measure. a. Upon request by Member State A, your Member State would enforce*

**ad i.** the treatment of Y as an out-patient / **ad ii.** the hospitalization of Y on the basis of:

- FD 2008/947/JHA
- FD 2008/909/JHA
- Not enforced

Ad i: 61 CPs were able to reply to this question. Nearly 3/4 would enforce the treatment as an out-patient on the basis of FD 2008/947, including all CPs from AT, BE, DE, EE, ES, HU, LU, LV, NL, PL, PT and RO. Only 4 out of 61 CPs (from DK, FI, HR and IT) would enforce it on the basis of FD 2008/909 (custodial sentences), whereas other CPs from DK, HR and IT would apply FD 2008/947. 1/5 would not enforce it, including the CP from LT and SE. There were mixed views whether it could be enforced from CPs of CZ, FI, FR, IT, SI, SK and UK.

Ad ii: 60 CPs were able to reply to this question. Less than half would enforce hospitalization under FD 2008/947, including all CPs from AT, BE, LU, LV, NL and PT. 3/10 would enforce it on the basis of FD 2008/909, including all CPs from DK, EE and PL. 1/4 would not enforce it, including the CPs from

FI, HU, LT and SE and some CPs from CZ, ES, FR, IT, SI, SK and UK, while the other CPs from CZ, ES, and FR would apply FD 2008/909, and the other CP from UK would apply FD 2008/947. There were mixed views on which FD would apply in DE, HR, IT, RO, SI and SK.

The majority of the CPs see both the treatment as an out-patient and the hospitalization as a falling under the scope of FD 2008/947. A CP from BE bases this on the suspension of the prison sentence and that the consent of the person is required. CPs from DE, HR, IT and SI state their national laws provide for the application of FD 2008/947, while CPs from IT, NL and PT directly refer to the FD.

Some CPs from DE, DK, ES, PL, RO, SI and SK see the alternative i. treatment as an out-patient as falling under FD 2008/947, while they view alternative ii. Hospitalization as a measure involving deprivation of liberty and therefore would apply FD 2008/909. CPs from CZ, EE and FR gave the same answers but no reasons, it can be assumed they are of the same view.

A CP from DK states that probably FD 2008/909 would be applied, but both FD are applicable.

A CP each from IT and HU could not enforce the hospitalization, but would apply FD 2008/947 for treatment as an out-patient, with the CP from IT stating that as the sentence is suspended, enforcement is not possible under FD 2008/909.

A CP from FI stated that such a sentence does not exist in FI, so enforcement is not possible. However, FI could first take over the prison sentence and afterwards adapt it in nature and length, with the risk that the issuing state does not approve of the adapted sentence and withdraws its request. One CP of SI stated they could not enforce it because the national law does not provide for this kind of measure.

*b. Which problems have you encountered related to the recognition of measures comparable to those mentioned above as: i. executing state / ii. issuing state? Please give examples:*

CPs from GR, HR mentioned the cost of translation.

CPs from DK, FI mentioned problems because the sentences vary much between MS, so it is often not possible or practicable to carry out the measures. The CP from FI stated that the sentence has to be adapted in every case in both nature and length, except for community service. As the measures are often short, it is not possible to consider transfer.

A CP from NL mentions problems as executing state in finding the right treatment or clinic, in not having the reports of experts and sometimes the person is already in a clinic before receiving the certificate. As issuing state necessary treatment cannot start because of delays in recognition. CPs from SK and RO see difficulties in ensuring the same treatment as in the executing state. SK does not have a specialized psychiatric facility.

All the other CPs either did not answer, had no experience or did not encounter any problems.

**3. Obligation to Carry Out Community Service**

*a. Does the national law of your Member State provide for community service as alternative sanction / as probation measure / or in the form of:*

77 CPs were able to reply to this question. Nearly 3/5 stated that their national law provides for community service as alternative sanction and 1/3 as probation measure. The rest stated their national law provides for both forms of community service.

