Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 20 May 2021 [1]

Case C-136/20

Criminal proceedings
against
LU

(Request for a preliminary ruling from the Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg, Hungary))

(Reference for a preliminary ruling – Area of freedom, security and justice – Framework Decision 2005/214/JHA – Mutual recognition of financial penalties – Article 5(1) – Offence relating to 'conduct which infringes road traffic regulations' – Scope of the offence – Financial penalty imposed by the issuing State on the vehicle owner on account of a breach of the obligation to identify the driver suspected of being responsible for committing a road traffic offence – Article 7(1) – Grounds for non-recognition and non-execution – Scope of and procedures for the verification by the executing State vis-à-vis the legal classification of the offence)

I. Introduction

1. By this reference for a preliminary ruling, the Court is invited to clarify the extent to which a competent authority in a Member State [2] may refuse to recognise and to execute a decision ordering a person to pay a financial penalty given in another Member State [3] where the authority considers the offence committed in the latter State does not come under the list of offences for which the EU legislature, in Framework Decision 2005/214, precluded verification of the double criminality of the act.

2. The request was made in the context of proceedings concerning the recognition and execution by the Hungarian competent authority of a financial penalty imposed on one of its nationals, LU, by the Austrian competent authority. That penalty was imposed because LU, as the owner of a vehicle involved in the commission of a road traffic offence, 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 considers that the breach of that obligation to identify the driver constitutes an offence falls within the scope of 'conduct which infringes road traffic

[1] Original language: French.

[2] 'The executing State' within the meaning of Article 1(d) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16).

[3] 'The issuing State' within the meaning of Article 1(c) of Framework Decision 2005/214.

regulations' within the meaning of the thirty-third indent of Article 5(1) of the framework decision, 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.

3. The questions submitted by the Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg, Hungary) seek, in essence, to determine the scope of and the procedures for the verification which may be carried out by the competent authority in the executing State where it considers that the request for recognition and execution of the financial penalty made to it by the competent authority in the issuing State is vitiated by an error as regards the legal classification of the offence within the meaning of Article 5(1) of Framework Decision 2005/214. Those questions also provide the Court with the opportunity to clarify the concept of 'conduct which infringes road traffic regulations' used by the EU legislature in the thirty-third indent of Article 5(1) of that framework decision, in the absence of any definition in EU law of that offence and in a context in which the road traffic rules within the European Union are not standardised.

4. In this Opinion, I will propose that the Court rule that Article 7(1) of Framework Decision 2005/214 is to be interpreted as meaning that the competent authority in the executing State may refuse to recognise and to enforce 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, for the purposes of applying Article 5(1) of that framework decision. However, before doing so, the competent authority in the executing State must initiate the consultation procedure provided for in Article 7(3) of the framework decision.

5. I will also invite the Court to rule that the thirty-third indent of Article 5(1) of Framework Decision 2005/214 is to be interpreted as meaning that the offence relating to 'conduct which infringes road traffic regulations' covers conduct by which the owner of a vehicle refuses to identify the driver who is suspected of being responsible for committing a road traffic offence.

II. Legal context

A. Framework Decision 2005/214

6. Recitals 1, 2 and 4 of Framework Decision 2005/214 state:

'(1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(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.'

7. Article 4(1) and (2) of Framework Decision 2005/214 provides:

'1. A decision, together with a certificate as provided for in this Article, may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.

2. The certificate, the standard form for which is given in the Annex, must be signed, and its contents certified as accurate, by the competent authority in the issuing State.'

8. As regards the scope of that framework decision, Article 5(1), thirty-third indent, and (3) of the framework decision provides:

'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,

…

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a decision subject to the condition that the decision is related to conduct which would constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.'

9. Article 6 of Framework Decision 2005/214, which is entitled 'Recognition and execution of decisions', reads as follows:

'The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.'

10. Article 7 of that framework decision, which is entitled 'Grounds for non-recognition and non-execution', provides:

'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.

2. The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that:

…

(b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;

…

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.'

B. Austrian law

11. Paragraph 103 of the Kraftfahrgesetz (Federal Law on Motor Vehicles) [4] of 23 June 1967 on the obligations of vehicle owners provides, in subparagraph 2 thereof:

'The authority may request information about the identity of the person who, at a particular time, drove a vehicle identified by its registration … or who parked the vehicle … last in a specific place before a particular time. That information, which must include the name and the address of the person concerned, must be provided by the registered owner …; if that owner is unable to provide that information, he is required to nominate the person who is able to do so and who, therefore, is subject to the duty to provide information; the information provided by the person subject to the duty to provide information shall not exempt the authority from verifying that information where it appears necessary to do so in the light of the circumstances of the case. The information must be provided immediately and, if requested in writing, within two weeks from notification …'

12. Paragraph 134(1) of the KFG 1967 on 'criminal provisions' reads as follows:

'Any person who infringes this federal law … shall commit an administrative offence and be punishable by a fine of up to EUR 5 000 and, if that fine cannot be recovered, a term of imprisonment of up to six weeks …'

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

13. By a decision of 6 June 2018, [5] which became final on 1 January 2019, the Bezirkshauptmannschaft Weiz (administrative authority of the district of Weiz, Austria) imposed on LU, a Hungarian national, a financial penalty of EUR 80. That penalty was imposed because LU, as the owner of a vehicle registered in Hungary, did not respond within the two-week period laid down in Austrian law to the request made by that administrative authority to identify the driver of her vehicle, who was suspected of being responsible for committing a road traffic offence.

14. On 27 January 2020, in accordance with Framework Decision 2005/214, the administrative authority of the district of Weiz sent to the referring court, which is also the competent authority in the executing State, a request for recognition and enforcement of the decision of 6 June 2018, together with the certificate provided for in Article 4 of that framework decision. It is apparent

4 BGBl. 267/1967; 'the KFG 1967'.

5 'The decision of 6 June 2018'.

from the information available to the Court that, in that certificate, the offence committed by LU was classified as 'conduct which infringes road traffic regulations' within the meaning of the thirty-third indent of Article 5(1) of the framework decision. However, the referring court has doubts whether the conditions for the recognition and enforcement of the decision of 6 June 2018 on the basis of that article are satisfied. In its view, the classification assigned by the competent authority in the issuing State to the act at issue amounts to an 'excessively broad' interpretation of EU law. The conduct of which LU is guilty constitutes a refusal to comply with a request made by national authorities and cannot come under the acts in respect of which verification of the double criminality of the act is excluded, within the meaning of Article 5(1) of Framework Decision 2005/214.

