Analysis

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"The Judgement of the Court of Justice in *LU.* A missed opportunity to address certain aspects of the Framework Decision on financial penalties"

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On Wednesday 6 October 2021, the Court of Justice issued its judgment in *LU* (C-136/20) concerning the interpretation of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, and adopted a restrictive approach regarding the grounds for refusal to recognise and execute a decision from a competent authority of an issuing Member State. Whilst the outcome of the case is unsurprising, the Court of Justice had the opportunity to interpret the concept of ‘conduct which infringes road traffic regulations’ as a criminal offence for which double criminality of the act is precluded. Moreover, following Advocate General (AG) Richard de La Tour’s Opinion, the Court of Justice had the chance to shed light on whether an executing State has discretion to verify the request for recognition and execution of the financial penalty by the issuing State if it considers that the request is vitiated by an error as regards the legal classification of the offence within the meaning of Article 5(1) of the Framework Decision. Unfortunately, these issues remain unaddressed.

As previously reported on EU Law Live (here), the case concerned a financial penalty imposed on a registered owner of a vehicle involved in the commission of a road traffic offence, who failed to comply with the obligation to identify the driver suspected of being responsible for committing the offence. The breach to comply with that obligation falls, according to the Austrian competent authority, within the scope of the 33rd indent of Article 5(1) of the Framework Decision which provides ‘conduct which infringes road traffic regulations’ as an offence for which double criminality of the act is precluded. By contrast, the Hungarian competent authority submits that the act in

question committed by LU does not fall within that classification and that the issuing State has adopted an 'excessively broad interpretation of EU Law'.

Interestingly, in its Opinion − in which the issues in question were addressed more generally − AG Richard de La Tour had held that Article 7(1) of the Framework Decision should be interpreted as meaning that the executing State may refuse to recognise and to execute a decision if the offence, as defined in the law of the issuing State, does not fall within the offence or the category of offences to which the certificate attached to the issuing State's decision refers for the purpose of applying Article 5(1) of the Framework Decision. The refusal to recognise and to execute is, however, only permitted if the consultation procedure referred to in Article 7(3) of the Framework Decision has not been able to rectify the error in that decision. In addition, the AG included a rigorous discussion on the interpretation of the offence in question which is not defined in EU Law.

The Court of Justice, however, focused on the effectiveness of the Framework Decision as a mutual recognition instrument and ruled that allowing an executing State to classify the offence according to their national law would undermine mutual trust upon which the Framework Decision is built. Unlike the AG, who addressed the question whether, in principle, an executing State could refuse to give effect to a decision of an issuing State if the classification of the offence does not correspond with the issuing State's decision and thoroughly discussed the legal basis and scope of the verification that an executing State may enjoy, the Court of Justice concentrated on the specific facts of the case. It held that the Hungarian preliminary reference does not indicate that the certificate, as stipulated in Article 4 of the Framework Decision, not corresponds with the decision of the issuing State, it only refers to the broad interpretation of 'conduct which infringes road traffic regulations'. Therefore, the case does not concern a ground for refusal and execution as listed in Article 7(1) of the Framework Decision, and the executing State should give effect to the decision of the issuing State without verification of the double criminality of the act.

The Court's reasoning is in line with previous case law, such as *Centraal Justitieel Incassobureau* (C-671/18), in which the Court of Justice reiterated that Member States should, in principle, recognise and execute a decision of an issuing State and that the grounds for refusal must be interpreted strictly. This includes the classification of the offence, especially if this concerns an offence listed under Article 5(1) of the Framework Decision, otherwise the effectiveness of the Framework Decision as a mutual recognition instrument is undermined. Unfortunately, whilst the AG stressed the importance of interpreting the offence 'conduct which infringes road traffic regulations' (Opinion, point 56), the Court of Justice did not expand on this.

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