



## Report on cross-border enforcement of administrative fines and recovery claims

For the purpose of the administrative approach  
to organised crime



# Contents

<b>General description</b>	<b>3</b>
<b>1 Legal framework</b>	<b>5</b>
<b>1.1 European regulations</b>	<b>5</b>
1.1.1 Framework Decision 2005/214/JHA	5
1.1.2 Brussels I bis Regulation	6
<b>1.2 Belgium</b>	<b>7</b>
1.2.1 Administrative sanctions and recovery measures in Belgium	7
1.2.2 Enforcement of Belgian administrative claims in Germany/the Netherlands	7
1.2.3 Cross-border recovery of German/Dutch financial administrative fines and recovery claims in Belgium	8
<b>1.3 Germany</b>	<b>9</b>
1.3.1 Administrative sanctions and recovery measures in Germany	9
1.3.2 Enforcement of German administrative claims in Belgium/the Netherlands	9
1.3.3 Cross-border recovery of Belgian/Dutch financial administrative sanctions in Germany	9
<b>1.4 The Netherlands</b>	<b>12</b>
1.4.1 Administrative sanctions in the Netherlands	12
1.4.2 Enforcement of Dutch financial administrative sanctions in Belgium/Germany	12
1.4.3 Cross-border recovery of Belgian/German financial administrative sanctions in the Netherlands	13
<b>2 Practical consequences</b>	<b>14</b>
<b>3 Conclusion</b>	<b>15</b>

# General description

Governments in Belgium, the Netherlands and Germany may have claims against subjects based on different laws and regulations. Generally, the following claims are the most common:

- **Private law claims:** When the government acts as a legal person, for example, in the context of a lease agreement. If the municipality wishes to collect claims in such cases, this must be done through the civil court
- **Public law claims: taxes and fees.** The levy and collection of municipal taxes and fees are regulated in various special laws
- **Public law claims: penalty payments and recovery claims.** Governments may impose periodic penalty payments when the municipality wants to encourage a citizen to comply with a certain regulation or when the government wants to encourage the relevant person to correct a mistake
- **Public law claims: administrative fines.** Local authorities may impose fines based on certain laws and regulations in the context of, for example, maintaining public order and safety.

Clear and relatively well-known rules exist for the recovery of various claims, including cross-border recovery. For example, where cross-border private law claims are concerned, local authorities can rely on the Brussels I bis regulation, which supervises enforcement in civil and commercial matters. Regarding taxes and fees, international laws and regulations also exist that enable the cross-border recovery of such claims (see also the EURIEC memorandum: tax data).

However, the possibilities with regard to the collection of penalty payments, recovery claims and administrative fines are still unknown territory for most local authorities. These claims will nevertheless occur most often in the context of the fight against organised crime and, in practice, it appears that such claims are not collected or only partially collected when there is a cross-border element. For example, recovery often proves difficult when the subject on whom the sanction has been imposed turns out to have moved abroad subsequently. As a result, municipalities are more likely, in such cases, to choose to simply write off the fine in their accounts and therefore not collect it. Criminals are aware of this and use it to their advantage. Therefore, the EURIEC wants to use this memorandum to map out the possibilities for and obstacles to collecting cross-border penalties, recovery claims and administrative fines. The remainder of this memorandum will therefore focus on the cross-border recovery of such claims.

In section 1, the possibilities offered by international legal frameworks for the cross-border collection of administrative sanctions and recovery claims will be examined. This is followed by an explanation about the domestic possibilities for the recovery of administrative sanctions and recovery claims in Belgium, Germany and the Netherlands. In addition, the cross-border legal options are discussed in more detail for each country. Section 2 combines the findings from the first section and examines the practical consequences of (legal) bottlenecks, challenges and opportunities. Finally, section 3 offers a conclusion.



# 1 Legal framework

The issue to be examined is whether and how administrative sanctions and recovery claims can be collected across borders. In principle, direct recovery of sanctions and recovery claims appears impossible since the foreign municipalities must respect the other country's sovereignty. A foreign government cannot simply collect a fine in another country.<sup>1</sup> In order to justify an infringement on sovereignty, permission is required or a treaty basis must be available.

## 1.1 European regulations

The enforcement of penalties/claims is regulated by several European treaties. Most of these treaties deal with the exchange of decisions on criminal, civil and commercial matters, however, and not administrative matters. Nevertheless, some of the treaties and decrees dealing with criminal matters are open to broad interpretation, to allow certain administrative sanctions to fall within the scope as well.

