



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

4 March 2020\*

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2005/214/JHA – Recognition and enforcement of financial penalties imposed on legal persons – Incomplete transposition of a framework decision – Obligation to interpret national law in accordance with EU law – Scope)

In Case C-183/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy Gdańsk-Południe w Gdańsku (District Court for Gdańsk-South, Gdańsk, Poland), made by decision of 26 February 2018, received at the Court on 9 March 2018, in the proceedings

**Centraal Justitiele Incassobureau, Ministerie van Veiligheid en Justitie (CJIB)**

v

**Bank BGŻ BNP Paribas S.A.,**

Intervener:

**Prokuratura Rejonowa Gdańsk-Śródmieście w Gdańsku,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteure) and N. Jääskinen, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Bank BGŻ BNP Paribas S.A., by M. Konieczny and M. Cymmerman, radcowie prawni,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Hungarian Government, by M.Z. Fehér, G. Koós and R.D. Gesztelyi, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and P. Huurnink, acting as Agents,

\* Language of the case: Polish.

– the European Commission, by R. Troosters and M. Owsiany-Hornung, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 12 November 2019,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(a), Article 9(3) and Article 20(1) and (2)(b) 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), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24), ('the Framework Decision').
- 2 The request has been made in proceedings brought by the Centraal Justitiele Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) (Central Judicial Recovery Office, Ministry of Security and Justice (CJIB), the Netherlands) relating to the recognition and enforcement of a financial penalty imposed by the Adm. Verwerking Flitsgegevens CJIB HA Leeuwarden (CJIB speed camera data processing department, Leeuwarden, Netherlands) on the branch, established in Gdańsk (Poland), of Bank BGŻ BNP Paribas S.A., which has its registered office in Warsaw (Poland).

### **Legal context**

#### *EU Law*

#### *The Framework Decision*

- 3 Recitals 1, 2 and 4 of the Framework Decision are worded as follows:
  - (1) The European Council meeting in Tampere [(Finland)] 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 [European] 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.'
- 4 Article 1 of the Framework Decision, entitled 'Definitions', provides, in point (a) thereof:

'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 ...'

- 5 Article 4 of the Framework Decision, entitled ‘Transmission of decisions and recourse to the central authority’, provides in paragraph 1 thereof:

‘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.’

- 6 Article 5 of the Framework Decision, entitled ‘Scope’, provides in paragraph 1 thereof:

‘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,

...’

- 7 Article 6 of the Framework Decision, entitled ‘Recognition and execution of decisions’, provides:

‘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.’

- 8 Under the heading ‘Law governing enforcement’, Article 9(1) and (3) of the Framework Decision provides:

‘1. Without prejudice to paragraph 3 of this Article, and to Article 10, the enforcement of the decision shall be governed by the law of the executing State in the same way as a financial penalty of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.

...

3. A financial penalty imposed on a legal person shall be enforced even if the executing State does not recognise the principle of criminal liability of legal persons.’

- 9 According to Article 20 of the Framework Decision, entitled ‘Implementation’:

‘1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 22 March 2007.

2. Each Member State may for a period of up to five years from the date of entry into force of this Framework Decision limit its application to:

...

(b) with regard to legal persons, decisions related to conduct for which a European instrument provides for the application of the principle of liability of legal persons.’

*Directive (EU) 2015/413*

10 Recitals 1 and 2 of 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) state that:

‘(1) Improving road safety is a prime objective of the Union’s transport policy. The Union is pursuing a policy to improve road safety with the objective of reducing fatalities, injuries and material damage. An important element of that policy is the consistent enforcement of sanctions for road traffic offences committed in the Union which considerably jeopardise road safety.

(2) ... This Directive aims to ensure that ... the effectiveness of the investigation of road-safety-related traffic offences should be ensured.’

11 Article 2 of that directive, entitled ‘Scope’, provides that the directive applies inter alia in the event of speeding.

12 Article 4 of that directive, entitled ‘Procedure for the exchange of information between Member States’, provides, in the third subparagraph of paragraph 3 thereof:

‘The Member State of the offence shall, under this Directive, use the data obtained in order to establish who is personally liable for road-safety-related traffic offences listed in Article 2 of this Directive.’

