

# CJEU Rules on Union-wide Enforcement of Fines against Legal Persons



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## News

**Thomas Wahl**

After its judgment on the interpretation of the Framework Decision on the application of the principle of mutual recognition to financial penalties (FD 2005/214/JHA) of 5 December 2019 (see [euclid 4/2019](#), p. pp. 246-247), the CJEU delivered another important judgment on the cross-border enforcement of fines on 4 March 2020 (*Case C-183/18, "Bank BGŻ BNP Paribas"*). The reference for preliminary ruling was brought up by a Polish court. In the case at issue, the *District Court of Gdańsk*, Poland, has to deal with a request from the central judicial recovery office of the Netherlands (CJIB) to recognise and enforce a fine of €36 imposed on the *Bank BGŻ BNP Paribas Gdańsk*, because the driver of a vehicle belonging to the bank had exceeded the authorised speed limit in Utrecht (Netherlands).

### *Legal Problems:*

The referring court first observed that the *Bank BGŻ BNP Paribas Gdańsk* has no legal personality under Polish law and does not have the capacity to act as a party in judicial proceedings. It is a separate entity of the parent company *Bank BGŻ BNP Paribas S.A.*, which has its seat in Warsaw. By contrast, Dutch law covers organisational units like the bank in Gdańsk under the concept of "legal persons" who can be liable for misdemeanours.

Second, the Polish court argues that there is no legal basis for recognising and enforcing the imposed fine, because the provisions of the Polish Code of Criminal Procedure transposing FD 2005/214 do not include legal persons. Although Art. 9 para. 3 of the FD imposes the obligation to enforce financial penalties against legal persons, even if the executing State does not recognise the principle of criminal liability of legal persons, in the view of the court, an interpretation of the Polish law in conformity with the provision of Art. 9 para. 3 FD would be *contra legem*.

### *Questions Referred:*

As a consequence, the *District Court of Gdańsk* asked the CJEU the following questions:

- Must the concept of "legal person" in the FD 2005/214 be interpreted in accordance with the law of the issuing State or the executing State or as an autonomous concept of EU law, and which consequences does this answer have for the concrete liability of the banking entity in Gdańsk?
- Must the financial penalty imposed on a legal person in the Netherlands be enforced in a Member State that has no national provisions on the execution of financial penalties imposed on legal persons?

### AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

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### *Decision as to the first question:*

Drawing on the context and the purpose of FD 2005/214, the CJEU concluded that the concept of “legal person” cannot be interpreted as an autonomous concept but must be interpreted in light of the law of the issuing State. The CJEU does not consider the legislation itself problematic but rather the implementation of the FD in practice. It advises the Polish court to consider whether, under the given circumstances, the infringement committed by the bank in Gdańsk can be attributed to the parent company Paribas with its seat in Warsaw. The sanction can be regarded as having been imposed on the entity with a legal personality. As a result, the fine could be enforced against *Bank BGŻ BNP Paribas S.A.*

### *Decision as to the second question:*

As regards the conflict between the national law and the obligations under Art. 9 para. 3 FD 2005/214, the CJEU first reiterates its established case law on the effects of Union acts and the principle of uniform interpretation. Referring to the *Poplawski* judgment (see [eucrim 2/2019, pp. 110-111](#)), the CJEU recapitulates that, although the framework decisions cannot have direct effect, their binding character nevertheless places an obligation on national authorities to interpret national law in conformity with EU law as from the date of expiry of the period for the transposition of these framework decisions. While the premise has its limits, e.g., no interpretation *contra legem*, the referring court must exhaust all possibilities to consider an interpretation of the Polish law in conformity with Union law (here, the obligation under Art. 9 para. 3 FD 2005/214). Contrary to the opinion of the referring court, the CJEU believes that the concepts of the Polish Code of Criminal Procedure can be interpreted as referring to the entity on which a final financial penalty has been imposed, regardless of whether this entity is a legal or natural person.

### *Put in Focus:*

Although it is up to the national court alone to determine whether national law can be interpreted in conformity with EU law, the CJEU stressed that national courts are empowered to pull out all the stops in order to ensure compatibility with the wording and purpose of EU law (here the framework decision). The CJEU has thus applied the lessons learned in the context of the European Arrest Warrant (judgment in Case C-573/17 – *Poplawski II*) to another instrument of mutual recognition in criminal matters, i.e., the mutual recognition of financial penalties. Against this background, the present judgment in *Bank BGŻ BNP Paribas* is of general significance, because the CJEU applies basic principles of its established case law on the primacy of Union law.

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