15. In those circumstances, the Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 5(1) of [Framework Decision 2005/214] be interpreted as meaning that, where the issuing … State indicates one of the types of conduct listed in that provision, the authority of the executing … 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 … State argue that the conduct indicated in the decision of the issuing … State does not correspond to the conduct described in the list?'

16. The Hungarian, Czech, Spanish and Austrian Governments and the European Commission submitted written observations.

17. It was decided, with the agreement of the Judge-Rapporteur, to put questions, in accordance with Article 61(1) of the Rules of Procedure of the Court, to which those same parties replied in writing within the time limit prescribed.

IV. Analysis

18. By its two questions referred for a preliminary ruling, which should be examined jointly, the referring court invites the Court, in essence, to clarify whether and, if so, to what extent the competent authority in the executing State may refuse to recognise and to execute a decision where it considers that the competent authority in the issuing State has wrongly referred, in the certificate attached to that decision, to one of the categories of offences laid down in Article 5(1) of Framework Decision 2005/214, in respect of which verification of the double criminality of the act is precluded.

19. The background to those questions lies in the difference of opinion between the competent authorities in the issuing State and in the executing State as regards the interpretation of the concept of 'conduct which infringes road traffic regulations', as provided for in the thirty-third indent of Article 5(1) of that framework decision.

20. The competent authority in the issuing State considers that the breach by the owner of a vehicle of the obligation on him or her to identify the driver suspected of being responsible for committing a road traffic offence falls within that concept. Under Austrian law, that breach

constitutes an offence against the highway code. By contrast, the competent authority in the executing State takes the view that the competent authority in the issuing State is adopting an 'excessively broad' interpretation of EU law, since such an offence cannot be covered by that concept. In its view, the decision of 6 June 2018 therefore falls outside the scope *ratione materiae* of Article 5(1) and concerns an 'other' offence within the meaning of Article 5(3) of that framework decision, such that it may make the recognition and execution of that decision subject to the condition that the criterion of the double criminality of the act is satisfied.

21. That difference of opinion can be explained by the very specific context of the case in the main proceedings. Unlike other offences listed in Article 5(1) of the framework decision, the offence relating to 'conduct which infringes road traffic regulations' is not defined in EU law and nor have the Member States adopted a common approach to it.

22. For the purposes of my analysis of the questions submitted to the Court, I will examine, first, the circumstances in which the competent authority in the executing State may check that the offence concerned falls within the scope *ratione materiae* of Article 5(1) of Framework Decision 2005/214 and, where appropriate, refuse to recognise and to execute the decision at issue. In that context, I propose to examine the provisions of Article 7(1) of that framework decision. That article expressly refers to the situation to which, in my view, the national court is referring, in which the competent authority in the executing State considers that the certificate attached to the decision at issue, which reproduces the list of the 39 offences contained in Article 5(1) of the framework decision, does not correspond to that decision.

23. Next, as part of a second stage, I will invite the Court to interpret the concept of 'conduct which infringes road traffic regulations', as provided for in the thirty-third indent of Article 5(1) of Framework Decision 2005/214.

A. The scope of the verification by the competent authority in the executing State

24. According to the Court's settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part.[6]

1. The wording of Article 5(1) of Framework Decision 2005/214

25. It should be observed, as a preliminary point, that Article 5(1) of Framework Decision 2005/214, to which the referring court makes reference, provides no answers as to the nature of the verification which the competent authority in the executing State may carry out in order to check that the offence, as defined in the law of the issuing State, falls within the scope *ratione materiae* of that provision and does not constitute an other offence within the meaning of Article 5(3) of that framework decision.

26. The purpose of Article 5 of Framework Decision 2005/214, as is made clear by its heading, is to define the scope of that framework decision. In Article 5(1) of the framework decision, the EU legislature lists the offences giving rise to recognition and enforcement of decisions, without verification of the double criminality of the act, and makes clear that the definition of those

[6] See judgments of 3 March 2020, *X (European arrest warrant – Double criminality)* (C-717/18, EU:C:2020:142, paragraph 21 and the case-law cited), and of 10 March 2021, *Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg* (C-365/19, EU:C:2021:189, paragraph 27 and the case-law cited).

offences is provided for by the law of the issuing State.[7] According to the Court's case-law, the law of the issuing State therefore governs the elements of criminal liability, in particular the applicable penalty and the entity on whom that penalty is imposed.[8]

27. In Article 5(3) of Framework Decision 2005/214, the EU legislature provides that verification of the double criminality of the act may be required for offences other than those covered by Article 5(1) of that framework decision.

28. The nature of the verification which may be carried out by the competent authority in the executing State is therefore not explicitly stated.

2. The scheme and objectives of Framework Decision 2005/214

29. Consideration of the scheme and of the objectives of Framework Decision 2005/214 and, in particular, of the provisions of Article 7(1) and (3) thereof,[9] makes it possible to determine the scope of the verification that the competent authority in the executing State may carry out in order to verify that the offence at issue, as defined in the law of the issuing State, does indeed fall within one of the categories of offences laid down in Article 5(1) of that framework decision.

30. It should be recalled, as a preliminary point, that Framework Decision 2005/214 is intended to establish an effective mechanism for recognition and cross-border execution of final decisions requiring a financial penalty to be paid by a natural person or a legal person following the commission of one of the offences listed in Article 5 of the framework decision.[10] While not harmonising the legislation of the Member States in the field of criminal law, that framework decision seeks to ensure the enforcement of financial penalties in those States by virtue of the principle of mutual recognition.[11]

31. That principle is the 'cornerstone' of judicial cooperation in both civil and criminal matters[12] and means, pursuant to Article 6 of Framework Decision 2005/214, that the competent authority in the executing State is, in principle, obliged, forthwith and without any further formality being required, to take all the measures necessary for the recognition of a decision 'which has been transmitted in accordance with Article 4' of that framework decision, unless it 'decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7' of the framework decision.