### 1.1.1 Framework Decision 2005/214/JHA

The international instrument that appears to offer the most possibilities for the cross-border recovery of administrative sanctions is Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial sanctions. This Framework Decision only deals with administrative sanctions of a punitive nature. As a result, administrative fines generally fall within the scope of the Framework Decision, while remedial measures, such as the payment of a penalty, will not fall under this. After all, since remedial measures lack the punitive nature, they cannot therefore be referred to as a sanction.

The Framework Decision's aim is that the principle of mutual recognition should be applied to financial penalties imposed by a judicial or administrative authority. Member States mutually recognise the existence of sanctions imposed in another Member State. In this way, such sanctions could be enforced in Member States other than the one in which they were imposed.

Administrative sanctions may fall within the scope of the Framework Decision if the person concerned has had the opportunity to have the case heard by a court having jurisdiction in criminal matters in particular.<sup>2</sup> Since the term 'court having jurisdiction in criminal matters' is open to broad interpretation,<sup>3</sup> a criminal court does not need to provide legal protection. For the purposes of the Framework Decision, it is sufficient for the court to apply a procedure that meets the essential characteristics of criminal proceedings. These features should be understood to include: the full jurisdiction of the court to investigate the case, such as assessing the fine's proportionality.

The Framework Decision can be applied to administrative sanctions that:

- Have been imposed for an offence under the Framework Decision, such as participation in a criminal organisation, human trafficking, illicit drug trafficking, fraud and money laundering<sup>4</sup>
- In addition, other criminal offences may also be recognised and enforced. In that case, the executing State may, however, make recognition and enforcement conditional on the decision relating to an offence that is punishable under the law of the executing State.<sup>5</sup>

Regarding administrative sanctions in Belgium and the Netherlands, the criteria mentioned above are met and the Framework Decision can therefore be applied.<sup>6</sup> <sup>7</sup> This is in contrast to recovery claims that do not meet the above criteria as these claims are not categorised as a penalty.

1 A. J. METSELAAR & P. C. ADRIAANSE, *Grensoverschrijdende invordering van bestuurlijke boetes: een verkennend onderzoek naar ervaringen in België, Duitsland en het Verenigd Koninkrijk en mogelijkheden voor internationale samenwerking [Cross-border recovery of administrative fines: an exploratory study of experiences in Belgium, Germany and the United Kingdom and opportunities for international cooperation]*, WODC: The Hague, 2014, 27.

2 Art. 1, a) Framework Decision 2005/214/JHA.

3 ECJ, *Balazs case*, C 60/12.

4 Art. 5 paragraph 1 Framework Decision 2005/214/JHA.

5 Art. 5 paragraph 1 Framework Decision 2005/214/JHA.

6 Constitutional Court, judgment no. 44/2011, of 30 March 2011, B.10.1 and B.10.2.; Council of State, judgment no. 209.318, Gonthier, of 30 November 2010. Meeting of the Councils of State of the Benelux and of the Administrative Court of Luxembourg: administrative sanctions in Belgium, Luxembourg and the Netherlands, 2011, 3; See also Council of State, judgments numbers 205.637 and 205.638, Mohammad, of 22 June 2010.

7 Council of State (Netherlands), judgment 201308572/1/A3, 3 December 2014.

Each Member State should designate an authority or authorities to be responsible for the implementation of the Framework Decision. This authority or these authorities are competent when that Member State is the issuing State or the executing State.<sup>8</sup> A possible issue is that the collected sums of money accrue, in principle, to the state that makes the recovery, unless otherwise agreed with the other Member State.

### 1.1.2 Brussels I bis Regulation

As described in paragraph 1.1.1, the Framework Decision can only be applied if there is a possibility to have the case heard by a 'court having jurisdiction in particular in criminal matters'.<sup>9</sup> This is the case if the relevant court applies a procedure that has the essential characteristics of criminal proceedings.<sup>10</sup> If these conditions for the application of the Framework Decision are not met, it is possible, under certain conditions, to have the administrative sanction enforced by means of the Brussels I bis Regulation.<sup>11</sup> In principle, this Regulation only applies to civil and commercial matters and not to administrative matters.<sup>12</sup>

---

<sup>8</sup> Art. 2 paragraph 1 Framework Decision 2005/214/JHA.

<sup>9</sup> Art. 1 sub a Framework Decision 2005/214/JHA.

<sup>10</sup> De Boer 2020 (T&C Internationaal Strafrecht [T&C International Criminal Law]), Art. 10 WWETGC (Act of mutual recognition and execution of criminal sanctions), General.

<sup>11</sup> Regulation (EU) No 1215/2012.

<sup>12</sup> Art. 1 paragraph 1 Regulation (EU) No 1215/2012.