*b. Do you consider it useful to provide an overview on the existence and the legal classification of community service in each Member State on the EJN website?*

81 CPs were able to reply to this question. Over 85 % of the responding CPs, including all from AT, BE, CZ, EE, FI, GR, HR, HU, IT, LT, LU, LV, NL, PL, RO, SE and SI considered this useful. Only the CP from and some CPs from DE, DK, ES, FR, IE, PT, SK and UK did not. The CPs from SK stated they would always contact other CPs directly, while a CP from DE thinks the workload is too heavy for only very few cases, and CPs from DE, IE and PT see no usefulness. A CP from ES says the information in the certificate should be sufficient.

The majority of the CPs is of the view that this would facilitate cooperation between MS, due to the variety of community services in different MS. It would be especially useful for preparing requests and to establish whether community service is an alternative sanction or a probation measure. Many also stated this information would be of a general interest for comparing the different systems. A CP from BE mentioned that the results of the 2011 EU probation project on FD 2008/947 could be updated and made available, a CP from FI also mentioned information gathered by the CEP and the expert group on this FD and FD 2009/829.

*c. Have you ever sent a request to execute community service ordered by your national courts to another Member State? If yes, please indicate what sort of community service it was and if you encountered any problems relating to the request:*

81 CPs were able to reply to this question. Only 1/10 (3 CPs from HR, 2 from CZ and 1 each from FI, NL, SE) have sent a request to execute community service.

The CP from the NL mentioned problems in finding the right authority and the delay of recognizing the certificate. CPs from DE and PL noted disproportionate costs. The CP from FI mentioned the executing state had a different concept of probation time (time until the service had to be served), so it was necessary to adapt it by the executing state.

*d. Have you already received a request for enforcing community service? If yes, please indicate what sort of community service it was and if you encountered any problems relating to the request:*

80 CPs were able to reply to this question. Less than 1/10 (CPs from EE, FI, FR, NL, PT, SK, UK) have received a request for enforcing community service. Except for the UK (opt out) all the requests could be enforced and no problems were mentioned. The CP from NL stated NL receives a lot of requests especially from BE.

#### **4. What do you think are reasons/obstacles why this FD is rarely used?**

CPs from AT, HR, IT, NL, PT and RO said there is a lack of knowledge of this instrument among practitioners. CPs from DE, IT, LU, SK and SE are of the view that the procedure is too complicated or provides a big administrative burden. CPs from BE, FI, SE and SI see the disparity of the measures in



different MS as an obstacle, as transfer requires some similarity. A CP from BE mentions its necessary to decide on the modalities before the request is made and without having certainty that it will be accepted by the executing state. A CP from NL mentioned difficulties in getting the required consent of the suspect, while a CP from PL mentioned the national law provides for consensual ways for ending proceedings without trial at reduced cost. These also allow telephone contact with the probation officer. CPs from CZ mention that this FD is applied not so rarely between CZ and SK. A CP from UK mentioned moving away would be deemed a breach and require resentencing.



### III COUNCIL FRAMEWORK DECISION 2009/829/JHA of 23 October 2009

**on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.**

**1. How often have you been concerned with the application of the FD 2009/829/JHA as contact point or in any other function since its implementation?**

96 CPs were able to reply to this question. A vast majority (nearly 7/8) of the CPs, including all CPs from AT, CZ, DK, EE, ES, GR, IE, IT, LU, LV, PL, SE, SI and SK have not at all been concerned with this FD. 1/8 of the CPs have dealt with this FD rarely, including the only CP from HU and LT and 1 CP each from BE, DE, FI, FR, HR, PT and UK and 2 CPs from RO, while the other CPs of these MS answered “not at all”. Only 1 CP altogether - from NL - has answered “often”, with the other CPs from NL answering “rarely” and “not at all”.

