

CJEU: Hungarian Court Must Enforce Austrian Fine for Refusal to Name Driver



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News

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In a [judgment of 6 October 2021](#), the CJEU ruled on the question of the extent to which an executing authority may challenge the legal classification of an offence by the issuing authority in a category where double criminality is no longer to be examined.

Facts of the case

The case ([C-136/20](#)) concerned the request by an Austrian authority to a Hungarian authority to execute a financial penalty against a Hungarian national on the basis of Framework Decision 2005/214/JI. That penalty was imposed because *LU*, as the owner of a vehicle involved in the commission of a road traffic offence in Austria, failed to comply with the obligation on her to identify the driver suspected of being responsible for committing that offence. Whilst the Austrian competent authority considered that the breach of that obligation to identify the driver constitutes an offence that falls within the scope of “conduct which infringes road traffic regulations” within the meaning of the thirty-third indent of Art. 5(1) of FD 2005/214, in respect of which verification of the double criminality of the act is precluded, the Hungarian competent authority submits, for its part, that the offence cannot be classified as such. The referring Hungarian court therefore asked the CJEU of whether it has additional discretion to refuse the execution of the financial penalty if the indication of the conduct as a “list offence” by the issuing authority is considered too excessive.

Finding of the CJEU

The CJEU emphasised that FD 2005/214 aims to establish an effective mechanism of mutual recognition of final decisions that imposed financial penalties on natural or legal persons for criminal and regulatory offences as defined in Art. 5(1) of the FD. Considering that the executing authority is, in principle, obliged to recognise the decision of the issuing authority without any formality and given that Art. 5(1) FD 2005/214 excludes verification of double criminality for offences “as...defined by the law of the issuing State”, the executing authority is bound by the legal classification of a sanctioned conduct made by the issuing authority. Moreover, an interpretation of Art. 5(1) FD 2005/214 which would allow the authority of the executing State to classify the offence in question itself on the basis of its national law would be contrary to the principle of mutual trust. Under these circumstances, the Hungarian authorities cannot refuse the recognition and execution of the submitted sanctioning decision of the Austrian counterpart.

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Put in focus:

The CJEU partly deviates from the [opinion of Advocate General de la Tour](#) in this case (delivered on 20 May 2021). The AG concluded that the executing authority can, on the basis of Art. 7(1) FD 2005/214, refuse to recognise and to execute a decision where the offence, as defined in the law of the issuing State, does not fall within the scope of the offence or the category of offences to which the competent authority in the issuing State refers in the certificate attached to that decision. However, the AG also concluded that the offence at issue is covered by the notion “conduct which infringes road traffic regulations”, so that the Hungarian authorities would not have been entitled to refuse the request. Overall, the CJEU indicates in its judgment a stricter line of the mutual recognition principle and reaffirms its standing case law that possibilities to refuse judicial decisions must be interpreted narrowly in a system based on mutual recognition and mutual trust.

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