## 1.2 Belgium

### 1.2.1 Administrative sanctions and recovery measures in Belgium

As mentioned in the introduction, a (Belgian) municipality may have a claim against citizens in a variety of cases. Examples include receivables from private agreements or receivables resulting from taxes. However, this memorandum focuses primarily on the government's claims on citizens in the form of administrative sanctions and recovery measures.

Administrative sanctions are understood to mean: "administrative decisions that impose a penalty on persons for an act that is contrary to the applicable rules, whether it concerns a fine or any other punitive measure, monetary or otherwise".<sup>13</sup> In Belgium, administrative sanctions are not subject to a single regulation. As a result, no inventory of penalties is available in this context, nor are there unified procedures regarding, for example, the available means of legal redress.<sup>14</sup> Several government departments in Belgium, such as municipalities and the tax administration, have the power to impose administrative sanctions. Violations of environmental legislation that can be punished with administrative fines are one example of such sanctions.<sup>15</sup>

Regarding the cross-border recovery of administrative sanctions, the Framework Decision mentioned above and its transposition can be invoked into the Belgian law. Under Belgian law<sup>16</sup>, any decision imposing a financial penalty on a natural person or legal entity falls within the scope of the Framework Decision.

Recovery claims are understood to include the recovery claim, the penalty payment and the official execution.<sup>17</sup> The purpose of these measures is not to punish a citizen, but to rectify an act that the citizen has committed or put a stop to an anomalous situation. There is currently no legal/international law regulation for cross-border recovery should a citizen refuse to pay these recovery claims and move abroad.

### 1.2.2 Enforcement of Belgian administrative claims in Germany/the Netherlands

Persons who have been imposed an administrative fine in Belgium can try to move to Germany/the Netherlands to ensure that there are no more goods that can be seized in Belgium. That is why it is important to show how Belgian administrative fines can be collected.

#### Cross-border recovery administrative sanctions using the Framework Decision

In Belgium, the Framework Decision was transposed using the law on the application of the principle of mutual recognition of court rulings in criminal matters between Member States of the European Union. This law regulates, among other things, the way in which administrative sanctions can be transferred by Belgian authorities to other European Member States.<sup>18</sup> Administrative fines imposed by a Belgian administrative body, due to their punitive nature, fall under the conditions of the Framework Decision which, in principle, allows for cross-border collection. Fines imposed in the context of the administrative approach and administrative enforcement can therefore also fall within the scope of the Framework Decision. As mentioned above, incremental penalty payments do not fall within the scope of the Framework Decision because they are not punitive in nature. As a result, it is currently impossible to collect Belgian recovery claims in the context of administrative enforcement on a cross-border basis.

In order to recover a Belgian decision to impose an administrative pecuniary sanction in another EU Member State, a copy of the decision needs to be sent. This copy must be accompanied by a model certificate (see annex to the law) in which the Belgian competent authority certifies that the content is correct.<sup>19</sup> The copy and the certificate must then be sent to the competent authorities of the executing State. Under the law, the certificate must be translated into the official language or one of the official languages of the executing Member State.

<sup>13</sup> Recommendation R 91/1 regarding administrative sanctions, adopted by the Committee of Ministers of the Council of Europe on 13 February 1991.

<sup>14</sup> Meeting of the Councils of State of the Benelux and of the Administrative Court of Luxembourg: administrative sanctions in Belgium, Luxembourg and the Netherlands, 2011, 3.

<sup>15</sup> <https://omgeving.vlaanderen.be/bestuurlijke-geldboete>.

<sup>16</sup> Art. 2/1, 5° Law of 5 August 2006 on the application of the principle of mutual recognition of court rulings in criminal matters between the Member States of the European Union.

<sup>17</sup> K. Wauters, *Herstellvordering en herstelmaatregelen: ruimtelijk ordenen onder dwang [Recovery claim and recovery measures: spatial planning under compulsion]*, Brussel: Larcier.

<sup>18</sup> Art. 2 Law of on the application of the principle of mutual recognition of court rulings in criminal matters between the Member States of the European Union, 5 August 2006.

<sup>19</sup> Art. 3, 5° Law of on the application of the principle of mutual recognition of court rulings in criminal matters between the Member States of the European Union, 5 August 2006.

### 1.2.3 Cross-border recovery of German/Dutch financial administrative fines and recovery claims in Belgium

The procedure for foreign authorities is similar to the conditions that Belgian authorities must fulfil to collect an administrative fine across borders. Foreign authorities will thus have to submit a copy of the decision, accompanied by a certificate that certifies that the content is correct. The certificate submitted to the Belgian competent authority must also be translated into either Dutch, French, German or English.