***Polish law***

*The Code of Criminal Procedure*

13 Chapters 66a and 66b of the Kodeks postępowania karnego (Code of Criminal Procedure) (‘the CCP’) transposed the provisions of the Framework Decision into Polish law.

14 Under the heading ‘Request from an EU Member State for execution of a final decision imposing a financial penalty’, Chapter 66b of the CCP provides, in Article 611ff thereof:

‘1. In the event that a Member State of the [European Union], referred to in this chapter as the “issuing State”, has submitted a request for execution of a final decision on financial penalties, such decision shall be subject to execution by the district court in the district where the offender has property or income, or has permanent or temporary residence. Within the meaning of the provisions of this chapter, the term “financial penalty” refers to the offender’s obligation to pay the following amounts set forth in the decision:

(1) an amount of money as a penalty for a criminal offence;

...

6. Unless the provisions of this chapter provide otherwise, the provisions of Polish law shall apply to the execution of the decision referred to in Paragraph 1. ...’

15 Article 611fg of the CCP provides:

‘Execution of the decision referred to in paragraph 1 of Article 611ff may be refused if:

(1) the act in connection with which the decision in question has been issued is not a criminal offence under Polish law, unless under the law of the issuing State it is an offence listed in Article 607w or under the law of the issuing State it is an offence:

...

(c) against transport safety,

...’

16 According to Article 611fh of the CCP:

‘1. The court will examine the case concerning the execution of the decision on financial penalties at a sitting in which the public prosecutor, the offender, if present in the territory of the Republic of Poland, and the offender’s defence lawyer, if he appears for the sitting, shall have the right to participate. If an offender who is not present in the territory of the Republic of Poland does not have a defence lawyer, the president of the court having jurisdiction to examine the case may appoint a defence lawyer *ex officio*.

2. The order issued by the court ruling on the execution of the decision on financial penalties shall be subject to appeal.

3. A final decision on financial penalties, together with the appended certificate referred to in paragraph 2 of Article 611ff, shall constitute an enforceable instrument and shall be enforceable in Poland following the making of an order for its execution.

4. If the information transmitted by the issuing State is not sufficient for an order to be made for the execution of a decision imposing financial penalties, the court shall request the competent court or other authority of the issuing State to provide it with the necessary additional information within a specified period.

5. In the event of failure to act within the period referred to in paragraph 4, the order for the execution of the decision shall be made on the basis of the information previously provided.’

*The Law on the liability of collective entities for unlawful acts*

17 Article 2 of the Ustawa o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary (Law on the liability of collective entities for unlawful acts) of 28 October 2002 (Dz. U. No 197, item 1661), in the version applicable to the dispute in the main proceedings, provides as follows:

‘1. ... a legal person or organisational entity without legal personality on which special provisions confer legal capacity, with the exception of the State Treasury, local authorities and associations of such authorities, shall constitute a collective entity.

2. A commercial company in which the State Treasury, a local authority or an association of such authorities has a holding, a capital company in the process of being formed, an entity in liquidation or an undertaking which is not a natural person, as well as a foreign organisational entity, shall also constitute a collective entity within the meaning of the Law.’

18 According to Article 22 of that Law:

‘The provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* to proceedings relating to the liability of collective entities for criminal offences, unless otherwise provided for by this Law. ...’

*The Code of procedure in cases involving minor offences*

19 The Kodeks postępowania w sprawach o wykroczenia (Code of procedure in cases involving minor offences) provides in Article 116b(1) thereof:

‘The provisions of Chapters 66a and 66b of the CCP shall apply *mutatis mutandis* to requests from EU Member States concerning the enforcement of fines, penalties in the form of exemplary damages, an obligation to pay damages or a decision awarding costs, and to the execution of a decision on financial penalties issued by a court or other authority of an EU Member State.’

*The Code relating to minor offences*

20 Chapter XI of the Kodeks Wykroczeń (Code relating to minor offences), entitled ‘Minor offences against transport safety and order’, provides in Article 92a thereof:

‘A person who, while driving a vehicle, does not comply with the speed limit stipulated by statute or by a road sign shall be liable to pay a fine.’