32. I note that, in order for the principle of mutual recognition to be implemented, the competent authority in the issuing State must send to the competent authority in the executing State a decision which complies with the requirements set out in Article 4 of Framework Decision

7 See judgment of 4 March 2020, *Bank BGŻ BNP Paribas* (C-183/18, EU:C:2020:153, paragraph 44).

8 See judgment of 4 March 2020, *Bank BGŻ BNP Paribas* (C-183/18, EU:C:2020:153, paragraph 44).

9 See judgment of 3 March 2020, *X (European arrest warrant – Double criminality)* (C-717/18, EU:C:2020:142, paragraph 21 and the case-law cited).

10 See Articles 1 and 6, and recitals 1 and 2 of Framework Decision 2005/214, as well as judgment of 4 March 2020, *Bank BGŻ BNP Paribas* (C-183/18, EU:C:2020:153, paragraph 48 and the case-law cited).

11 It is settled case-law that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained (see judgment of 10 January 2019, *ET* (C-97/18, EU:C:2019:7, paragraph 17)).

12 See recital 1 of Framework Decision 2005/214.

2005/214, and the competent authority in the executing State must initiate, pursuant to Article 7 of that framework decision, a consultation procedure before giving effect to a ground of non-recognition or non-execution.

(a) Verification by the competent authority in the executing State that the requirements laid down in Article 4 of Framework Decision 2005/214 are satisfied

33. In accordance with Article 4(1) of Framework Decision 2005/214, the competent authority in the issuing State must attach a certificate to its decision. That certificate is a standard form that appears in the annex to that framework decision. It includes various sections which must be completed by that authority. Those sections allow it to provide the minimum formal information concerning, inter alia, the authority in the issuing State which passed the decision and the authority competent for its enforcement, the natural or legal person on which the financial penalty has been imposed, and information relating to the nature of the decision and of the offence committed.

34. For the purpose of my analysis, reference must be made in particular to the information required in points 2 to 4 of Section (g) of the certificate, which is entitled 'The decision imposing a financial penalty'.

35. Under point 2 of Section (g) of the certificate annexed to Framework Decision 2005/214, the competent authority in the issuing State is required, first, to provide a summary of the facts and to describe the circumstances in which the offence was committed, including the time and place of the offence, and, second, to state the nature and legal classification of the offence as well as the applicable statutory provision or code on the basis of which the decision was made, the text of which must be attached to that certificate. [13]

36. Point 3 of that section concerns offences falling within the scope *ratione materiae* of Article 5(1) of Framework Decision 2005/214. The competent authority in the issuing State is in fact required to confirm whether the offence, as it is defined in its national law, 'constitutes' an offence under the list drawn up in that article by ticking the relevant box or boxes. [14] In that connection, the EU legislature reproduces the list of the 39 offences contained in Article 5(1) of that framework decision.

37. Point 4 of the section is, by contrast, devoted to the other offences which are not covered by the list drawn up by the EU legislature in Article 5(1) of the framework decision and in respect of which the competent authority in the issuing State is required to give a full description.

38. Under Article 4(2) of Framework Decision 2005/214, the certificate must be signed and the information contained therein certified as accurate by the competent authorities in the issuing State.

39. That strict and rigorous approach adopted vis-à-vis the description of the offence at issue must form the basis of the mutual trust, in particular in the context of Article 5(1) of Framework Decision 2005/214 where such trust precludes verification of the double criminality of the act in

[13] See Section (k) of that certificate.

[14] If the offence falls within the category of offences set out in the thirty-ninth indent of Article 5(1) of Framework Decision 2005/214 ('offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty'), which is particularly broad, the EU legislature asks the competent authority in the issuing State to indicate the exact provisions of the instrument adopted on the basis of the Treaty to which the offence relates.

relation to particularly serious offences. The information contained in the certificate provided for in Article 4 of that framework decision must enable the competent authority in the executing State to carry out a check of the decision in such a way as to guarantee that that decision is properly executed and, in particular, to make sure that the decision was adopted by a competent authority and falls within the scope of the framework decision. It is in that context that the competent authority in the executing State may verify, in the light of the information provided to it, whether the decision in question falls within the scope *ratione materiae* of Article 5(1) of Framework Decision 2005/214, such that verification of the double criminality of the act is precluded, or that of Article 5(3) of that framework decision. Such verification is however limited and must, where appropriate, go hand in hand with the consultation of the competent authority in the issuing State.

40. If the certificate is produced, is complete and corresponds to the decision, the competent authority in the executing State is required, pursuant to Article 6 of Framework Decision 2005/214, to recognise and to execute that decision, without any further formality being required, and forthwith take all the necessary measures for its execution. The competent authority in the executing State thus recognises the decision relying on the certificate transmitted by the competent authority in the issuing State which attests that the decision is lawful and enforceable.

41. However, if the certificate is not produced, is incomplete or 'manifestly does not correspond to the decision', it is clear from Article 7(1) of Framework Decision 2005/214 that the competent authority in the executing State may then refuse to recognise and to execute the decision. [15]

42. First, it is clear from the wording of that provision that it is for the competent authority in the executing State to assess the certificate's compliance with the requirements laid down in Framework Decision 2005/214 and to draw the appropriate conclusions from any non-compliance. On that point, the EU legislature gives that authority the choice whether or not to refuse to recognise or to execute the decision, notwithstanding the flaws vitiating the certificate.

43. Secondly, the flaws to which the EU legislature refers in Article 7(1) of Framework Decision 2005/214 concern cases in which the competent authority in the issuing State has not complied with its obligations under Article 4 of that framework decision by failing to attach the certificate, by not completing it or by producing a certificate that 'manifestly' does not correspond to the decision. The use of the adverb 'manifestly' in Article 7(1) of the framework decision demonstrates, in my view, the intention of the EU legislature to restrict the ground of non-recognition and non-execution of the decision to the existence of a manifest error vitiating the certificate, given the mutual trust that must exist between the competent authorities in the issuing State and the executing State as well as the need to ensure that the mechanism which it is seeking to establish is effective, swift and simple.