Belgium does not have a single central service for the recovery of financial sanctions. The public prosecutor with territorial jurisdiction is responsible for sending/receiving requests under the Framework Decision.<sup>20</sup> As a result, requests from foreign governments must be submitted to the public prosecutor with territorial jurisdiction. In the context of financial sanctions, as is the case with administrative sanctions, the public prosecutor of the place of residence or domicile of the person concerned has territorial jurisdiction. In Belgium, the judicial districts and the prosecutor with territorial jurisdiction generally coincide with the provincial borders. It follows that if a person lives in the province of Antwerp, the public prosecutor of the judicial district of Antwerp is responsible for sending/receiving requests under the Framework Decision.

In principle, the Belgian authorities that rule on the decision that has been transmitted, recognise it without further formality. They also take all necessary measures for its enforcement.<sup>21</sup> The enforcement of administrative sanctions coming from another EU Member State may be refused in certain (limitative) cases:

- If, due to their age, the person concerned could not yet be held criminally responsible for the acts for which the decision was given
- If the person concerned has not been informed personally or through a representative authorised under foreign law of their right to initiate an appeal and the period within which this must happen
- If the person concerned has not appeared in person, unless they have expressly waived their right and indicated that they did not contest the case
- If the financial penalty is less than €70.<sup>22</sup>

The collected sums of money obtained from the enforcement of decisions from other countries accrue to the Belgian State, unless otherwise agreed with the issuing State. There are currently no agreements with Germany or the Netherlands that stipulate such a different distribution. As a result, fines from the Netherlands and Germany that are collected in Belgium will end up in the Belgian state treasury.

---

<sup>20</sup> Art. 3, 4° Law of on the application of the principle of mutual recognition of court rulings in criminal matters between the Member States of the European Union, 5 August 2006.

<sup>21</sup> Art. 4, 5° Law of on the application of the principle of mutual recognition of court rulings in criminal matters between the Member States of the European Union, 5 August 2006.

<sup>22</sup> Art. 19, Law of 5 August 2006 on the application of the principle of mutual recognition of court rulings in criminal matters between the Member States of the European Union.

## 1.3 Germany

### 1.3.1 Administrative sanctions and recovery measures in Germany

The German authorities have a variety of means at their disposal to penalise certain behaviours and to encourage the citizen concerned to behave in accordance with the law. Firstly, depending on the specific legislation, a fine is an option as a sanction when the citizen has violated a certain provision for which a fine may be imposed.<sup>23</sup> In addition, the government can take administrative enforcement measures and recovery claims against the citizen if they fail to comply with a legal obligation. This can be done through a penalty, for example.<sup>24</sup> As a result, fines based on the Administrative Offences Act (*Ordnungswidrigkeitengesetz*) have a punitive character, while in the case of a penalty payment based on the Administrative Enforcement Act, the emphasis is on the behavioural control aspect.

Depending on the legal nature of the claim, the rules of German law vary when it comes to the subsequent enforcement and collection of these claims. Public law claims, such as the aforementioned claims for fines, must be enforced through and in accordance with the provisions of public law.<sup>25</sup> In such cases, legal protection against this must be sought from the administrative court.<sup>26</sup> In contrast, private law claims are enforced through private law collection, whereby the respective legal remedies can be invoked.<sup>27</sup>

### 1.3.2 Enforcement of German administrative claims in Belgium/the Netherlands

Regarding the aforementioned claims for an **administrative fine**, it is possible from the German government's perspective, to use the possibilities of mutual legal assistance through Framework Decision 2005/214/JHA (see above). Where the certificate required under the Appendix to the Framework Decision and the decision to be enforced are submitted in duplicate, the *Bundesamt für Justiz* then forwards the application to the competent authority in the other EU country.<sup>28</sup> The competent authority of the other Member State may be asked to assist if the person concerned, as a natural person, has their habitual residence,

has their registered office as a legal entity or, in general, owns property in the requested Member State or receives income there.<sup>29</sup>

In the case of German administrative recovery claims such as penalty payments, enforcement assistance is not possible, since extensive bilateral arrangements for mutual assistance in the recovery are lacking in this case. Nor can a German periodic penalty claim be enforced through Framework Decision 2005/214/JHA, because unlike the procedure for administrative sanctions, the German administrative enforcement procedure generally does not provide sufficient guarantees within the meaning of the condition of a decision of a court with jurisdiction in criminal matters (see 1.1.1.).

