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## Transmission of the enforcement of financial penalties within the framework of the European Union in the Polish law

**Abstract.** The authoress discusses issues associated with the implementation of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties into the Polish legal system. These regulations enable the enforcement of decisions related to financial obligations in other member States of the European Union. Undoubtedly, the adopted regulations provide a real possibility to enforce such a decision without the unnecessary formalities. The implementation of the principle of mutual communication between competent authorities of the State where the decision was issued and enforced makes this instrument a fast and efficient tool in the enforcement of obligations.

**Key words:** framework decision, financial penalties, fine, recognition of judgments, court proceedings costs.

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## Finanšu rakstura sankciju pieņemšana izpildījumam Eiropas Savienības robežās Polijas praksē

**Anotācija.** Raksta autore apskata jautājumus, kuri ir saistīti ar Eiropas Padomes Pamatlēmuma 2005/214/TI 24.02.2005. ieviešanu Polijas tiesību sistēmā par finansiālu sankciju savstarpējas atzīšanas principa piemērošanu. Pamatlēmumā paredzētais regulējums dod iespēju izpildīt citās Eiropas Savienības valstīs pieņemtos lēmumus, kuri ir saistīti ar finanšu rakstura sodiem. Bez šaubām, pieņemtais Pamatlēmums dod reālu iespēju izpildīt tiesu nolēmumus bez liekām formalitātēm. Tas, ka pamatā ir attiecīgo valsts orgānu tiešais savstarpējais kontakts, pieņemot spriedumu un to izpildot, padara šo instrumentu par ļoti efektīvu līdzekli tiesu nolēmumu piespiedu izpildē.

**Atslēgas vārdi:** Pamatlēmums, finanšu sankcijas, naudas sods, tiesu nolēmumu atzīšana, procesuālie izdevumi.

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## Принятие к исполнению санкций финансового характера в рамках Европейского Союза в польской практике

**Аннотация.** Автор статьи рассматривает вопросы, связанные с внедрением в польскую правовую систему рамочного решения Совета 2005/214/ПВД от 24 февраля 2005 года о применении принципа взаимного признания к финансовым санкциям. Предусмотренное рамочным решением регулирование, предоставляет возможность исполнения принятого судом постановления, касающегося наказаний финансового характера, в иных государствах-членах Европейского Союза. Несомненно, указанное рамочное решение предоставляет реальную возможность исполнения такого постановления суда, которое предусматривает санкции финансового характера, без излишних формальностей. Благодаря тому, что в основе лежит непосредственный контакт соответствующих государственных органов, при вынесении и исполнении приговора, вынесенных судом, этот инструмент является эффективным средством в принудительном исполнении наказаний.

**Ключевые слова:** рамочное решение, финансовые санкции, денежный штраф, признание судебных решений, процессуальные издержки.

### *Introduction*

The adoption of the Convention of 19 June 1990 Implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders resulted in virtually unlimited possibilities of migration of people within the area of united Europe, which require referring to instruments enabling a faster and more effective enforcement of financial penalties, namely such that would make the enforcement real, regardless of the country where the penalty was issued and of the whereabouts of the convicted person. Such instruments shall constitute a real measure that would prevent perpetrators, who were imposed with financial penalties, from having the possibility of escaping liability for crimes and offences. The Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition of financial penalties (hereinafter referred to as Decision 2005/214/JHA) constitutes the answer to those needs. The Decision is another step in the implementation of the objective set by the Council of Europe and defined in the conclusions of Tampere (15-16 October 1999, adopted by the

Council of Europe on 30 November 2000), namely the implementation of the principle of mutual recognition of judicial decisions in the EU.

The objective set by the European Union, which aims at guaranteeing the effectiveness of Member States judicial system, can be achieved only by strengthening mutual trust between competent authorities of Member States, in particular on the grounds of mutual recognition of judicial criminal decisions [1, 87-94; 2, 38-46].

