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LIMITE

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NOTE

From:	Portuguese delegation
To:	Delegations
Subject:	The Naples II Convention and Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition of financial penalties as amended by Council Framework Decision 2009/299/JHA of 26 February 2009

Portugal would like to discuss an issue in the context of the mutual recognition of financial penalties. This is because it has been receiving requests aimed at obtaining information prior to a decision being issued on the assets of a natural person with a view to making use of the mutual recognition of financial penalties mechanism.

Some doubts have arisen about the applicability of the Naples II Convention to this type of request, so as mentioned, we would like to discuss the matter in order to get the view of the other Member States.

Example of a request

A citizen with tax residence in Portugal was fined EUR 2000 by the customs administration of another EU Member State, due to the illegal possession and transport of a small amount of psychotropic substances.

The applicant Member State wants to obtain previous information on the assets of this person (properties, cars, bank accounts), in order to evaluate the subsequent issuance of a decision requiring a financial penalty, in accordance with Council Framework Decision 2005/214/JHA.

Questions

- Do you consider that the Naples II Convention is applicable in this situation?
 - Does the applicable national legislation in your country provide for investigation, prior to a decision being issued, into the existence of assets?
 - Which is the competent authority in your country for issuing a decision regarding the mutual recognition of financial penalties?
 - Does your customs administration have the legal power to execute such a decision?
 - What communication channel is used between the competent authorities in your country?
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