*The Civil Code*

21 According to Article 33 of the Kodeks cywilny (Civil Code), legal persons are to include the State Treasury and organisational units on which special provisions confer legal personality.

*The Code of Civil Procedure*

22 Article 64(1) of the Kodeks postępowania cywilnego (Code of Civil Procedure) provides that any natural or legal person is entitled to act as a party in judicial proceedings (capacity to act as a party in judicial proceedings). It provides also that organisational units without legal personality on which the law confers capacity to act as parties in judicial proceedings are to have that capacity.

*The Law on the freedom of business activity*

23 Article 5(4) of the Ustawa o swobodzie działalności gospodarczej (Law on the freedom of business activity) of 2 July 2004 (Dz. U. No 173 item 1807) defines a ‘branch’ as a separate and organisationally independent area of business activity, carried on by an entrepreneur outside that entrepreneur’s seat or principal place of activity.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

24 On 9 July 2017, the CJIB made an application to the Sąd Rejonowy Gdańsk-Południe w Gdańsku (District Court for Gdańsk-South, Gdańsk, Poland) for recognition and enforcement of the decision of 25 November 2016 of the CJIB speed camera data processing department, Leeuwarden (‘the decision of

25 November 2016'), imposing a fine of EUR 36 on Bank BGŻ BNP Paribas S.A., established in Gdańsk ('Bank BGŻ BNP Paribas Gdańsk'), a branch of Bank BGŻ BNP Paribas, which has its registered office in Warsaw.

- 25 The offence of exceeding the authorised speed limit by 6 km/h had been committed on 13 November 2016 in Utrecht (Netherlands) by the driver of a vehicle registered in the name of Bank BGŻ BNP Paribas Gdańsk.
- 26 It is apparent from the certificate which the CJIB appended to the decision of 25 November 2016 that Bank BGŻ BNP Paribas Gdańsk was not questioned during the proceedings which gave rise to that decision but was informed of its right to challenge the soundness of the charges against it, though it did not lodge an appeal within the prescribed period. It is apparent from the order for reference that the decision of 25 November 2016 therefore became final on 6 January 2017 and that, under Netherlands law, enforcement of the penalty imposed by that decision will become time-barred on 6 January 2022.
- 27 The referring court set a date for a hearing to examine the CJIB's application, referred to in paragraph 24 of this judgment, at which the parties to the main proceedings did not enter an appearance and did not submit observations.
- 28 The referring court states that Chapter 66b of the CCP, which transposed the provisions of the Framework Decision into Polish law, applies both to the execution of decisions on criminal offences and to the execution of decisions on minor offences, by reason of the reference to that chapter by Article 116b(1) of the Code of procedure in cases involving minor offences.
- 29 Nevertheless, the referring court is of the view that the Framework Decision has been incompletely transposed into Polish law, in so far as Polish law does not include the obligation imposed on the executing State by Article 9(3) of the Framework Decision to enforce financial penalties imposed on a legal person even if that State does not recognise the principle of criminal liability of legal persons.
- 30 In the view of the referring court, Article 611ff of the CCP refers to the 'offender' responsible for the act being penalised and to his or her 'permanent or temporary residence'. While the common meaning of the concept of 'offender' could lend itself to a broad interpretation, encompassing both natural and legal persons, a contextual interpretation of that concept, in the light of the structure of the CCP, and the absence of any reference to the registered seat lead, in its view, to the conclusion that the concept of 'offender', within the meaning of Article 611ff of the CCP, covers only natural persons.
- 31 Consequently, the referring court takes the view that Article 611ff et seq. of the CCP do not provide for the possibility of enforcing a decision imposing a financial penalty on a legal person.
- 32 According to the referring court, such a possibility is also not provided for by the Law on the liability of collective entities for unlawful acts, in so far as that law is not applicable to minor offences committed by collective entities, as its scope is limited to criminal or tax offences.
- 33 The incomplete transposition of the Framework Decision into Polish law has therefore, in the view of the referring court, resulted in an absence of rules on the possibility of recognising and enforcing financial penalties imposed on legal persons, with the consequence that the Polish courts consistently refuse to recognise and execute decisions imposing penalties of that kind.
- 34 The referring court notes that it follows from the case-law of the Court, in particular from the judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), that, even though framework decisions do not have direct effect, it is for the national authorities and in particular for the national courts, when they rule on the disputes before them, to interpret national law in accordance with the

provisions of framework decisions, with a view to ensuring the full effectiveness of EU law. The principle of interpreting national law in a manner consonant with EU law cannot, however, serve as a basis for an interpretation of national law *contra legem*.