The contents of the preamble undoubtedly confirms the intention of the Council of Europe within this scope. It indicates that the principle of mutual recognition should apply to financial obligations imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such obligations in a Member State other than the State in which the obligations are imposed. In addition, Framework Decision should also cover financial obligations imposed in respect of road traffic offences.

In Poland, this principle was introduced to the system of law as a result of the implementation of the Council Framework Decision 2005/214/JHA by the Act of 24 October 2008 amending the

Criminal Code and other acts [3], namely, two new chapters 66a and 66b were introduced to the Criminal Proceedings Code [4] (hereinafter referred to as CPC). The first chapter refers to the situation where Polish courts apply to a Member State for the enforcement of judicial decision relating to financial penalties. The second one, to a reverse situation, where such a motion comes from another Member State. The Act of 24 October 2004 also amended the Petty Offences Procedure Code [5] (hereinafter referred to as POPC) adding a new chapter 20b. It should be stated at this point that the provisions of the POPC in all proceedings, with the exception of proceedings by police penalty orders, refer to certain provisions of the CPC.

#### ***The concept of financial penalty***

According to Art. 611 fa of the CPC, in case of a legally binding decision issued by a Polish court on a Polish citizen or a foreigner, regarding a fine or a penal measure in the form of compensatory damages or money consideration, as well as in case of an award of legal costs, the court may apply for its enforcement directly to an appropriate court or other authority of a Member State, referred to in this chapter as «country competent for the enforcement of the decision», in which the perpetrator has property or an income, or has a permanent or temporary residence.

Art. 611 fa of the CPC is limited to specifying only those financial claims that are regarded as financial within the meaning of the Polish law. This provision refers to the terminology used in the Criminal Code [6] (hereinafter referred to as CC) and in the Petty Offences Code (POC) [7]. Such application may take place when a fine or a penal measure in the form of compensatory damages, money consideration or also an award of legal costs, was imposed. However, this provision does not fully reflect the application of the implemented Decision 2005/214/JHA as it does not mention the penal measure in the form of a duty to redress the injury or giving satisfaction for the incurred damage (Art 39 § 5 in conjunction with Art. 46 § 1 of the CC) in case of a decision which should be possible to be applied for execution in another country.

As it results from Art.1 (b) (ii) of the Decision 2005/214/JHA, it is admissible to apply for the

enforcement of penal measures in the form of duty to redress damage imposed in criminal jurisdiction as well as compensation imposed for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction. In the Polish criminal proceedings, in crime cases, the victim may be a civil party to the proceedings. The situation is different in petty offences cases.

The provision 611 fa of the CPC does not state that in case of compensatory damages or pecuniary performance for the benefit of the victim the condition to apply to another Member State of the EU for the enforcement of a decision is the fact that the victim may not be a civil party to such criminal proceedings.

This issue was regulated differently in Chapter 66b of the CPC, in a situation when another Member State applies to Polish authorities for the enforcement of financial penalty. In Art. 611 ff of the CPC, financial penalty is understood (similarly as in the Decision 2005/214/JHA) as «a sum of money» imposed on conviction of an offence, compensation for the benefit of victims, where the victim may not be a civil party to the proceedings, or a sum of money to a public fund or a victim support organisation, as well as a sum of money in respect of the costs of court or administrative proceedings leading to the decision.

The aforementioned is connected with the contents of Art. 13 of the Decision 2005/214/JHA, which states that: «Monies obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Article 1(b)(ii)». Therefore, it is adopted as a rule that monies obtained from the enforcement of decisions are accrued to the executing State unless it was agreed differently between the issuing and the executing State, in particular in cases of compensation for the victim.