**2. Do you consider it useful to provide an overview on the different types of supervision measures as an alternative to provisional detention available in each MS on the EJN website?**

76 CPs were able to reply to this question. About 4/5 of the responding CPs, including all from AT, BE, FI, GR, HR, HU, IT, LT, LU, PL, RO and SI considered this useful. The only responding CPs from IE and SE and some CPs from CZ, DE, DK, ES, FR, NL, PT, SK and UK did not.

2 CPs from SK stated they would rather contact other CPs directly, while 1 CP from DE doubts the practical need for such an overview and whether it could increase the number of requests. The CP from SE sees little practical use for supervision measures because either supervision is not sufficient due to risk of evading, or it is unnecessary if there is no absolute need for provisional detention. A CP from NL said this is not useful, as the FD is clear about what supervision measures can be transferred.

The majority of the CPs is of the view that this would facilitate cooperation when applying this FD, especially when preparing requests, to anticipate the likelihood of recognition and regarding adaptation by the executing state under Art 13 FD. Many also stated this information would be of a general interest for comparing the different systems and understanding the law of other MS.

**3. Practical application**

*a. Which problems have you encountered related to the recognition and monitoring of supervision measures as i. executing state/ ii. issuing state? Please give examples:*

A CP from FI stated in several cases prosecutors have contemplated using the FD instead of demanding custody but ultimately no requests were issued. Although requests from neighbouring countries were anticipated, there were no cases as executing state either. A CP from NL mentioned that supervision could not be guaranteed as executing state as the suspect might be released before recognition and wrong addresses often make additional checks and adaptation of decisions necessary. The CP stated that as issuing state it is difficult to find the right authority, that the

principle of mutual recognition is in fact ignored as too many irrelevant questions are asked before recognition and that measures are made stricter than ordered contrary to Art 13 FD.

All the other CPs either did not answer, had no experience or did not encounter any problems.

*b. What do you think are reasons/obstacles why this FD is rarely used?*

CPs from BE, IT, NL, PT, RO and SI said there is a lack of knowledge of this instrument among practitioners. CPs from BE, DE and IT are of the view that the procedure is too complicated, while CPs from FI, NL and SI mentioned a possible lack of trust in the supervision by another MS and risk of flight. CPs from IE, IT and RO see proportionality an obstacle for making a request, as these cases often concern minor offences. A CP from NL mentioned difficulties in getting the required consent of the suspect, while a CP from PL mentioned the national law provides for consensual ways for ending proceedings without trial at reduced cost. Apparently these can be used in cases the FD could be applicable.

## IV COUNCIL FRAMEWORK DECISION 2005/214/JHA of 24 February 2005

### on the application of the principle of mutual recognition to financial penalties

#### 1. How often have you been concerned with the application of the FD 2005/214/JHA as contact point or in any other function on average per year?

95 CPs were able to reply to this question. About 3/10 stated that they deal with this FD often and nearly 1/5 rarely, while more than half of the CPs (less than 2/5) have not dealt with it at all. The only CPs from HU, LU and LV have dealt with it often. The CP from LT has rarely been concerned with this FD, the CPs from EE, GR, IE and SE not at all. The CPs from AT, NL and UK have dealt with this FD either rarely or not at all. There are different experiences ranging from often to not at all in BE, CZ, DE, DK, ES, FI, FR, HR, IT, RO, PL, PT, SI and SK.

#### 2. Discontinuation of Proceedings Taking into Consideration the Payment of an Amount of Money:

*Case: The national law of Member State A provides for the discontinuation of proceedings (either by the PPO or – after indictment – the court) without a formal sentencing taking into consideration certain circumstances such as the payment of a certain amount of money by the accused.*

- a. *Would your Member State recognize such payment of money without the accused being formally sentenced as:*
  - financial penalty within the meaning of the FD 2005/214/JHA.
  - probation measure within the meaning of the FD 2008/947/JHA.
  - alternative sanction within the meaning of the FD 2008/947/JHA.