44. The last scenario provided for by the EU legislature covers, in my opinion, a situation such as that mentioned in the second question referred for a preliminary ruling where the competent authority in the executing State considers that the offence in question, as defined in the law of

[15] The text entitled 'Initiative of the United Kingdom, the French Republic and the Kingdom of Sweden with a view to adopting a Council Framework Decision on the application of the principle of mutual recognition to financial penalties' of 12 September 2001 provided, in Article 4(1) thereof: 'The competent authority in the Executing State may decide not to enforce the judgment if the certificate provided for in Article 2 is not produced, or the particulars in that certificate are incomplete or manifestly incorrect' (OJ 2001 C 278, p. 4).

the issuing State, does not correspond to the offence to which the competent authority in the issuing State refers for the purpose of applying Article 5(1) of Framework Decision 2005/214. In other words, the legal classification of the offence is incorrect.

45. That limited verification must, in my view, enable the competent authority in the executing State to check, on the basis of the information provided, that the competent authority in the issuing State is not seeking the recognition and execution of a decision on the basis of Article 5(1) of Framework Decision 2005/214 even though the offence in question, as defined in the law of the issuing State, *manifestly* does not come under the offences for which the EU legislature precludes verification of the double criminality of the act and constitutes, on the contrary, another offence as provided for in paragraph 3 of that article. The primary objective is to guarantee observance of the scope *ratione materiae* of Article 5 of that framework decision by ensuring that the offence is assigned the correct legal classification, since otherwise the mutual trust would be broken and the objective laid down in the framework decision thus not achieved.

46. Points 2 and 3 of Section (g) of the certificate annexed to Framework Decision 2005/214 allow that verification to be conducted, since details about the offence must be provided therein for the purpose of applying Article 5 of that framework decision. I would observe that point 2 of that section explicitly requires that information is provided about the offences to which the penalty relates as well as a description of the circumstance in which the offence or offences were committed, in addition to information regarding the 'nature and legal classification of the offence(s) and the applicable statutory provision/code'.

47. The check carried out by the competent authority in the executing State is made even easier because the offence which led to the imposition of a financial penalty corresponds to a specific act that is punishable in all the national legal systems, such as rape which is provided for in the twenty-eighth indent of Article 5(1) of Framework Decision 2005/214, or to an offence or a category of offences which is defined in EU law by minimum rules or has been the subject of a common approach adopted by Member States.

48. It should be observed, in this regard, that the offences giving rise to recognition and enforcement of a decision without verification of the double criminality of the act referred to in Article 5(1) of Framework Decision 2005/214 reflect, as a rule, the main forms of crime. Most of them have thus been the subject of harmonisation in EU law. This is the case, for example, with participation in a criminal organisation, which is defined in Article 1 of Framework Decision 2008/841/JHA;[16] terrorist offences, which are defined in Article 3 of Directive (EU) 2017/514;[17] trafficking in human beings, as defined in Article 2 of Directive 2011/36/EU;[18] child pornography and offences concerning sexual abuse, as defined in Articles 2 and 3 of Directive 2011/93/EU;[19] illicit trafficking in narcotic drugs and psychotropic substances, as defined in Article 2 of Framework Decision 2004/757/JHA;[20] fraud, as defined in Article 3 of Directive (EU)

[16] Council Framework Decision of 24 October 2008 on the fight against organised crime (OJ 2008 L 300, p. 42).

[17] Directive of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ 2017 L 88, p. 6).

[18] Directive of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011 L 101, p. 1).

[19] Directive of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ 2011 L 335, p. 1, and corrigendum OJ 2012 L 18, p. 7).

[20] Council Framework Decision of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8).

2017/1371;[21] facilitation of unauthorised entry and residence, as defined in Article 1 of Directive 2002/90/EC;[22] environmental crime, as defined in Article 3 of Directive 2008/99/EC;[23] and even illicit trafficking in cultural goods.[24]

49. In those situations, the competent authority in the executing State can determine with greater ease and speed whether the offence, as it occurred on the facts and as it is defined in the law of the issuing State – the text of which is attached to the decision – corresponds to the offence or to the category of offences to which the competent authority in the issuing State refers for the purpose of applying Article 5(1) of Framework Decision 2005/214, or to an other offence covered by the situation provided for in Article 5(3) of that framework decision.

50. However, such verification, even though it is limited, may prove more delicate where the offence or the category of offences to which the competent authority in the issuing State refers is not defined in EU law. The present case is one example of such a situation, as I have stated.

51. It is in such circumstances that I believe that the duty of consultation provided for in Article 7(3) of Framework Decision 2005/214 takes on its full significance.

(b) The consultation procedure initiated by the competent authority in the executing State pursuant to Article 7(3) of Framework Decision 2005/214

52. In accordance with Article 7(3) of Framework Decision 2005/214, in cases where, inter alia, the certificate is not produced, is incomplete or manifestly does not correspond to the decision, the competent authority in the executing State is required to consult the competent authority in the issuing State. It must initiate that procedure by any appropriate means and ask for any necessary information to be supplied without delay before deciding not to recognise and not to execute that decision.[25] The EU legislature thus demonstrates its desire to establish constructive dialogue between those authorities so as to allow for the correction of the flaws vitiating the certificate attached to the decision. I take the view that, in a situation such as that at issue, that dialogue must enable the competent authority in the issuing State either to correct the section to which it incorrectly referred or to provide supplementary information that allows the competent authority in the executing State to make a better assessment of the extent to which the offence, as defined in the law of the issuing State, is covered by the section to which reference is made in the certificate attached to the decision.

53. Only once that prior consultation is completed is the competent authority in the executing State thus free to assess, in accordance with Article 7(1) of Framework Decision 2005/214, whether or not it must recognise the decision notified to it.

21 Directive of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29).

22 Council Directive of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 17). See also Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 1).

23 Directive of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ 2008 L 328, p. 28). See also Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ 2005 L 255, p. 164).

24 See Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods (COM(2017) 375 final).

25 See, in that regard, judgment of 5 December 2019, *Centraal Justitieel Incassobureau (Recognition and enforcement of financial penalties)* (C-671/18, EU:C:2019:1054, paragraph 44).