This regulation leads to the conclusion that from the point of view of the victim, if a solution different from the one stated in Art. 13 of the Decision was not adopted, it will not be beneficial to apply to another Member State for the enforcement of a decision imposing a compensation for the victim's benefit as in case of the enforcement of such a decision, the victim will not obtain any

compensation. The assumption in Chapter 66b that the Polish authorities will enforce decisions regarding the imposed compensation for the benefit of the victim is beneficial from the point of view of the State enforcing such a decision as the enforced money constitutes its income.

It shall be also indicated that the phrase «in particular» used in Art. 13 of the Decision does not exclude the fact that the agreement may relate to a sum of money for a public fund or a sum of money in respect of the court or administrative proceedings.

The admissibility of applying Decision 2005/214/JHA raises no doubts in a situation where a financial penalty was imposed jointly with another penalty.

It is arguable among the representatives of the Polish doctrine whether, pursuant to Act 611 fa of the CPC, it is possible to apply for the enforcement of a decision relating to a substantive penalty of a fine. There are opposing views on this issue. According to A. Sakowicz [Compare: 8, s.12-13], a financial penalty will not include the substitutive penalty of a fine. Another view is presented by A. Górski, according to which the phrase «imposing a fine» used in Art. 611 fa of the CPC, is not understood as only a decision «originally sentencing» to a fine, but also a decision changing the penalty at the stage of judicial proceedings or a substitutive penalty adjudicated in accordance with the POC [9, p.1462]. This view is supported by A. Sołtysińska.

Art. 611 fa of the CPC discusses the costs of court proceedings. In the light of the Polish law, the costs of court proceedings include court costs and justifiable expenses of the parties. The Decision 2005/214/JHA discusses costs of court or administrative proceedings, which should be construed more narrowly, namely costs which do not include justifiable expenses incurred by the parties. It should be recognised that the European Union legislator's intention was, by means of the aforementioned, to enforce only court costs paid to the benefit of the State [10, p.476].

### **Competence of authorities**

The Decision 2005/214/JHA does not determine which authorities are competent to implement it. In turn, Art. 2 (1) imposes an

obligation that each Member State shall inform the General Secretariat of the Council which authority or authorities are competent under its national law and according to this Framework. This indicates that Member States have the competences to decide, during the process of the implementation of a decision, which authority should be competent in such implementation, taking into consideration their function in the judicial system as consistent with the law. The requirement of informing results from the fact that the General Secretariat of the Council is required to make all the information received available to all the Member States (Art. 2 (3) of the Decision 2005/214/JHA).

Declarations of Member States deposited with the General Secretariat of the Council concerning the fact whether an authority or authorities under the national law constitute authorities competent according to the Framework Decision, in a situation where the Member State constitutes the State issuing or executing a financial penalty and declaration of the language into which the declaration shall be translated, can be found on the webpage of the Council of the European Union in (<http://www.consilium.europa.eu>) or in «Police and Judicial Cooperation» bookmark [11].

In Poland, both in criminal cases and petty offence cases it was assumed that the authority competent to apply to other Member States as well as to execute the applications referred to the Republic of Poland is the court.

The situation is different when it comes to fines imposed by means of penalty notice. Pursuant to Art. 100 of the Petty Offences Procedure Code, in proceedings of petty offence cases, the collection of a fine imposed by means of a penalty notice takes place under the provisions of administrative enforcement proceedings, namely according to the regulations of the Act of 17 June 1996 on administrative enforcement proceedings [12]. In addition, in Art. 116b (2) the legislator stated that the execution of a fine imposed by means of a penalty notice can be applied for to a competent court or another Member State authority by a creditor that is authorised to do so under the regulations of administrative enforcement proceedings. A creditor may be the head of a tax office having jurisdiction in the place of residence of a person obligated to pay the fine – Art. 19 (1) in conjunction with Art. 22 (2) of the Act of

administrative enforcement proceedings, and if the fine constitutes a payment for the benefit of a municipal entity or an entity included in the Warsaw County, a competent authority of this entity – Art. 19 (2) of the Act in question.