### 1.3.3 Cross-border recovery of Belgian/Dutch financial administrative sanctions in Germany

Enforcement options are also available for a foreign municipality or a foreign actor who wants to enforce their own administrative fines in Germany. Regarding claims for fines as public law claims, enforcement under Framework Decision 2005/214/JHA could be considered. In the case of a public law tax claim from abroad, EU law and numerous bilateral agreements allow for mutual assistance, ranging from information exchange on individual claims to concrete assistance with collection. Conversely, foreign public law claims in the form of penalty payments cannot be enforced in Germany. In certain cases, however, assistance with service from the German authorities is possible.

Cross-border recovery using the Framework Decision For the implementation of Framework Decision 2005/214/JHA, German law allows for the collection of financial penalties on the basis of judicial as well as administrative decisions. For this purpose, a request for assistance with the collection must be submitted to the *Bundesamt für Justiz* in Bonn since this is the central German authority for the collection of fines in line with the Framework Decision.<sup>30</sup>

The *Bundesamt für Justiz* can then assist in the recovery if the natural person or legal entity concerned has their domicile or registered office, a permanent residence, income or parts of their assets in Germany. The competent authority of the Member State requesting assistance shall forward the request for assistance in recovery to the *Bundesamt für Justiz*. No fees or costs shall be charged to the requesting Member State for recognition and enforcement under Framework Decision 2005/214/JHA.<sup>31</sup> The *Bundesamt für*

<sup>23</sup> For example, anyone who moves out of their residence without establishing a new residence in Germany and without deregistering with the registration office within two weeks is committing an administrative offense. § 17 II 1 Federal Registration Act iVm § 54 II Nr. 1 Federal Registration Act.

<sup>24</sup> § 60 Administrative Enforcement Act NRW.

<sup>25</sup> § 90 I OWiG, §§ 1ff. Administrative Enforcement Act NRW.

<sup>26</sup> § 40 I 1 Administrative Enforcement Act, Art. 19 IV Constitution.

<sup>27</sup> §§ 704 766, 767, 771, 805 Code of Civil Procedure.

<sup>28</sup> [https://www.bundesjustizamt.de/DE/Themen/Gerichte\\_Behoerden/EUGeld/Formulare/Formulare\\_node.html](https://www.bundesjustizamt.de/DE/Themen/Gerichte_Behoerden/EUGeld/Formulare/Formulare_node.html).

<sup>29</sup> § 87p II IRG.

<sup>30</sup> § 87 II Nr. 2,3 Law on International Mutual Assistance in Criminal Matters.

<sup>31</sup> Art. 17 Framework Decision 2005/214/JI.

*Justiz* shall give the person concerned the opportunity to submit his/her observations within two weeks. Subsequently, after the time limit has expired, it is decided that the assistance will be granted, provided that there are no obstacles to the recognition and enforcement of the decision.

For several listed criminal offences and administrative offences, recognition and enforcement is allowed without verification of the mutual sanctionability. This concerns, for example, penalties and fines for fraud, money laundering, participating in a criminal organisation, theft and certain traffic violations. For non-listed offences, the *Bundesamt für Justiz* shall check whether German law would also provide for a fine for the act on which the decision is based.<sup>32</sup>

In addition, fines and financial penalties under €70 are not enforced.<sup>33</sup> Similarly, the enforcement of a fine is not allowed if the person concerned has not been given the opportunity to argue in the foreign procedure that they were not responsible for the act on which the decision is based.<sup>34</sup>

#### **Collection of foreign claims such as a penalty payment**

Conversely, the enforcement of foreign penalty payments that are comparable to German penalty payments is highly problematic. Similar claims are only covered by Framework Decision 2005/214/JHA insofar as they can be challenged before a court that is also competent in criminal matters and when it actually concerns a sanction.<sup>35</sup> However, in the States concerned, such claims are generally subject to a separate administrative jurisdiction rather than to a criminal court or the concept of criminal law. It is true that in German law, the concept of “competent court in criminal matters” must be interpreted in accordance with European Union law, which in turn is interpreted broadly by the Court of Justice. However, it is often questionable whether the foreign administrative jurisdiction concerned satisfies the conditions whereas a “competent court in criminal matters” fulfils these conditions in each of the cases. Nor is it possible to bring a claim before the German administrative court, as this court only allows proceedings involving the German public authority.

As a result, collection of foreign claims based on a penalty payment is not possible in Germany. Only enforcement of a foreign civil decision through the Brussels I Regulation (see below) is eligible, insofar as a relevant claim can be brought before the civil courts in the requesting State.