54. In the light of all of the foregoing, I propose that the Court rule that Article 7(1) of Framework Decision 2005/214 is to be interpreted as meaning that the competent authority in the executing State may 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, for the purpose of applying Article 5(1) of that framework decision. The competent authority in the executing State can refuse to recognise and to execute the decision only where the consultation procedure initiated beforehand on the basis of Article 7(3) of the framework decision has not allowed the error vitiating the same decision to be corrected.

B. Interpretation of the concept of 'conduct which infringes road traffic regulations' provided for in the thirty-third indent of Article 5(1) of Framework Decision 2005/214

55. I note that the questions put to the Court have their origin in the difference of opinion between the competent authorities in the issuing State and in the executing State as to the interpretation of the concept of 'conduct which infringes road traffic regulations' provided for in the thirty-third indent of Article 5(1) of Framework Decision 2005/214, in respect of which verification of the double criminality of the act is precluded.

56. Since that offence has not been defined in secondary EU law,[26] it appears to me essential for the Court to take this opportunity to interpret the words used by the EU legislature, which will allow the referring court to determine the extent to which the competent authority in the issuing State made an error of assessment.

57. This case in fact illustrates the fears relayed at a very early stage by the European Economic and Social Committee (EESC) when work was being carried out in relation to a European highway code and vehicle register.[27] The EESC noted that 'Framework [D]ecision [2005/214] implies and requires measures to make road traffic rules uniform throughout Europe',[28] since such uniformity is necessary in order to 'avoid a situation where one activity is an offence in one Member State but not in another'.[29] Thus, in their observations, the Member States are divided as to interpretation of the concept used by the EU legislature in the thirty-third indent of Article 5(1) of Framework Decision 2005/214. Although the Hungarian and Czech Governments submit, in essence, that the offence of 'failing to report the driver of the vehicle' does not number amongst those to which that article refers, the Spanish and Austrian Governments and the Commission are, however, of the view that legislation such as that at issue in the main proceedings does fall within the scope of 'road traffic regulations' within the meaning of that article.

[26] As EU law currently stands, only certain aspects of road traffic legislation have in fact been harmonised by EU law: driving licences (Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18)); the use of safety belts (Council Directive 91/671/EEC of 16 December 1991 on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes (OJ 1991 L 373, p. 26), as amended by Directive 2003/20/EC of the European Parliament and of the Council of 8 April 2003 (OJ 2003 L 115, p. 63)); the organisation of the working time of road transport operators (Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35)); and exchanges of information on road-safety-related traffic offences (Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences (OJ 2015 L 68, p. 9)).

[27] See Opinion of the European Economic and Social Committee on 'A European highway code and vehicle register' of 29 January 2004 (OJ 2005 C 157, p. 34); 'the EESC Opinion on a European highway code'.

[28] See EESC Opinion on a European highway code (paragraph 5.3(a)).

[29] See EESC Opinion on a European highway code (paragraph 6.7).

1. The wording of the thirty-third indent of Article 5(1) of Framework Decision 2005/214 and the scheme into which that provision fits

58. It should be noted, from the outset, that there are differences between the various language versions of the thirty-third indent of Article 5(1) of Framework Decision 2005/214.

59. Whereas in the French-language version of that article the EU legislature refers to 'conduite contraire aux normes qui règlent *la circulation routière*' (in English: conduct which infringes *road traffic* regulations),[30] the Slovenian-language version refers to 'conduct which infringes *road safety* rules'[31] ('ravnanja, ki so v nasprotju s predpisi o varnosti v prometu'), whilst the Italian- ('infrazioni al codice della strada') and Polish- ('naruszenie przepisów ruchu drogowego') language versions refer to breaches of the 'highway code'.[32]

60. I would observe, first, that most language versions of the thirty-third indent of Article 5(1) of Framework Decision 2005/214 correspond to the French-language version, thus setting apart the Slovenian-language version, which refers only to road safety rules, and the Italian- and Polish-language versions, which refer only to breaches of the highway code. The Spanish- ('conducta contraria a la legislación de tráfico'), German- ('gegen die den Straßenverkehr regelnden Vorschriften verstoßende Verhaltensweise'), Greek- ('symperiforá pou paraviázei kanonismoús odikís kykloforías'), English- ('conduct which infringes road traffic regulations'), Lithuanian- ('elgesys, pažeidžiantis kelių eismo taisykles'), Hungarian- ('olyan magatartás, amely sérti a közúti közlekedés szabályait') and Slovak- ('správanie porušujúce pravidlá cestnej premávky') language versions thus refer to conduct which infringes road traffic rules or regulations.

61. I note, secondly, that the French-language version of the thirty-third indent of Article 5(1) of Framework Decision 2005/214 has its origin in the words used in Article 1 of the Agreement on cooperation in proceedings for road traffic offences and the enforcement of financial penalties imposed in respect thereof, approved by the decision of the Executive Committee of 28 April 1999,[33] the agreement which integrated the Schengen acquis.[34]

62. Article 1 of that agreement defines a 'road traffic offence' as '*conduct which infringes road traffic regulations* and which is considered a criminal or administrative offence, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods'.[35] The Italian-, Polish- and Slovenian language versions do not differ from the other language versions of Article 1 of the Agreement and define a road traffic offence as an act or conduct which infringes road traffic regulations.[36]

63. I conclude from this that, by using the concept of 'conduct which infringes road traffic' in the thirty-third indent of Article 5(1) of Framework Decision, the EU legislature intended to cover 'road traffic offences'.

30 Emphasis added.

31 Emphasis added.

32 The French-language version of point 3 of Section (g) of the certificate annexed to Framework Decision 2005/214 also refers to 'conduite contraire au code de la route' (in English: 'conduct which infringes the highway code').

33 OJ 2000 L 239, p. 428.

34 See, in this regard, Jekewitz, J., 'L'initiative de la République fédérale d'Allemagne relative à la coopération dans le cadre des procédures relatives aux infractions routières et à l'exécution des sanctions pécuniaires y relatives', *La reconnaissance mutuelle des décisions judiciaires pénales dans l'Union européenne*, Éditions de l'Université de Bruxelles, Brussels, 2001, pp. 133 to 139, in particular p. 137.