Poland did not present any central authority competent to fulfill an administrative function of transferring applications to execute decisions relating to financial penalties from the Member States to competent judicial authorities. The Member States are provided with such an opportunity under Art. 2 (2) of the Decision 2005/214/JHA, according to which «each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the decisions to assist the competent authorities». Declarations for designating a central authority for the purpose of transmission of documents were made by, inter alia, Belgium, Cyprus, Holland, Lithuania, Latvia, Romania, Slovakia, Slovenia, Hungary.

In the light of Art. 611 ff, the Polish authority competent to issue decisions received from other Member States is a district court, in which the perpetrator has property or income and a permanent or temporary residence. Pursuant to Art. 611 ff (4) of the CPC, if a court which received the decision is not competent to initiate proceedings, it transmits it to a court which is competent to do so and informs a competent court or another authority of the country where the decision was issued. Art. 611 ff (3) of the CPC requires the court to immediately initiate proceedings that would issue a decision. However, the legislator did not set any definite time limits within which the decision should be issued.

Pursuant to Art. 611 fa of the CPC, the authority competent to apply to a judicial authority of another Member State for the execution of the decision is the court which issued the penalty or another penal measure. The regulation does not clearly state whether this shall be a Court of First Instance which issued the decision or e.g. a court which executed the decision.

Pursuant to Art. 611 fa (6) of the CPC, in case of any difficulties while establishing a competent court or another state authority executing the decision, the Polish court may apply to competent

organizational units of the European Judicial Network [13, p.130]. Such a possibility is stated in Art. 4 (5) of the Decision 2005/214/JHA.

***Proceedings concerning the execution of decisions relating to financial penalties issued in another Member State***

Article 611 ff (2) of the CPC requires that in case of the decision being executed by another Member State, the decision or its certified copy along with a declaration shall be sent in. Poland did not deposit any declarations on the basis of Art. 16 (1) of the Decision 2005/214/JHA, therefore the sent declaration should be translated into Polish. The State issuing a decision is not obligated to send a copy of the decision related to financial penalty translated into Polish. The lack of translated decision shall not constitute the basis for the refusal to execute a decision. As it results from Art. 16 (2) of the Decision 2005/214/JHA, the expense of the translation of a decision is incurred by the State executing such a decision, namely the State Treasury.

The absence of a declaration or its incompleteness constitutes the basis for the refusal to execute a decision (Art. 611 fg (2) of the CPC). However, the Polish court is obligated to make a declaration to a competent authority of the State issuing the decision to send or complete the declaration.

Article 611 ff (3) of the CPC binds the Polish court, as the executing authority, to execute the decision immediately, which is correspondent with Art. 6 of the Decision 2005/214/JHA.

The decision shall be executed in an unchanged form and in a way as if it constituted a decision issued by a Polish court, taking into consideration only the fact of its partial execution. Applicable here is Art. 611c (3) of the CPC, according to which while determining the amount of a fine inflicted in a foreign currency, the court shall convert the fine or the amount of a daily rate according to the exchange rate specified by the National Bank of Poland at the time the penalty was imposed in a foreign country. The modification of the decision is possible only in the situation regulated in Art. 611 ff (5) of the CPC by the adjustment of the financial penalty issued in another Member State to the sanctions for a given crime provided for in the

Polish legal system. The aforementioned is strictly connected with Art. 8 of the Decision 2005/214/JHA. The condition for such a modification to be admissible is the establishment that the decision relates to acts which were not committed within the territory of the State issuing the decision and which at the same time are under the jurisdiction of Polish courts. In addition, a court may issue a decision on reducing the amount of the financial penalty under execution to the maximum amount of penalty provided for acts of the same kind under the Polish law.

Only in case of establishing obstacles listed in Art. 611 fg of the CPC, the Polish court can refuse to execute a decision relating to a financial penalty issued in another Member State.