56 CPs were able to reply to this question. Most of the CPs (nearly 2/3), including all responding CPs from BE, DK, ES, FI, HU, LV, LT, LU, NL, RO, SK, answered that they would apply the FD 2005/214 Financial Penalties. The CPs of CZ and PL stated that they would recognize such payment of money as a probation measure and the CPs from AT responded that they would recognize such payment as alternative sanction. The CPs from DE, FR, HR, IT, PT, SI and UK have responded differently to this question, but there was always at least one CP who would apply the FD Financial Penalties.

- b. *Which problems have you encountered related to the recognition of a measure comparable to the one mentioned above as: i. executing state/ ii. issuing state?*

Some CPs from CZ stated that such a case as described in 2.a. does not fit in any of the proposed options. One CP from DE pointed out that an execution would only be possible, if the decision is final. Another CP from DE mentioned, that under German Law such a decision would not be recognized at all, as these FDs do not apply for discontinuation of proceedings without formal sentencing. If the accused does not pay the money the proceeding have to be resumed. A CP from ES who choose the

answer “financial penalty” in 2.a. answered that the national law does not provide for this possibility. The CP from LV stated they cannot recognise and enforce the administrative cases related to this measure.

While some CPs from SK stated that they have not encountered any problems yet, most of them answered that the Certificates are often not correctly or sufficiently filled in and that there are constant problems with translation.

The responding CPs from DK, DE, IT, PL, PT and RO answered that they have not encountered any problems. The responding CPs from AT, HR, FR, DE, GR, IT, NL, PT, RO, SI and UK answered that they have no relevant experience.

### **3. Accrual of Monies Obtained from the Enforcement of Decisions:**

*Do you consider it useful to provide an overview of the different rules on asset sharing existing in each Member State on the EJN website (Article 13 FD)? – please give reasons:*

73 CPs were able to reply to this question. Over 3/4 of the responding CPs, including all from ES, GR, HU, IE, IT, LT, LU, LV, NL, PL, RO and SI, answered that providing an overview of the different rules on asset sharing would be useful. There was no MS where all responding CPs did not consider this useful, but there were mixed views in AT, BE, CZ, DE, DK, FI, FR, HR, PT, SK and UK.

The majority of the CPs is of the view that this would facilitate cooperation when applying this FD, especially when preparing requests and to anticipate the likelihood of recognition. One CP from ES pointed out that it may encourage the use of this instrument because the general rule that all the money goes to the executing State is a deterrent factor for the issuing state. Many also stated this information would be of a general interest for comparing the different systems and understanding the law of other MS.

While one CP from FI answered that this kind of information would be useful, another one stated that it would not be particularly useful and that it would just complicate matters for them. 2 CPs from SK stated they would rather contact other CPs directly. In the opinion of some CPs from CZ, Art 13 refers to rules on asset sharing agreed on a case-by-case basis.

### **4. Enforcement of Administrative Penalties:**

*Case: According to its national law, an administrative authority of Member State A imposes an administrative penalty on X, who has exceeded the permitted speed limit. X is a permanent resident of your Member State. Member State A forwards a respective request to execute the administrative penalty.*

#### *a. Would your MS execute the administrative penalty?*

65 CPs were able to reply to this question. About ¾ of the CPs including all responding CPs from AT, DK, ES, HU, HR, LT, LU, PL, PT, SI, SK (with the exception of one CP) answered that their Member State would execute the administrative penalty. The CPs from LV and NL stated that they could not

execute the administrative penalty. In BE, CZ, DE, FI, FR, IT, RO and UK there seem to be different interpretations, on whether they could execute the administrative penalty.

*b. Which problems related to the enforcement of administrative penalties have you encountered as: i. executing state / ii. issuing state? Please give Examples:*

CPs from CZ pointed out that the requests/certificates do not fulfil all requirements as prescribed by the FD, because they are often filled in very poorly, with important information missing.

CPs from CZ and SK also stressed several times that they have problems with the translations of the certificates (google translator) which makes them difficult to understand. Sometimes it is not clear how the person was informed of the imposed financial penalty – especially, if a decision was issued in absentia. It would be useful to obtain the translated decision together with the certificate. Certificates are often forwarded to wrong authorities.

