

# Anonymised version

Translation

C-136/20 — 1

## Case C-136/20

### Request for a preliminary ruling

**Date lodged:**

12 March 2020

**Referring court:**

Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg, Hungary)

**Date of the decision to refer:**

12 March 2020

**Intervener in the proceedings:**

LU

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[...]

### DECISION

This court **stays** the proceedings brought against LU for the enforcement of a financial penalty or other financial obligation **and commences the preliminary-ruling procedure**, referring the following questions to the Court of Justice of the European Union for a preliminary ruling:

- 1) Must the rule laid down in Article 5(1) of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties be interpreted as meaning that, where the issuing Member State indicates one of the types of conduct listed in that provision, the authority of the executing Member State has no additional discretion to refuse execution and must execute the [decision imposing the penalty]?
- 2) If that question is answered in the negative, can the authority of the executing Member State argue that the conduct indicated in the decision of the issuing Member State does not correspond to the conduct described in the list?

[...] [procedural aspects of national law]

## REASONING

The Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg, Hungary) is seised of proceedings for the enforcement of a financial penalty or other financial obligation against LU, a Hungarian citizen, based on a request [...] lodged with this court on 27 January 2020 by the Bezirkshauptmannschaft Weiz (administrative authority of the district of Weiz, Austria) in the context of the procedure laid down under chapter IX/C of the az Európai Unió tagállamaival folytatott bűnügyi együttműködésről szóló 2012. évi CLXXX. törvény (Hungarian Law CLXXX of 2012 on cooperation between the Member States of the European Union in criminal matters).

### 1.

#### 1.1. Facts of the dispute:

The administrative authority of the district of Weiz imposed a financial penalty of EUR 80.00 on LU, a Hungarian citizen, by a penalty decision [...] of 6 June 2018, which became final on 1 January 2019, because LU, as the owner of a vehicle with the registration number [...], failed to state, within the time limit of two weeks from the date on which she was required to give the name of the driver of the vehicle, who was driving or who parked that vehicle at 14.21 hours on 28 December 2017 in the municipality of Gleisdorf [Austria].

In order to enforce the financial penalty imposed, the Austrian authority forwarded to the Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg), the court with jurisdiction, the final decision and the model certificate included in the annex to Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties ('the Framework Decision').

#### 1.2. Relevant EU law:

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

'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 of Great Britain and Northern Ireland, the French Republic and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament,

Whereas:

[Preamble]

...

(2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.

...

(4) This Framework Decision should also cover financial penalties imposed in respect of road traffic offences.

(5) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union ...

...

## Article 1

### Definitions

For the purposes of this Framework Decision:

- a) “decision” shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:
  - i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;
  - ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
  - iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
  - iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);
- b) “financial penalty” shall mean the obligation to pay:

i) a sum of money on conviction of an offence imposed in a decision;

...

c) “issuing State” shall mean the Member State in which a decision within the meaning of this Framework Decision was delivered;

d) “executing State” shall mean the Member State to which a decision has been transmitted for the purpose of enforcement.

...

## Article 5

### Scope

1. The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:

...

– conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,

...

## Article 7

### Grounds for non-recognition and non-execution

1. The competent authorities in the executing State may refuse to recognise and execute the decision if the certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision.

...

3. In cases referred to in paragraphs 1 and 2(c) and (g), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

...?

### 1.3. Applicable national law and case-law:

Az Európai Unió tagállamaival folytatott bűnügyi együttműködésről szóló 2012. évi CLXXX. törvény (Law CLXXX of 2012 on cooperation between the Member States of the European Union in criminal matters)

#### Article 109

‘1. Unless this Law states otherwise, judgments given in criminal proceedings in other Member States shall create the same effects as judgments given by Hungarian courts and, in criminal proceedings brought after judgment has been given in another Member State, shall be taken into account by the court seised of the case, the prosecution service and the authority conducting the investigation.

...’

#### Article 112

‘Legal assistance in relation to enforcement shall mean:

...

c) legal assistance for the enforcement of financial penalties or other financial obligations ...