However, regarding administrative claims, the German authorities may provide assistance in individual cases for the service of documents in administrative matters, provided that the requesting State is a party to the European Convention on the Service Abroad of Documents relating to Administrative Matters. Belgium and Germany have signed and ratified this treaty, but the Netherlands has not.<sup>36</sup> Each German federal state has designated a competent authority. For the federal state of North Rhine-Westphalia, for example, this is the *Bezirksregierung Köln*.<sup>37</sup>

#### **Cross-border collection under the Brussels I bis Regulation**

Where the collection of private-law claims is concerned, the foreign municipality can first bring a claim against the debtor who is established in another Member State (in this case Germany) in its own courts. According to the Brussels I bis Regulation, a claim against a debtor from another Member State is also possible in another Member State, for example, if the place of execution of the contract is located in the other Member State.<sup>38</sup>

In addition, a decision of a court in civil and commercial matters of another Member State is also enforceable in Germany if the foreign court grants a special certificate.<sup>39</sup> This certificate can be issued on request by the court of judgment in civil and commercial matters. The certificate must then be presented to the competent German authority, with a copy of the enforcement order.<sup>40</sup> If a seizure of movable property is sought for financial claims, the bailiff is responsible. The local court is competent for the seizure of claims, such as wages resulting from employment. The jurisdiction of the specific bailiff<sup>41</sup> or of the specific enforcement court<sup>42</sup> can be found via an Internet address of the judicial system of the federal state of North Rhine-Westphalia.

#### **Participation in German insolvency proceedings**

In principle, an action can also be brought before a German civil court against a German national in the context of insolvency proceedings. In the absence of any special exclusive jurisdiction or of agreements on the place of jurisdiction, the courts of the place of residence of the natural person or of the registered office of a legal person has local jurisdiction.<sup>43</sup> For claims with an estimated value of less than €5,000 and for claims relating to rent and lease, the local courts have jurisdiction; in other cases, the regional courts have jurisdiction.<sup>44</sup> Based on the defendant’s address, it is possible to find out which court has jurisdiction via the website of the

32 § 87b III Nr. 9 Law on International Mutual Assistance in Criminal Matters.

33 § 87b III Nr. 2 Law on International Mutual Assistance in Criminal Matters.

34 § 87b III Nr. 9 Law on International Mutual Assistance in Criminal Matters.

35 Art. 1 a) i),ii) Framework Decision 2005/214/JI.

36 [https://www.coe.int/de/web/conventions/full-list/-/conventions/treaty/094/signatures?p\\_auth=a0roMtpd](https://www.coe.int/de/web/conventions/full-list/-/conventions/treaty/094/signatures?p_auth=a0roMtpd).

37 § 1 EuAusVwZ/AuskÜbkAG.

38 Art. 5 I iVm Art. 7 Nr. 1 a) Regulation 1215/2012.

39 Art. 53 VO 1215/2012 iVm Anhang I.

40 § 828 I,II Code of Civil Procedure.

41 <https://www.gerichtsvollzieher.nrw.de>.

42 <https://www.justizadressen.nrw.de>.

43 §§ 12,13,17 I Code of Civil Procedure.

44 §§ 23,71 Judicature Act.

NRW Justice Portal (selection issue general jurisdiction).<sup>45</sup>  
This makes it possible for a foreign municipality or government with a civil claim to participate in German insolvency proceedings. In the event of insolvency, however, compulsory enforcement is not possible;<sup>46</sup> instead, all creditors who still have an interest in the collection of their claim must register their interest with the insolvency administrator.<sup>47</sup>

---

<sup>45</sup> <https://www.justizadressen.nrw.de>.

<sup>46</sup> § 89 I Insolvency Code.

<sup>47</sup> § 174 ff Insolvency Code.

## 1.4 The Netherlands

### 1.4.1 Administrative sanctions in the Netherlands

Dutch administrative bodies can impose administrative (reparative) recovery sanctions as well as punitive sanctions.<sup>48</sup> Such sanctions may result in a financial claim by the municipality against the citizen. Financial sanctions are the incremental penalty payments<sup>49</sup> and the administrative fine<sup>50</sup>. **Incremental penalty payments are aimed at restoration.** The purpose of an incremental penalty payment is, for example, to induce the citizen to undo a violation in whole or in part or to prevent a repetition of a violation.<sup>51</sup> The purpose of the **administrative fine** is to punish the citizen; it is mainly imposed if the violation cannot be corrected, or not easily be corrected.<sup>52</sup>

If the debtor has not paid after a reminder, the municipality has the option of **issuing a writ of execution**<sup>53</sup> or **summoning the citizen before a civil court**.<sup>54 55</sup> Issuing a writ of execution or summoning a person before the civil court results in an enforceable title which a Dutch bailiff can subsequently enforce.<sup>56 57</sup>

### 1.4.2 Enforcement of Dutch financial administrative sanctions in Belgium/Germany

In the border regions in particular, it regularly happens that people with an outstanding debt with a Dutch municipality as a result of an administrative sanction move to Belgium or Germany, thus making collection of the outstanding debt more difficult. Unfamiliarity with the options for collecting such claims leads to an unequal situation compared with persons who are resident in the Netherlands. Below, we explain based on which regulations and under which conditions municipalities can collect outstanding claims on a cross-border basis.