CPs from ES and IT argued that it takes too much effort and time to execute penalties which are imposed for minor crimes and are very low in value.

Although one of the CPs from RO has no significant issues as issuing state, he pointed out that there might be a lack of awareness among administrative authorities on the possibility of issuing certificates. Nevertheless as an executing state, issues arose in the stage of the actual enforcement, when the issuing state informs the Romanian authorities that the decision ceased to be enforceable and, in some cases, the enforcement did not cease immediately in Romania.

A CP from FI stated that the framework decision does not apply to administrative penalties.

A CP from DK stated they receive many administrative sanctions from other MS in traffic cases, which is not problematic.

## V. COUNCIL FRAMEWORK DECISION 2006/783/JHA of 6 October 2006

### On the application of the principle of mutual recognition to confiscation orders.

#### 1. Application of FD 2006/783/JHA

*How often have you been concerned with the application of the FD 2006/783/JHA as contact point or in any other function since its implementation?*

101 CPs were able to reply to this question. Less than 3/5 of the CPs, including all from GR, HU, LU, NL and SE, stated they have never been confronted with such requests, while nearly 3/10 stated they have rarely dealt with this FD, including the CPs from LT, LV, . CPs from AT, CZ, FR, IE, IT, PL, PT and SK either rarely or not at all. 1/8 have had more than five requests, including the only CP from CY and CPs from BE, DE, DK (2x), ES (2x), FI, HR, RO, SI and UK (2x), while other CPs from these countries answered rarely or not at all.

#### 2. Practical Application of the FD 2006/783/JHA

- a. *Which problems have you encountered related to the enforcement of confiscation orders as i. executing state / ii. issuing state? Please give examples:*

CPs from DE, ES, NL and PL referred to problems because of the differences in regulations regarding confiscation between MS. A CP from DK mentions CEO-fraud cases where some MS require a confiscation order while others can return the money according to national law, after the money on a bank account has been seized based on a statement by the person to whom the money was transferred. A CP from ES mentioned that confiscation for the purpose of restitution is not recognized by some MS under this FD. CPs from BE and RO noted problems with non-conviction-based confiscation.

A CP from UK mentioned that executing states often do not understand the principle of mutual recognition and still treat the confiscation order like an MLA request. A CP from SE referred to problems that the executing state refused a quick confiscation order because of a lack of authorized translations and the unwillingness to undertake preliminary investigative measures (e.g. address of a bank).

Several CPs (IE, HR, RO and UK) had problems in identifying the assets. As issuing state one might not be aware of assets in another MS and as executing state there are delays in getting precise information or a lack resources to carry out investigations. The CP from IE also mentioned it often takes years to enforce and there are problems with the identification and notification of all interested parties and proving that the convicted person has been in control of the assets free from encumbrances.

A CP from FI mention delays in transferring the funds as issuing state and a CP from AT had problems finding out where to send the funds. 7 of those participants who at least reported experience with this instrument in individual cases stated there are no problems. All the other CPs either did not answer or had no experience.

- b. *Do you consider it useful to provide an overview of the different rules existing in the Member States on the EJN website on the question of who is considered to be a bona fide third party?*

*Please give reasons:*

85 CPs were able to reply to this question. Over 3/4 of the responding CPs, including all from BE, CY, GR, HU, IE, IT, LT, LU, PL, RO and SI considered this useful. The only responding CP from LV and some CPs from AT, CZ, DE, DK, ES, FI, FR, HR, NL, PT, SE, SK and UK did not.

A CP from ES says the information in the certificate should be sufficient. The CPs from SK stated they would always contact other CPs directly, while a CP from DE thinks the workload is too heavy for only very few cases, and CPs from DE and PT see no usefulness. A CP from CZ is of the view it is better to consider this question on a case-by-case basis, if necessary by communication between authorities. The new Confiscation Regulation provides for a certain description who to consider as bona fide third party.