The court examines the execution of the decision issued in another Member State in a court session. The right to take part in the session is granted to the prosecutor and the accused, to the latter under the condition that he resides within the territory of the Republic of Poland. This right is also granted to the defence counsel, unless, pursuant to the Act, he appears. If the accused, who resides within the territory of the Republic of Poland, has no defence counsel of his own choice, the president of the court, competent to examine the case, may appoint a defence counsel *ex officio*.

One may appeal against the decision of the court regarding the execution of the decision relating to a financial penalty. The appeal may be filed both against the decision relating to the refusal to execute a decision as well as against the decision to execute it. Both parties are entitled to appeal – the accused and the prosecutor, as well as the person directly related to the decision.

Pursuant to Art. 611 fh (3) of the CPC, the legally binding decision concerning financial penalties issued by another Member State, along with the attached declaration, constitutes an enforcement order and is subject to execution after the decision concerning its execution was issued by a competent Polish court.

If the information transferred by the State issuing the decision is insufficient to make a decision regarding the execution of the decision concerning a financial penalty, a Polish court requests a competent court or another authority, issuing the decision, to complete them within a

specified timeframe. In case of a missed deadline, the decision regarding the execution of the decision is issued on the basis of the information transferred earlier. While setting a deadline a court shall take into consideration both the scope of information that is to be completed, the time necessary to do it and the acceptable information medium as well as the fact that a decision should be executed immediately and overextension of proceedings may sometimes lower the chances for the conduct of an effective execution [Compare: 10, p.475].

Pursuant to Art. 611 fi (1) of the CPC, sums of money obtained from the execution of decisions are for the benefit of the national budget of the Republic of Poland, which is the executing State. The Minister of Justice is entitled to make an agreement with a competent authority of the executing State concerning the division of sums obtained from executions (2). The implementation of such an agreement shall mean that an appropriate sum of money is transferred in accordance with the agreement (3).

The Criminal Proceedings Code also regulates a situation, where before the issuing of a decision regarding the execution of the decision, the financial penalty is paid. In such a situation, a Polish court asks the court which issued the decision to confirm the payment, and after receiving such a confirmation deducts the paid sum from the executed sum (Art. 611 fj of the CPC) or alternatively discontinues the proceedings (Art. 611 fk of the CPC).

A Polish Court is obligated to inform the court of the issuing State about:

- 1) the contents of the decision regarding the execution of a decision,
- 2) the end of executive proceedings,
- 3) the possible conversion of financial penalty into community service or the execution of a substitutive penalty (611 fl of the CPC).

As it results from Art. 611fm of the CPC, costs related to the execution of a decision are incurred by the State Treasury. This provision constitutes the implementation of the aforementioned Art. 17 of the Decision 2005/214/JHA, which excludes Member States from the possibility to claim from each other the refund of costs resulting from application of the Decision 2005/214/JHA.

***Proceedings in cases relating to the application by a Polish Court for execution of a decision regarding a financial penalty***

Pursuant to Art. 611 fa of the CPC, a court may apply for the execution of a decision regarding a financial penalty. This means that such application is optional and should be driven by necessity and purpose. Therefore, it may take place only when the execution of a fine or another financial penalties in the Republic of Poland was unsuccessful or there are bases to claim that it was doomed to failure from the very beginning [14].

Such execution is purposeful if the competent authority has reliable information that the perpetrator has income abroad or there are grounds to assume that in view of him having property in another Member State or the very fact that he resides there, the execution of a fine or other financial penalty can be facilitated. When evaluating the purposefulness of the application, costs associated with it should be taken into account.

The Polish legislator limited the transmission of the enforcement only to perpetrators being natural persons. Therefore, it is not admissible to apply to another Member State with a motion to execute a financial penalty to which the subject is a collective entity. In turn, according to Art. 1 (a) of the Framework Decision 2005/214/JHA, the decisions to which the Framework Decision refers to shall mean final decisions requiring a financial penalty to be paid by a natural or legal person. Further provisions prove this principle. Article 4 (1), which defines the Member State to which the decision should be transmitted, indicates that in case of a legal person this should be the State where such a person has a registered seat. In addition, this principle is emphasised in Art. 9 (3), according to which a financial penalty imposed on a legal person shall be enforced even if the executing State does not recognise the principle of criminal liability of legal persons.