35 Emphasis added.

36 The Italian-language version reads 'Atto contrario alle norme che regolano la circolazione stradale', the Polish-language version 'Zachowanie naruszające przepisy o ruchu drogowym' and the Slovenian-language version 'vedenje, s katerim se krši prometne predpise'.

64. This is, moreover, borne out by the wording of recital 4 of Framework Decision 2005/214, in which the EU legislature states that that framework decision 'should also cover financial penalties imposed in respect of *road traffic offences*'.[37]

65. I therefore disagree with the view expressed by the Hungarian Government in its observations that the conduct covered by the thirty-third indent of Article 5(1) of Framework Decision 2005/214 should, in essence, be limited to that which infringes road safety. The wording used both in that article and in recital 4 of that framework decision clearly demonstrates the EU legislature's intention not to restrict the scope *ratione materiae* of the article merely to the infringement of road safety rules or regulations, as is the case within the context of Directive 2015/413, but rather to extend that scope to cover all road traffic rules, regardless of the nature of the legislation in which those rules are laid down.

66. That wording allows account to be taken of the heterogeneity of national road traffic legislation within the Union in both formal and substantive terms.

67. From a formal perspective, road traffic rules are not necessarily brought together in a specific code, such as the highway code,[38] but may rather be codified in different laws and regulations, as is the case in Germany.[39]

68. In substantive terms, there are major differences in road traffic rules between the Member States, despite the harmonisation already brought about by means of international agreements.[40] It is readily apparent that road signs and signals, driving licence requirements,[41] speed limits and even blood-alcohol limits can differ between Member States.[42] The EESC thus observed that, 'although there are significant differences just in the way that basic traffic rules are formulated, even more serious is the fact that these rules are interpreted and applied differently in the various Member States. This is not only because people view failure to comply with these rules differently, but also because the penalties for driving offences vary considerably too'.[43] In that context, the Court recalled in the judgment of 5 December 2019, *Centraal Justitieel Incassobureau (Recognition and enforcement of financial penalties)*[44] that offences relating to 'conduct which

37 Emphasis added.

38 In Belgium, such rules do not take the form of a code but they are rather defined by the arrêté royal portant règlement général sur la police de la circulation routière et de l'usage de la voie publique, du 1er décembre 1975 (Royal Decree laying down general rules on road traffic policing and the use of the public highway of 1 December 1975) (*Moniteur belge* of 9 December 1975, p. 15627), as last amended by the Decree of the Flemish Government of 15 January 2021 (*Moniteur belge* of 4 February 2021, p. 8401).

39 Road traffic rules in Germany are laid down in several laws, in particular the Straßenverkehrsgesetz (Road Traffic Act) of 3 May 1909, in the version thereof published on 5 March 2003 (BGBl. 2003 I, p. 310, corrigendum p. 919), as last amended by the Law of 26 November 2020 (BGBl. 2020 I, p. 2575), and the Straßenverkehrs-Ordnung (Highway Code) of 6 March 2013 (BGBl. 2013 I, p. 367), as last amended by the Ordinance of 18 December 2020 (BGBl. 2020 I, p. 3047), which contain the basic road traffic rules, and in the Personenbeförderungsgesetz (Passenger Transport Act) of 21 March 1961, in the version thereof published on 8 August 1990 (BGBl. 1990 I, p. 1690), as last amended by the Law of 3 December 2020 (BGBl. 2020 I, p. 2694), and the Straßenverkehrs-Zulassungs-Ordnung (Road Traffic Registration Code) of 26 April 2012 (BGBl. 2012 I, p. 679), as last amended by the Ordinance of 26 November 2019 (BGBl. 2019 I, p. 2015), which governs the registration procedure and compulsory insurance and contains rules applicable to the construction and the use of vehicles.

40 See, in particular, International Convention on Motor Traffic, signed in Paris on 24 April 1926; Convention on Road Traffic, signed in Geneva on 19 September 1949; and Convention on Road Traffic, signed in Vienna on 8 November 1968. See, in this regard, EESC Opinion on a European highway code (paragraph 3).

41 See EESC Opinion on a European highway code (paragraph 4).

42 For example, with regard to conditions for disqualification from driving or for withdrawal of a driving licence: see, inter alia, judgments of 7 June 2012, *Vinkov* (C-27/11, EU:C:2012:326) and of 23 April 2015, *Aykul* (C-260/13, EU:C:2015:257).

43 EESC Opinion on a European highway code (paragraph 4.5).

44 C-671/18, EU:C:2019:1054.

infringes road traffic regulations' are not subject to homogeneous treatment in the various Member States, some of which classify them as administrative offences while others treat them as criminal offences. [45]

69. Road traffic rules cover both the use of public highways and the signs and signals on such highways, as well as the obligations on the part of vehicle owners (registration procedure, taking out of civil liability insurance etc.) and of drivers (holding of a driving licence, observance of road sign/signal and road safety rules etc.) and the penalties applicable in cases of breach of those obligations. The concept of 'conduct which infringes road traffic regulations' used in the thirty-third indent of Article 5(1) of Framework Decision 2005/214 may therefore cover a good many actions and as many offences, the constituent elements of which may vary between the Member States.

70. Thus, although the Hungarian Government submits in its observations that the competent authority in the issuing State is obliged to apply the law and to interpret and classify conduct falling within the categories of offences laid down in Article 5(1) of Framework Decision 2005/214 as restrictively as possible, the fact remains that the road traffic rules to which the EU legislature refers in the thirty-third indent of Article 5(1) of that framework decision have a very broad scope. The concept of 'road traffic regulations' differs from other concepts provided for in the same article, which refer to specific conduct, such as organised robbery, illicit trade in organs, swindling or unlawful seizure of aircraft.

71. In that context, it is my view that the obligation on the owner of a vehicle to identify the person suspected of being responsible for committing a road traffic offence does come under a road traffic regulation and that a breach of that obligation falls within the scope *ratione materiae* of the thirty-third indent of Article 5(1) of Framework Decision 2005/214.