35 The referring court argues that a broad interpretation of the concept of ‘offender’ as encompassing legal persons, in order to ensure that Polish law is in conformity with the Framework Decision, would amount to such an interpretation *contra legem*.

36 Consequently, the referring court is unsure, in the context of the first question, what conclusions are to be drawn from a finding that Polish law does not comply with the Framework Decision and, in particular, whether, in such a situation, the referring court is required to disapply the national rule in the case where that rule cannot be interpreted in conformity with EU law or, in the absence of other compatible provisions of national law, to replace the national rule with the rule contained in that framework decision.

37 In the context of the second question, the referring court seeks clarification of the concept of ‘legal person’. In that regard, it points out that, in Polish law, the branch of a legal person is referred to in the commercial register, although it does not have its own seat. Even though it is organisationally independent, a branch has no legal personality separate from the parent company and does not have capacity to act as a party in judicial proceedings. By contrast, it appears that in Netherlands law the organisational units of a legal person are also covered by the concept of ‘legal person’.

38 In that context, the referring court expresses uncertainty as to whether the concept of ‘legal person’, within the meaning of Article 1(a) and Article 9(3) of the Framework Decision, should be understood as an autonomous concept of EU law or whether it should be interpreted in accordance with the law of the issuing State or in accordance with the law of the executing State.

39 In the view of the referring court, that concept should be interpreted in conformity with the law of the issuing State, since it is for that State to impose a financial penalty in accordance with its own legal rules.

40 It was in those circumstances that the Sąd Rejonowy Gdańsk-Południe w Gdańsku (District Court for Gdańsk-South, Gdańsk, Poland) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Should the provisions of Article 1(a), Article 9(3) and Article 20(1) and (2)(b) of the Framework Decision ... be interpreted as meaning that a decision transmitted for execution which imposes a financial penalty on a legal person should be executed in the executing State despite the fact that the national provisions implementing that framework decision do not provide for the possibility of executing a decision which imposes such a penalty on a legal person?’

(2) In the event of an affirmative answer to the first question, must the term “legal person” as used in Article 1(a) and Article 9(3) of [the] Framework Decision ... be interpreted:

- a. in accordance with the law of the issuing State (Article 1(c) [of the Framework Decision]);
- b. in accordance with the law of the executing State (Article 1(d) [of the Framework Decision]);
- [or]
- c. as an autonomous concept of EU law,

and, as a consequence, does it also cover a branch of a legal person notwithstanding the fact that that branch does not have legal personality in the executing State?’