...’

#### Article 113

‘Enforcement of the penalty or measure concerned shall be dealt with provided that it is appropriate to take into account the judgment given in another Member State.’

#### Article 140/A

‘...

3. In the case of the types of offence referred to in annex number 12, the court may not refuse to enforce a financial penalty imposed by another Member State on the grounds that the penalty decision imposed by that State cannot be taken into account because the double criminality condition is not satisfied.

4. The provisions of paragraph 3 shall also apply *mutatis mutandis* where the authority of another Member State seeks the enforcement of a financial penalty imposed in that State in connection with an act constituting an administrative offence in that State.

...’

[Former Article 148]

‘ ...

4. In its decision, the court shall determine the amount to be enforced and the imposition and collection of that amount shall be handled by the finance office operating in the appropriate törvényszék (high court).

...’

#### **1.4. The need for an interpretation of EU law in the present case:**

The enforcement of a financial penalty imposed by an authority of another Member State is to be dealt with by a court where that penalty was imposed in respect of the commission of a criminal offence (either under the law of the issuing Member State or in accordance with Hungarian law) and where the conduct penalised by the other Member State does not constitute a criminal offence or an administrative offence under Hungarian law.

The European Parliament, the Council of the European Union and the European Commission have emphasised in numerous documents the importance of road safety and the concern with promoting the effectiveness of penalties that punish infringements of road traffic legislation. Those documents also note that financial penalties imposed in respect of certain traffic offences do not tend to be enforced where those offences involve a vehicle registered in a Member State other than that where the offence was committed.

In Case C-671/18, the Court of Justice of the European Union held that the competent authority of the executing Member State may not refuse to recognise and execute a decision requiring payment of a financial penalty in respect of road traffic offences where such a penalty has been imposed on the person in whose name the vehicle in question is registered on the basis of a presumption of liability laid down in the national legislation of the issuing Member State, provided that that presumption may be rebutted. Similarly, in Case C-60/12, the Court observed that, under its Article 5(1), the scope of the Framework Decision includes offences relating to conduct which infringes road traffic regulations.

The purpose of strict liability, which is also applied by Hungarian law, is to ensure that offences do not go unpunished merely because the real perpetrator is unknown. Strict liability provides the vehicle owner with the possibility of choosing between stating the name of the real driver or paying the (as the case may be, limited) penalty imposed in respect of the infringement of road traffic regulations

However, the considerations set out above refer expressly to conduct which infringes road traffic regulations; the vehicle owner on whom a penalty is imposed

on the basis of strict liability is also punished (as a consequence) due to an infringement of road traffic regulations.

According to the wording of the request at issue in the present case, the authority of the other Member State imposed a financial penalty because the vehicle owner failed to state who was driving that vehicle at the time when the offence was committed, despite being required to do so by the authority. In this case, the ground for the penalty is failure to comply with an authority's request for information. It is questionable whether that is conduct contrary to road traffic regulations, including infringements of the laws governing driving times and rest periods and the provisions governing the transport of hazardous goods, or whether it is conduct outside that category, and consideration may lead to the conclusion that the conduct concerned does not correspond to that indicated in the Framework Decision.

This court takes the view that, in the present case, the conduct penalised by the decision of the other Member State is not conduct contrary to road traffic regulations, including infringements of the laws governing driving times and rest periods and the provisions governing the transport of hazardous goods, and that instead it merely constitutes non-compliance with the request for information made by the authority. Accordingly, it cannot be included in the list of conduct in respect of which the review of double criminality is excluded; therefore, in the view of this court, the classification as such of the conduct penalised in the decision of the other Member State amounts to an excessively broad interpretation of EU law which is not compatible with the original aim of the Framework Decision.

In accordance with Article 267 TFEU, the Court of Justice of the European Union has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

[...]

[...] [procedural aspects of national law]

Zalaegerszeg, 12 March 2020

[...] [signature, decision that has become final, date and signature]