The majority of the CPs is of the view that this would facilitate cooperation between MS, due to the variety of community services in different MS. It would be especially useful for preparing requests, to clarify what evidence is required to proof bona fide and who would need to investigate. Many also stated this information would be of a general interest for comparing the different systems. A CP from DE mentioned this question is often relevant where there is a SIS alert concerning objects, therefore the overview would be useful not only for the FD.

### **3. Relationship with the Framework Decision on the execution in the European Union of orders freezing property or evidence 2003/577/JHA**

*Which problems have you encountered in cases where the confiscation order is a follow up to a freezing order transmitted under FD 2003/577/JHA as i. executing state / ii. issuing state? Please give examples:*

CPs from HR experienced problems in finding the property. CPs from ES and RO encountered problems with freezing orders where there is no follow up. A CP sees a problem with the obligation to postpone it every 6 months. A CP from IE mentions difficulties to prove de facto ownership of assets due to a lack of resources for financial analysis.

A CP from FI mentions the question of misinterpretation of the FD by the executing state has been raised after multiple for requests for supplementary information before recognizing. A CP from UK mentioned a lack of knowledge of this FD. Another CP from FI said the main problem is that it is not possible to freeze or confiscate for the benefit of the victim and that freezing refers to a certain piece of property not any property with a certain monetary value.

However a CP from IT and a CP from UK mention that both FD work well in practice.

All the other CPs either did not answer, had no experience or did not encounter any problems.



## VI. DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011

### on the European Protection Order

#### **1. How often have you been concerned with the application of the FD 2009/829/JHA as contact point or in any other function since its implementation?**

96 CPs were able to reply to this question. A vast majority (nearly 7/8) of the CPs, including all CPs from AT, BE, CZ, DK, EE, FR, GR, HU, HR, IE, LU, LV, PL, RO, SE and SK have not at all been concerned with this DIR. Nearly 1/8 of the CPs have dealt with this DIR rarely, including the only CP from LT and 1 CP each from DE and ES and 2 CPs each from FI, NL, SI and UK while the other CPs of these MS answered “not at all”. Only 2 CP altogether - from IT and PT - have answered “often”, with all other CPs of these countries answering “not at all”.

#### **2. What experiences / problems have you already gathered / encountered with European Protection Orders as i. executing state/ ii. issuing state? Please give examples:**

A CP from FI recalls a case where the convicted person and the victim were in different MS. While no EPO was issued in this case, this scenario might be interesting to discuss.

Another CP from FI mentioned it is more efficient to protect the person under national law when supplementary information is needed for execution. A CP from IE pointed out that the police is competent to protect victims both formally and informally, while according to a CP from DE only the family courts are competent there, so it is not a matter for criminal law.

The CP from PT who applies this FD mentioned difficulties in coordinating the activity of the judicial authority and the issuing authority (apparently the central authority). A CP from SI mentioned problems in filling out the form, while a CP from UK stated problems with the speed of execution.

All the other CPs either did not answer, had no experience or did not encounter any problems.

#### **3. What do you think are the reasons/obstacles why the European Protection Order is rarely used?**

CPs from AT, BE, FI, IT, NL, PT, RO, SI and UK said there is a lack of knowledge of this instrument among practitioners and the victims. CPs from IT, LU, SE and SK stated that the procedure is too complicated.

Several CPs from BE, CZ, ES, IT and NL doubt whether this instrument is really needed. Those from IT are of the view that the need for protection ceases when the protected and dangerous person are in different MS. The CPs from BE, ES and NL see an overlap with other instruments like FD 2008/947 (Probation Measures and Alternative Sanctions) and FD 2009/829 (Supervision of Alternative Measures to Provisional Detention). A CP from IE sees this as an area of police cooperation. CPs from ES and FI are concerned that it might not be in the interest of the victim to inform the dangerous person of the EPO/where the victim has moved.