72. In the present case, the purpose of the provisions set out in Paragraph 103 of the KFG 1967 is to define the 'Legal obligations of the registered owner of a vehicle or trailer'. In other words, by virtue of his or her status as the owner of the vehicle identified as being involved in the commission of a road traffic offence, the owner of that vehicle is required to assist in the identification of the driver. It is clear from Paragraph 134(1) of the KFG 1967, which concerns 'criminal provisions', that any person who infringes that obligation commits an administrative offence, which is punishable by a fine and, if that fine cannot be recovered, a term of imprisonment. In the present case, the amount of the financial penalty is above the limit stipulated in Article 7(2)(h) of Framework Decision 2005/214.

73. A similar obligation exists in other Member States, such as France [46] and Belgium. [47]

[45] See judgment of 5 December 2019, *Centraal Justitieel Incassobureau (Recognition and enforcement of financial penalties)* (C-671/18, EU:C:2019:1054, paragraph 48 and the case-law cited). See also Opinion of Advocate General Bot in *Commission* v *Parliament and Council* (C-43/12, EU:C:2013:534, point 38), in which he observed that the constituent elements of the road traffic offences provided for in the context of Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences (OJ 2011 L 288, p. 1), which was replaced by Directive 2015/413, are likewise not harmonised at EU level but are determined by the Member States, as are the sanctions applicable to those offences.

[46] See Article L121-6 of the code de la route (Highway Code), which establishes the offence of failing to report the driver where the owner of the vehicle is a legal person.

[47] See Article 67a of the loi relative à la police de la circulation routière, du 16 mars 1968 (Law on road traffic policing of 16 March 1968) (*Moniteur belge* of 27 March 1968, p. 3146), as amended by the Law of 8 May 2019 (*Moniteur belge* of 22 August 2019, p. 80518), which is inserted into Title V, entitled 'Procédure pénale, ordre de paiement et procédure judiciaire civile' (Criminal proceedings, payment orders and civil judicial proceedings), specifically within Chapter IVa, entitled 'Identification du contrevenant' (Identification of the offender').

74. The purpose of identifying the driver of a vehicle is to guarantee the order and the control of road traffic, as the Austrian Government points out in its observations. That obligation pursues, to my mind, the same objective as that assisted by the obligation on the vehicle owner to affix a licence plate to his or her vehicle, which is intended to establish his or her identity.

75. Such identification is essential in order to enforce the civil liability of the vehicle's owner or the criminal liability of the driver. In accordance with the principle of the personal nature of penalties, only the driver is criminally responsible for the offences which he or she commits whilst driving a vehicle. He or she must therefore be identified by name so that the commission of the road traffic offence may be attributed to him or her and a penalty imposed. As is shown by the measures adopted in the context of Directive 2015/413, that identification is essential where the offence committed relates to certain road traffic offences, including speeding, drink-driving and failing to stop at a red light. [48] As the Austrian Government states in its reply to the questions put to it by the Court, in the case in the main proceedings the driver is suspected of speeding within the meaning of Article 2(a) of that directive. It should be noted that, in the judgment of 4 March 2020, *Bank BGŻ BNP Paribas*, [49] the Court found that the provisions of Directive 2015/413 provide that Member States must facilitate, in a spirit of sincere cooperation, the cross-border exchange of information concerning the road traffic offences provided for in Article 2 of that directive in order to facilitate the enforcement of sanctions, where those offences were committed in a Member State other than the Member State in which the vehicle in question is registered, and thus to contribute to the attainment of the objective pursued by that directive, which is to ensure a high level of protection for all road users in the European Union. [50] To that end, the Court held that the cross-border exchange of information must encompass data provided by the Member State of registration, in the present case the executing Member State, allowing the identification not only of the registered owner of the vehicle but also of the person liable under national law in the event of a road traffic offence, in order to facilitate the enforcement of any financial penalties. [51]

76. In addition, that obligation to identify the driver allows practical and technical difficulties specific to the particular area of road traffic to be resolved. Depending on the nature of the offence or the method of control used, attributing the road traffic offence to an individual raises difficulties.

77. Road traffic offences are somewhat unique in that it is often difficult for the police authorities to identify the driver with certainty if there is no direct contact with him or her, in particular where the detection of the offences occurs in the driver's absence, such as illegal parking, and even where the offence is recorded automatically using cameras, as in the case of speeding, the offence at the origin of the present case. [52] This has led some Member States, such as the French Republic, to establish a presumption of liability on the part of holder of the certificate of registration in the case of breaches of the rules on the parking of vehicles and the payment of tolls in respect of which only a fine is imposed. [53]

[48] The obligation at issue in the main proceedings applies regardless of the road offence committed, since the Austrian legislature seeks to identify the person who 'drove' or 'parked' the vehicle at a particular time.

[49] C-183/18, EU:C:2020:153.

[50] See judgment of 4 March 2020, *Bank BGŻ BNP Paribas* (C-183/18, EU:C:2020:153, paragraph 54).

[51] See judgment of 4 March 2020, *Bank BGŻ BNP Paribas* (C-183/18, EU:C:2020:153, paragraph 55).

[52] See recital 3 of the Agreement cited in point 61 of this Opinion.

[53] See Article L121-2 of the code de la route (Highway Code).

78. The obligation on the owner of the vehicle to identify the driver of that vehicle when a road traffic offence was committed is therefore a tool used by the Member States to improve the means at their disposal when investigating such an offence, by enabling them to obtain the information necessary to identify the perpetrator of that offence and therefore to punish him or her.

79. It follows from the foregoing that the breach of that obligation is an offence with its own substance and constituent elements and cannot be classified as an 'incidental offence', as the Hungarian Government claims.

80. That interpretation is supported by the wording of the Agreement of 11 October 2012 signed between the Republic of Bulgaria, the Republic of Croatia, Hungary and the Republic of Austria facilitating the cross-border enforcement of traffic offences.[54] I would point out that, pursuant to Article 18 of Framework Decision 2005/214, that framework decision does not preclude the application of that agreement if the latter allows the prescriptions laid down in the framework decision to be exceeded and helps to simplify or facilitate further the procedures for the enforcement of financial penalties. It is true that, as the Austrian Government has stated, the Agreement does not apply *ratione temporis* to the present case as it came into force, in relation to Austria, on 28 August 2018. However, I consider its provisions to be of interest. Both the issuing State and the executing State in the present case are parties to an agreement which has the specific aim, pursuant to Article 6(1) thereof, of establishing a system of cooperation for the purpose of the cross-border enforcement of financial penalties imposed on account of the commission of a road traffic offence.