## Consideration of the questions referred

### *The second question*

- 41 By its second question, which should be dealt with first, the referring court asks, in essence, whether the concept of ‘legal person’ set out, inter alia, in Article 1(a) and Article 9(3) of the Framework Decision must be interpreted in the light of the law of the State which issued the decision imposing a financial penalty or in the light of the law of the executing State, or whether it constitutes an autonomous concept of EU law.
- 42 In that regard, it should be noted that, although the Framework Decision does not define the concept of ‘legal person’, its provisions refer to that concept on several occasions, in particular in the wording of Article 1(a) and of Article 9(3), the interpretation of which has been requested by the referring court.
- 43 In the absence of such a definition, reference should be made to the general scheme and purpose of the Framework Decision for the purpose of interpreting that concept.
- 44 As regards the general scheme of the Framework Decision, Article 5 thereof 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 offences is provided for by the law of the issuing State. As also noted by the Advocate General in points 66 and 67 of his Opinion, it follows from that article that the law of the issuing State governs the elements of criminal liability, in particular the applicable penalty and the entity on whom that penalty is imposed.
- 45 By contrast, the enforcement of a decision imposing a financial penalty is to be governed, pursuant to Article 9 of the Framework Decision, by the law of the executing State, which means, on the one hand, that the authorities of the executing State alone are to be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement, and, on the other hand, that a financial penalty imposed on a legal person must be enforced even if the executing State does not recognise the principle of criminal liability of legal persons.
- 46 It follows that, according to the general scheme of the Framework Decision, the concept of ‘legal person’ must be interpreted in accordance with the law of the State which issued the decision imposing a financial penalty.
- 47 That conclusion is supported by the purpose of the Framework Decision.
- 48 In that regard, it should be recalled, as is apparent in particular from Articles 1 and 6, and from recitals 1 and 2, that the Framework Decision 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 (judgments of 14 November 2013, *Baláž*, C-60/12, EU:C:2013:733, paragraph 27, and of 5 December 2019, *Centraal Justitieel Incassobureau (recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraph 29).
- 49 As was also noted by the Advocate General in point 68 of his Opinion, the Framework Decision, while not harmonising the legislation of the Member States in the field of criminal law, seeks to ensure the enforcement of financial penalties in those States by virtue of the principle of mutual recognition.

- 50 The principle of mutual recognition, which underpins the Framework Decision, means that, in accordance with Article 6 of that decision, the Member States are, as a rule, obliged to recognise a decision requiring payment of a financial penalty which has been transmitted in accordance with Article 4 of the Framework Decision without any further formality being required, and to take without delay all the measures necessary for its enforcement, with the result that the grounds for refusal to recognise or enforce such a decision must be interpreted restrictively (judgments of 14 November 2013, *Baláz*, C-60/12, EU:C:2013:733, paragraph 29, and of 5 December 2019, *Centraal Justitieel Incassobureau (recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraph 31).
- 51 In the present case, it is apparent from the order for reference that the penalty that the CJIB sought to enforce was formally imposed on Bank BGŹ BNP Paribas Gdańsk, which is a branch of Bank BGŹ BNP Paribas, a company with its registered office in Warsaw, and which, under Polish law, does not have legal personality or legal capacity to act as a party in judicial proceedings. According to the referring court, that fact could lead, in practice, to a situation in which it is impossible to enforce a financial penalty under the Framework Decision at the request of the competent authority of another Member State.
- 52 However, it should be noted that, as is apparent from the order for reference, under Polish law a branch does not have a legal personality separate from the company to which it belongs. In those circumstances, subject to the checks to be carried out by the referring court, it appears that the acts of Bank BGŹ BNP Paribas Gdańsk are imputable to Bank BGŹ BNP Paribas and that the penalty may be deemed to have been imposed on the latter. It thus appears that the enforcement of the penalty may be initiated, in accordance with the law of the Member State of enforcement, against Bank BGŹ BNP Paribas.
- 53 Consequently, since the branch and its parent company constitute a single legal entity under Polish law, notification to the branch of the decision imposing a financial penalty could be regarded as constituting notification to the parent company, which has the legal capacity to act as a party in judicial proceedings, including at the enforcement stage.
- 54 In addition, it should be noted more generally that the provisions of Directive 2015/413, applicable in the event of road-safety-related traffic offences, including in the case of speeding, provide that Member States must facilitate, in a spirit of sincere cooperation, the cross-border exchange of information concerning those offences in order to facilitate the enforcement of sanctions, where those offences are committed by means of a vehicle registered in a Member State other than the Member State in which the offence occurred, 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.
- 55 To that end, as also noted by the Advocate General in point 73 of his Opinion, the cross-border exchange of information must encompass data provided by the Member State of registration, in the present case the executing 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.
- 56 In the light of all of the foregoing considerations, the answer to the second question is that the concept of ‘legal person’ set out, inter alia, in Article 1(a) and Article 9(3) of the Framework Decision must be interpreted in the light of the law of the State which issued the decision imposing a financial penalty.

