

Cross-border enforcement of administrative fines and recovery claims



Cross-border crime and the role of local government

- Within the European Union, **living and working across borders** has become a significant advantage and a matter of course.
- However, **crime doesn't stop at the border!** Criminals consciously use borders to stay under the administrations' radars.
- For the administrative approach, a **proper information position is essential**.
- Citizens may be subject to administrative fines and recovery claims in Belgium, Germany and the Netherlands.
- Administrative fines and recovery claims sometimes reach very high amounts due to a failure to pay the amount. **If the defaulter resides abroad or has goods in their possession abroad, the collection of this fine/recovery claim sometimes becomes more difficult.**

CASE: A subject who has been associated with organised crime also has an outstanding administrative fine and/or recovery claim with an administration. Meanwhile, the subject has moved abroad. The municipality is now looking to collect that fine and/or recovery claim.

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How can a local administration collect administrative fines and/or recovery claims?

1 Cross-border recovery of administrative fines

The international instrument that offers possibilities for the cross-border recovery of administrative sanctions is the Framework Decision on the application of the principle of mutual recognition to financial sanctions.

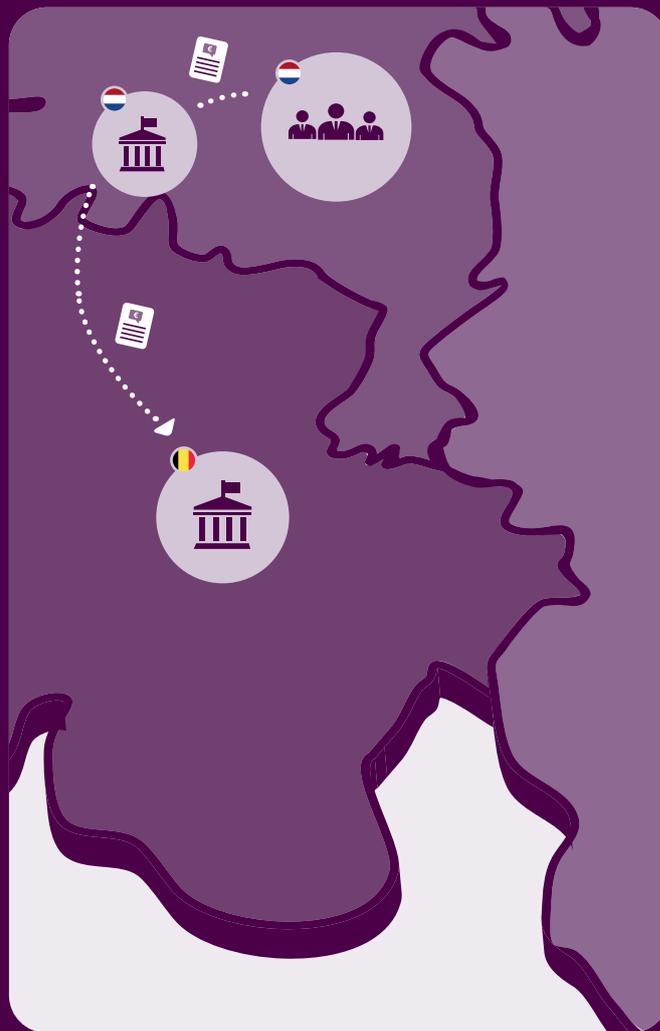
The Framework Decision requires each Member State to designate an authority or authorities as responsible for the implementation of the Framework Decision, and thus also for the possible recovery of fines. In addition, these authorities are also tasked with forwarding the requests for assistance with enforcement to the foreign competent authority. These authorities may be contacted to make collection of administrative fines possible.

Competent authorities:

- Belgium: the public prosecutor who is competent in the district where the relevant person resides
- Germany: Bundesamt für Justiz in Bonn
- The Netherlands: The Public Prosecutor of the district of the Northern Netherlands, affiliated with the Central Judicial Debt Collection Agency

2 Cross-border recovery of recovery claims

Recovery claims do not fall within the scope of the Framework Decision since the Framework Decision only relates to measures of a punitive nature. This punitive nature is lacking in recovery claims. Other bilateral arrangements for the recognition and collection of recovery measures are lacking. As a result, collecting amounts resulting from recovery claims across borders is, in principle, not possible.





Possibilities

Because a European Framework Decision monitors the cross-border collection of financial sanctions, administrative fines can also be collected across borders in many cases. Authorities have been designated for this collection and its implementation in Belgium, Germany and the Netherlands as the central responsible points for such requests.



Barriers

- In principle, however, the sums of administrative fines recovered cross-border accrue to the state that performs the recovery. As a result, foreign governments may be less inclined to make use of this option. The Framework Decision also offers the option to deviate from this principle, however, by concluding agreements between the Member States. There are currently no agreements between Belgium, Germany or the Netherlands that stipulate such a different distribution.
- Recognition and collection are possible for a number of offences without having to check whether the acts are punishable in both countries (e.g. fraud and money laundering). In other cases, such as administrative fines, there must be a acts that are punishable in both countries or may give rise to an administrative fine. Municipal employees often have insufficient knowledge of administrative fines abroad to know whether these violations are also punishable abroad, however.
- Dutch administrative fines in the framework of the administrative approach cannot be collected cross-border as they are not included in the list of financial sanctions that qualify for the Framework Decision and, therefore, cross-border collection.
- An international framework for the cross-border collection of recovery claims is lacking. As a result, incremental penalty payments, for example, cannot be collected abroad.



In short/conclusion

In many cases, European legislation makes it possible to collect administrative fines across borders. There is currently no such international instrument for recovery claims, which means that municipalities often write off these fines. Although as of now, the EURIEC has received various cases on the collection of recovery claims, it is still looking for cases relating to the recovery of administrative fines. These would allow us to put our findings into practice.

For a detailed legal explanation, please download the EURIEC memorandum 'Cross-border Collection of Administrative Fines and Recovery Claims' at www.euriec.eu.

If you have other questions or need support as a municipality with cross-border collection, please contact the EURIEC via: euriec.rik.limburg@politie.nl.