The application for the execution of the decision regarding a fine, a penal measure in the form of compensatory damages or pecuniary performance or the decision adjudicating the costs of court proceedings from the perpetrator can be made to a Member State in which the accused:

- 1) has a property – the property of both movables and immovables;
- 2) has income – this relates to any legally obtained income, regardless of its source;
- 3) has a permanent residence – this relates to the place of residence in another Member State, in which the person sentenced stays with the intention of living there permanently;
- 4) has a temporary residence – this means residing in a specific location within the territory of one of the Member States, which residence therein is not permanent in nature.

Article 611 fa (1) indicates that the Polish Court before making a decision regarding the execution of a decision shall establish, in a way raising no doubts, that at least one of the aforementioned circumstances occurs.

The Polish legislator did not introduce the principle stating that execution of a decision should not be applied for in a situation when financial penalty does not exceed EUR 70 or the equivalent of this amount. However, it should be concluded that any applications in such a situation are pointless as the country to which such an application was made has the right to refuse the execution of the decision under Art. 7 (2) of the Decision 2005/214/JHA.

The decision in which a financial penalty was issued itself does not constitute a sufficient basis to apply for its execution. A declaration attached to it is necessary. The standard application form of such a declaration was placed in the Annex to Decision 2005/214/JHA. In the Republic of Poland, the application form of such a declaration is the annex to the Order of the Minister of Justice of 23 February 2012 on determining the formula of the declaration used in case of applying to a Member State for the execution of a decision regarding a fine, penal measures in the form of compensatory damages, or a decision awarding the costs of court proceedings (Rozporządzenie Ministra Sprawiedliwości z dnia 23 lutego 2012 w sprawie określenia wzoru zaświadczenia stosowanego w razie wystąpienia do państwa członkowskiego UE o wykonanie orzeczenia dotyczącego grzywny, środków karnych w postaci nawiązki lub świadczenia pieniężnego lub orzeczenia zasądzonego od sprawcy koszty procesu) [15]. Such a declaration should be translated into the official language of the

executing State or into another language indicated by this State.

Art. 611 fc of the CPC regulates the manner in which a case is closed in the Republic of Poland when the decision was made to apply to another Member Country for execution of the decision regarding a financial penalty. In such a situation, the executive proceedings carried out in the Republic of Poland are adjourned. After receiving information about the execution of a decision, the court resumes the adjourned proceedings, and then discontinues them as being devoid of purpose.

In turn, in case of receiving information about the inability to execute a decision in another Member State partially or as a whole, a court resumes the adjourned proceedings in order to continue them, unless the inability resulted from the fact that the final judgment regarding the same crime was made and executed in another Member State.

Art. 611 fd of the CPC imposes an obligation on the Polish court issuing a decision to immediately

inform a competent authority of the executing State about any circumstances resulting in the inability to execute a decision, in particular about overruling the judgment as a result of cassation, resumption of the proceedings, a pardon or a ceased amenability to a penalty. This regulation corresponds to the reasons for refusal to recognize or execute a decision.

The Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition of financial penalties and its implementation into the Polish Criminal Procedure Code [16] enable the enforcement of decisions regarding financial penalties in other Member States of the European Union. Unquestionably, the adopted solutions are in the interest of the judicial system and provide a real possibility to execute such decisions with no unnecessary formalities. Currently, this instrument is frequently used by Polish courts. Other Member States also frequently use this tool. Until 28 September 2013, Germany applied to Poland in 3170 cases relating to the execution of financial penalties<sup>1</sup>.

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<sup>1</sup> Data obtained from the Ministry of Justice of the Federal Republic of Germany



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