### *The first question*

- 57 By its first question, the referring court asks, in essence, whether the Framework Decision must be interpreted as meaning that it requires a national court to refrain from applying a provision of national law that is incompatible with Article 9(3) of the Framework Decision.
- 58 As is clear from the combined provisions of the Framework Decision, in particular Article 1(a) and Article 9(3) thereof, a financial penalty, within the meaning of that Framework Decision, imposed on a legal person must be enforced by the executing State. The Framework Decision, the binding character of which has been made clear in the case-law (see, to that effect, judgment of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraphs 33 and 34), therefore imposes on Member States an obligation to enforce such a financial penalty, irrespective of whether national rules recognise the principle of criminal liability of legal persons.
- 59 In that context, the referring court is unsure whether it is required, under the principle of the primacy of EU law, to disapply a provision of national law in the case where that provision cannot be interpreted in conformity with EU law or, in the absence of other compatible provisions of national law, to replace that national provision with the provisions of the Framework Decision itself.
- 60 In that regard, it should be recalled, as is clear from the case-law of the Court, that, in order to ensure the effectiveness of all provisions of EU law, the primacy principle requires, inter alia, national courts to interpret, to the greatest extent possible, their national law in conformity with EU law (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 57).
- 61 Where it is unable to interpret national law in compliance with the requirements of EU law, any national court, hearing a case within its jurisdiction, has, as an organ of a Member State, the obligation to refrain from applying any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before it (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 58 and 61 and the case-law cited).
- 62 By contrast, a provision of EU law which does not have direct effect may not be relied on, as such, in a dispute coming under EU law in order to disapply a provision of national law that conflicts with it (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 62).
- 63 Thus, the Court has ruled that a national court's obligation to disapply a provision of its national law which is contrary to a provision of EU law, if that obligation stems from the primacy afforded to the latter provision, is nevertheless dependent on the direct effect of that provision in the dispute pending before that court. A national court is therefore not required, solely on the basis of EU law, to disapply a provision of its national law that is contrary to a provision of EU law if the latter provision does not have direct effect (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 68).
- 64 For its part, the Framework Decision was adopted on the basis of the former third pillar of the European Union, in particular, under Article 31(1)(a) and Article 34(2)(b) of the EU Treaty. Since the Framework Decision has not been subject to any repeal, annulment or amendment following the entry into force of the Treaty of Lisbon, it follows from Article 9 of Protocol (No 36) on transitional provisions, annexed to the Treaties, that its effects continue to be governed by the EU Treaty and that it therefore does not have direct effect (see, by analogy, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 69 and 70).
- 65 It also follows from the Court's case-law that, although framework decisions cannot have direct effect, their binding character nevertheless imposes on national authorities an obligation to interpret national law in conformity with EU law as from the date of expiry of the period for the transposition of those framework decisions (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 72 and the case-law cited).

- 66 When applying national law, those authorities are therefore required to interpret it, to the greatest extent possible, in the light of the text and the purpose of the framework decision, taking into consideration the whole body of national law and applying the interpretative methods recognised by national law, with a view to ensuring that the framework decision is fully effective and to achieving an outcome consistent with the objective which it pursues (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 73 and 77 and the case-law cited).
- 67 It should be recalled, however, that the principle of interpreting national law in conformity with EU law has certain limitations, since that principle, on the one hand, precludes the criminal liability of individuals from being determined or aggravated, on the basis of a framework decision alone, in the absence of any legislation implementing its provisions, in cases where those individuals have committed an offence (see, to that effect, judgments of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 63 and 64, and of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 32) and, on the other hand, precludes an interpretation of national law *contra legem* (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 33 and the case-law cited).
- 68 In that context, it should be recalled that the Court has already held that the national court cannot validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law or is applied in such a manner by the competent national authorities (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 79 and the case-law cited). Those considerations apply, *a fortiori*, with regard to positions taken by legal academics.
- 69 In the present case, it should be observed, in the first place, that, although the referring court states that the impossibility of interpreting Polish law in a manner consonant with the objectives of the Framework Decision also follows from national case-law, including the case-law of the appellate courts, and from the views expressed by some legal academics, the referring court cannot rely on those factors alone in order to hold that it is not possible for it to interpret Polish law in a manner consonant with EU law.
- 70 In the second place, it should be noted that, contrary to what has been suggested by the Polish Government and the European Commission, the referring court is of the view that an interpretation of Polish law so as to ensure its conformity with the Framework Decision would amount to a *contra legem* interpretation of that law. According to the referring court, the concept of ‘offender’ used in Article 611ff(1) of the CCP does not lend itself to a broad interpretation that also encompasses legal persons. Nor is it possible to ensure the conformity of Polish law with the Framework Decision under any other national provision, including the Law on the liability of collective entities for unlawful acts, which does not apply to minor offences.
- 71 In that connection, it should be recalled that, as regards the interpretation of provisions of national law, the Court is in principle required to base its consideration on the information contained in the order for reference. According to settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (judgment of 10 January 2019, *ET*, C-97/18, EU:C:2019:7, paragraph 24 and the case-law cited).
- 72 Consequently, it is for the referring court alone to assess whether Polish law can be interpreted as permitting the enforcement of financial penalties imposed on legal persons in accordance with the requirement laid down by Article 9(3) of the Framework Decision.