48 Verbeek 2009 (T&C Awb), art. 5:2 General Administrative Law Act, aant. 3.

49 Art. 5:31d General Administrative Law Act.

50 Titel 5.4 General Administrative Law Act.

51 X, *Handhaving en sancties [Enforcement and sanctions]*, <https://www.rechtspraak.nl/Onderwerpen/Handhaving-en-sancties> (consultation 18 Januari 2021).

52 X, *Handhaving en sancties [Enforcement and sanctions]*, <https://www.rechtspraak.nl/Onderwerpen/Handhaving-en-sancties> (consultation 18 Januari 2021).

53 Art. 4:117 paragraph 1 General Administrative Law Act.

54 JACOBS, R. en LIEDORP, M., "Handreiking Behoorlijke en effectieve invordering van geldschulden" [Guide to the proper and effective recovery of money debts], Ministry of the Interior and Kingdom Relations 2016, 21-23.

55 Art. 4:124 General Administrative Law Act.

56 Art. 4:116 General Administrative Law Act.

57 JACOBS, R. en LIEDORP, M., "Handreiking Behoorlijke en effectieve invordering van geldschulden" [Guide to the proper and effective recovery of money debts], Ministry of the Interior and Kingdom Relations 2016, 21-23.

### Cross-border recovery through a Framework Decision

The standard procedure for cross-border collection of financial administrative penalties within the European Union is in accordance with the Framework Decision discussed in paragraph 1.1.1. The Framework Decision has been implemented in the Netherlands in the Mutual Recognition and Enforcement of Financial Sanctions and Confiscation Orders Act (hereinafter referred to as: Implementation Act). In order to fall within the scope of the Framework Decision, it must be possible to have the case heard by a 'court with jurisdiction, especially in criminal matters'.<sup>58</sup> As described in paragraph 1.1.1, this is the case if the relevant court applies a procedure that has the essential characteristics of criminal proceedings.<sup>59</sup> When the administrative court rules on punishment, e.g. in the case of an **administrative fine**, the criminal law principles are applied, in order to meet the conditions of the Framework Decision.<sup>60</sup> As a result, administrative fines imposed by a Dutch administrative body fall within the scope of this Framework Decision.<sup>61</sup> However, the Dutch legislator has only designated a limited number of administrative fines in the Implementation Act as 'subject to recognition and enforcement in another Member State'.<sup>62</sup> This is limited to administrative fines under the Road Traffic Act and the Working Hours Decree on Transport. This includes non-administrative fines imposed by the municipality in the context of the administrative approach to organised crime. As a result, the Dutch Implementation Act stands in the way of cross-border recovery of administrative fines under the Framework Decision.

When the administrative court assesses an **incremental penalty payment**, the criminal law principles are not applied since an incremental penalty payment is not punitive in nature.<sup>63 64</sup> An incremental penalty payment therefore falls outside the scope of the Framework Decision. At present, it is therefore not possible to implement Dutch financial administrative sanctions imposed by a municipality in the context of the administrative approach to organised crime abroad. For the enforcement of administrative fines, the Dutch Implementation Act will need to be amended. The enforcement of an incremental penalty payment falls entirely outside the scope of this Framework Decision.

58 Art. 1 sub a Framework Decision 2005/214/JHA.

59 De Boer 2020 (T&C Internationaal Strafrecht [T&C International Criminal Law]), Art. 10 WWETGC (Act of mutual recognition and execution of criminal sanctions), General.

60 Parliamentary Papers II 2003/04, 29702, no. 3, p. 7.

61 De Boer 2020 (T&C Internationaal Strafrecht [T&C International Criminal Law]), Art. 10 WWETGC, aant. 2.

62 Art. 10 paragraph 1 Act on the mutual recognition and execution of financial sanctions and confiscation orders (WWETGC).

63 Jurisprudence, *Handhaving en sancties [Enforcement and Sanctions]*, [https://www.rechtspraak.nl/Onderwerpen/Handhaving-en-sancties\(-consultation 18 Januari 2021\)](https://www.rechtspraak.nl/Onderwerpen/Handhaving-en-sancties(-consultation 18 Januari 2021)).