81. In addition, under Article 1(1) of the Agreement of 11 October 2012, 'road traffic offences' include not only the road-safety-related traffic offences laid down in Article 2 of Directive 2015/413,[55] but also offences relating to a *failure to cooperate* on the part of the person in possession of the vehicle, the vehicle owner or any other person suspected of having committed a road traffic offence, if provision is made for those offences in the law of the State on whose territory the offence was committed. It thus follows from Article 1(2) of that agreement that the system of cooperation established by the States parties covers the enforcement of financial penalties imposed, inter alia, because of a failure to cooperate on the part of the owner of the vehicle which was involved in the commission of a road traffic offence.

82. The interpretation that I propose is likewise supported by the case-law of the European Court of Human Rights. In the judgment in *Weh v. Austria*,[56] that court drew a clear distinction, in the field of road traffic offences, between the penalty imposed on a vehicle owner who did not disclose the identity of the driver responsible for committing the road traffic offence, in breach of his or her obligation to do so under Paragraph 103(2) of the KFG 1967, and the penalty to which he or she could be subject on account of the commission of the road traffic offence.

83. As EU law currently stands, I therefore take the view that an obligation such as that at issue, under which the owner of a vehicle is required to disclose the identity of the driver suspected of being responsible for committing a road traffic offence, is a road traffic regulation within the

[54] 'The Agreement of 11 October 2012'.

[55] Following the annulment of Directive 2011/82 by the Court in the judgment of 6 May 2014, *Commission* v *Parliament and Council* (C-43/12, EU:C:2014:298), because an incorrect legal basis was used, that directive was replaced by Directive 2015/413, the content of which is identical to Directive 2011/82.

[56] ECtHR, 8 April 2004, *Weh v. Austria*, EC:ECHR:2004:0408JUD003854497, §§ 52 to 56. See also ECtHR, 24 March 2005, *Rieg v. Austria*, EC:ECHR:2005:0324JUD006320700, §§ 31 and 32.

meaning of the thirty-third indent of Article 5(1) of Framework Decision 2005/214, and that breaching that obligation falls within the scope of 'conduct which infringes road traffic regulations' within the meaning of that provision.

84. That interpretation is supported by the purpose of Framework Decision 2005/214.

2. The objective of Framework Decision 2005/214

85. The objective of Framework Decision 2005/214 is to enable the more effective enforcement of offences, in particular road traffic offences, by establishing a system of cooperation between the competent national authorities in the field of enforcement.

86. It is clear from recitals 2 and 4 of Framework Decision 2005/214 that the system of cooperation established by it is intended to enable better enforcement of the financial penalties imposed on the owners of vehicles registered in another Member State on account of the commission of road traffic offences. Such offences have a cross-border dimension and may be particularly serious. The aim is therefore to ensure that those offences are enforced more effectively and, by virtue of the deterrent effect, also to encourage drivers to observe the road traffic rules of the Member States through which they drive.

87. In that context, to exclude from the road traffic offences provided for in the thirty-third indent of Article 5(1) of Framework Decision 2005/214 an offence such as that at issue, relating to the breach of the obligation to identify the driver suspected of being responsible for committing a road traffic offence, appears to me to undermine the attainment of that objective.

88. Such exclusion would risk depriving the competent authority in the issuing State of the possibility of penalising a vehicle owner where that vehicle is registered in another Member State. This would entail a breach of equal treatment, but above all ultimately deny the competent authority in the issuing State the opportunity to pursue and to penalise the drivers of vehicles registered in another Member State who have committed a road traffic offence in the territory of the issuing State, even though those drivers may represent a danger to other road users in the European Union.

89. It is true that an offence such as that at issue, which relates to the breach of the obligation to identify the driver, is, prima facie, a minor offence in that it does not entail any material damage and there is no road accident victim. However, its cumulative impact across the territory of the European Union as a whole is, in my view, greatly significant and its punishment essential in order to guarantee compliance with road traffic rules in an area without internal borders. The obligation of identification at issue applies regardless of the road traffic offence committed by the driver of the vehicle. It may be a minor road traffic offence, such as illegal parking, even though, in the case of such an offence, the EU legislature has provided that the competent authority in the executing State may refuse to recognise or to enforce the decision if the financial penalty is less than or equal to EUR 70.[57] It may also be a more serious offence, such as failure to stop at a red light or speeding, the offence at the origin of the present case. Such conduct is a reflection of the day-to-day lived experiences throughout the territory of the European Union. It is, in my view, incompatible with the intention of the EU legislature to establish an area of freedom, security

[57] Pursuant to Article 7(2)(h) of Framework Decision 2005/214, the competent authority in the executing State may refuse to recognise and to execute the decision if it is established that the financial penalty is below EUR 70 or the equivalent to that amount.

and justice based on judicial cooperation between the Member States for the issuing State to be deprived of the means of pursuing and punishing such conduct because the vehicle in question is registered in another Member State.

90. In the light of all of the foregoing, I propose that the Court rule that the thirty-third indent of Article 5(1) of Framework Decision 2005/214 is to be interpreted as meaning that the offence relating to 'conduct which infringes road traffic regulations' covers the conduct of the owner of a vehicle who refuses to identify the driver suspected of being responsible for committing a road traffic offence.

V. Conclusion

91. In the light of the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Zalaegerszegi Járásbíróság (District Court, Zalaegerszeg, Hungary) as follows:

(1) Article 7(1) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties is to be interpreted as meaning that the competent authority in the executing State may 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, for the purpose of applying Article 5(1) of that framework decision.

    The competent authority in the executing State can refuse to recognise and to execute the decision only where the consultation procedure initiated beforehand on the basis of Article 7(3) of the framework decision has not allowed the error vitiating the same decision to be corrected.

(2) The thirty-third indent of Article 5(1) of Framework Decision 2005/214 is to be interpreted as meaning that the offence relating to 'conduct which infringes road traffic regulations' covers the conduct of the owner of a vehicle who refuses to identify the driver suspected of being responsible for committing a road traffic offence.