- 73 However, the Court, which is called on to provide answers that will be of use to the national court in the context of a reference for a preliminary ruling, may provide guidance, based on the file in the main proceedings and on the observations which have been submitted to it, in order to enable the national court to give judgment (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 40 and the case-law cited).
- 74 In the present case, it should be noted that, according to the observations of the Polish Government and of the Commission, the provisions of Chapter 66b of the CCP constitute an appropriate legal basis for the recognition and enforcement of decisions imposing financial penalties on legal persons for the commission of a minor offence, in so far as there is nothing to prevent a broad interpretation of the concept of ‘offender’. In particular, the Polish Government takes the view that the absence of a reference to a registered seat in the provisions of that chapter is not an insurmountable obstacle to such an interpretation. In that regard, the Polish Government argues that Article 611ff(1) of the CCP also confers jurisdiction to enforce a financial penalty on the court in the district where the ‘offender’ has property or income, a criterion fully applicable to legal persons.
- 75 Like the Polish Government and the Commission, the Advocate General noted, in point 54 of his Opinion, that, in order to interpret the concept of ‘offender’ within the meaning of the provisions of the CCP relating to the enforcement of financial penalties, that concept is not to be understood in the meaning which it has in substantive criminal law, and it can be interpreted as referring to the entity on which a final financial penalty has been imposed, whether that is a legal person or a natural person.
- 76 Moreover, it is clear from the documents before the Court that several Polish courts have already granted requests to enforce financial penalties imposed in the Netherlands on legal persons for road traffic offences.
- 77 Thus, it is for the referring court to ascertain, in the light of the foregoing considerations, whether such an interpretation of the concept of ‘offender’ is possible in the context of Chapter 66b of the CCP.
- 78 Finally, it should be noted that such an interpretation would not lead to any increase in the liability of legal persons, since the extent of such liability is determined by the law of the issuing State.
- 79 In the light of all of the foregoing considerations, the answer to the first question is that the Framework Decision must be interpreted as meaning that it does not require a national court to refrain from applying a provision of national law that is incompatible with Article 9(3) of the Framework Decision, since that provision is devoid of direct effect. Nevertheless, the referring court is required to give, as far as is possible, an interpretation of national law that is in accordance with EU law in order to ensure a result that is compatible with the aim pursued by that Framework Decision.

### Costs

- 80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

- 1. The concept of ‘legal person’ set out, inter alia, in Article 1(a) and Article 9(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted in the light of the law of the State which issued the decision imposing a financial penalty.**

2. **Framework Decision 2005/214, as amended by Framework Decision 2009/299, must be interpreted as meaning that it does not require a national court to refrain from applying a provision of national law that is incompatible with Article 9(3) of Framework Decision 2005/214, as amended by Framework Decision 2009/299, since that provision is devoid of direct effect. Nevertheless, the referring court is required to give, as far as is possible, an interpretation of national law that is in accordance with EU law in order to ensure a result that is compatible with the aim pursued by Framework Decision 2005/214, as amended by Framework Decision 2009/299.**

[Signatures]