64 Parliamentary Papers II 2003/04, 29702, no. 3, p. 7.

### 1.4.3 Cross-border recovery of Belgian/German financial administrative sanctions in the Netherlands

#### Recovery under the Framework Decision

In the **Netherlands**, the public prosecutor of the Northern Netherlands district, affiliated with the Central Judicial Collection Agency (CJIB), is authorised to recognise foreign financial sanctions and confiscation orders.<sup>65 66</sup> The restriction mentioned in paragraph 1.4.2 regarding outgoing enforcement requests relating to administrative fines does not apply to incoming requests. As a result, an administrative fine imposed by a Belgian or German municipality can be enforced in the Netherlands. The competent authority of the requesting country sends the request for recovery to the CJIB. In practice, the enforcement of the claim is performed by the CJIB, in the same way that enforcement is performed in the Netherlands.<sup>67</sup>

---

<sup>65</sup> Art. 4 paragraph 1 WWETGC.

<sup>66</sup> De Boer 2009 (*T&C Internationaal Strafrecht [T&C International Criminal Law]*), Art. 4 WWETGC (*Act of mutual recognition and execution of criminal sanctions*), General.

<sup>67</sup> De Boer 2009 (*T&C Internationaal Strafrecht [T&C International Criminal Law]*), Art. 4 WWETGC (*Act of mutual recognition and execution of criminal sanctions*), General.

## 2 Practical consequences

Despite the fact that legal possibilities are available to recover cross-border administrative sanctions, the case histories of the EURIEC show that administrative bodies often do not proceed with cross-border recovery, but rather write off the outstanding claims. The EURIEC's practical examples mainly concern administrative claims from the Netherlands against persons residing in Belgium or Germany. This is because projects have been initiated in the Netherlands to support municipalities in collecting outstanding administrative claims. As a result, more attention has been given to the municipalities' outstanding claims. Among these, there appeared to be a number of claims against persons who were (or are currently) resident in Belgium or Germany. From the Dutch perspective, one significant stumbling block is that the Dutch Implementation Act strongly restricts the cross-border recovery of Dutch administrative fines. Despite the fact that collection is possible per the European Framework Decision, the Implementation Act closes this route for administrative fines by Dutch municipalities. This then leaves the route of the civil courts and recovery based on the Brussels I bis Regulation. This is a cumbersome procedure, whereby the Brussels I bis Regulation is used for administrative procedures in a roundabout way. Within the Netherlands, there is no workable practical solution for collecting administrative sanctions abroad.

A more general practical consequence is the fact that in the case of collection via the Framework Decision, the monies to be collected remain in the collecting country. On the one hand, this is understandable, since the collecting country makes efforts to collect the outstanding monies. On the other hand, it reduces municipalities' motivation to make efforts to collect the debt abroad, because it does not result in any money.

### **Enforcement after judgement by a foreign court**

If the treaty bases do not offer an adequate solution, it is always possible to try to revert to the option of enforcement after a judgment by a foreign court. In such cases, an attempt can be made to obtain an enforceable title through the civil court procedure. Since this is a cumbersome procedure, more direct solutions should be sought, and enforcement after a judgment of a foreign court is more likely to be an *ultimum remedium*.

## 3 Conclusion

As a result of European legislation, it is possible in certain cases to collect administrative fines across borders. To this end, Belgium, Germany and the Netherlands have also designated competent authorities responsible for collecting fines from abroad. However, there are still some barriers that may hinder cross-border collection. First, in principle, the cross-border collected sums of money from administrative fines accrue to the state performing the collection. However, this could be deviated from in the future by concluding agreements between the member states. Secondly, in most cases there also has to be double incrimination for collection. The criminal acts must therefore be punishable in the two countries involved or give rise to an administrative fine.

With regard to restitution claims, there is currently no international legislation, which makes it virtually impossible to collect restitution claims across borders. Nevertheless, cases provided to the EURIEC show that the largest and most common uncollected claims are restitution claims. As a result, claims from subjects associated with organised crime at foreign municipalities will often not be able to be collected. Thus, when a citizen moves abroad, the chances of recovering outstanding funds are very small. In addition, this causes citizens to deliberately avoid the collection of outstanding debts by moving abroad.

In order to overcome these practical and legal obstacles, adaptation of legislation and regulations is necessary at both European and national level, as well as consultation in order to achieve an accessible method of working.

© 2022, EURIEC

All rights reserved. No part of this publication may be reproduced, stored in an automated database, or made public, in any form or by any means, electronic, mechanical, printouts, copies, or in any other way, without prior written permission from the publisher.

E: [euriec.rik.limburg@politie.nl](mailto:euriec.rik.limburg@politie.nl)

T: 088 – 1687380

W: [euriec.eu](http://euriec.eu)

P: Postbus 1992, 6201 BZ Maastricht