

Improving cross-border cooperation in the enforcement of administrative fines and recovery claims ¹

ABSTRACT

This study, commissioned by the Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, looks into the challenges and possible improvements of administrative cooperation between Member States, as regards cross-border enforcement of administrative fines and recovery claims. Legal instruments to facilitate transnational cooperation are necessary. Also the terms 'fine' and 'recovery claim' are often subject to different definitions in the Member States. Framework Decision 2005/214/JHA works for offenses regulated therein. Measures to improve cooperation are allowed by Article 82(1) TFEU but administrative authorities are regularly not judicial authorities. Amendments can be based on Article 114(1) TFEU if they serve to supplement provisions on information, service and enforcement assistance.

The Committee on Legal Affairs Committee of the European Parliament (JURI Committee) has requested expertise on how to improve administrative cooperation in cross-border enforcement of administrative fines and recovery claims. Effective legal instruments and best practices are necessary as the enforcement authorities can normally only exercise their powers on their own territory, but legal standards enforced by one Member State can also be infringed by natural or legal persons from other Member States.

This study presents a comparative analysis of the legal framework for cross-border enforcement of fines and recovery, including EU legislation and bilateral and multilateral legal instruments, in four Member States, namely Belgium, Germany, the Netherlands and Austria. It concludes, in particular, with the following remarks:

- As regards fines, a small number of legal instruments does exist both at the EU level and in the form of bilateral or multilateral agreements, but these seem insufficient when it comes to fines that are common in some Member States. In particular, Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (Framework Decision) can be applied to administrative sanctions, provided that they are based on a decision of a court (or, in certain circumstances, of an authority of the issuing State other than a court) imposing the payment of a fine by a natural or legal person. In addition, the administrative penalty must be imposed for an offence listed in Article 5(1) of the

¹ Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749502/IPOL_STU\(2023\)749502_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749502/IPOL_STU(2023)749502_EN.pdf)



Framework Decision and punishable in the issuing State. Other offences may also be recognised and enforced. However, in this case, "the executing State may make the recognition and enforcement of a decision subject to the condition that the decision relates to conduct which would constitute an offence under the law of the executing State, whatever the constituent elements or however it is described".

- The terms 'fines' and 'recovery claims' are based on the respective legal systems and consequently subject to different definitions and classifications in the Member States examined. Standardisation does not seem possible and does not appear to be advisable.
- The Framework Decision 2005/214/JHA is in principle a functioning legal basis for fines around the offences regulated therein. The case law of the Court of Justice of the European Union seems to have clarified existing questions.
- Insofar as there are supplementary bilateral agreements (example: treaty between the Federal Republic of Germany and the Republic of Austria on administrative and legal assistance in administrative matters), these are often used as a matter of priority.
- Improved cross-border cooperation in the enforcement of fines and recovery in the EU requires a legislative competence of the Union. In the area of judicial cooperation in criminal matters, the legal basis results from Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), whereby this is to be regarded as a conclusive authorisation. Measures to improve cross-border cooperation in the enforcement of fines must therefore be covered by Article 82(1) TFEU. Article 82(1) TFEU only covers cooperation between judicial authorities. Administrative authorities are generally not included.
- Rules on enforcement assistance for fines can nevertheless be based on Article 82(1)(2)(a) TFEU, so that Framework Decision 2005/214/JHA can be extended by including further offences in the catalogue of offences for which a reciprocity check is not required. A slight reduction of the minimum amount of EUR 70€ can be considered, as well as an amendment of the rule that the enforced amounts remain in the executing state. Article 82(1) TFEU does not provide a suitable legal basis for the recognition procedure. The only exception to this is assistance with service, insofar as the service of the judgment itself is concerned.
- An overarching use of the competence basis in Article 114(1) TFEU, which covers all public-law claims that can be subsumed under the concept of recovery, is not possible.
- If regulations on information, service and enforcement assistance are related to constructive prohibitions, there is a link to the internal market because the functioning of the internal market is promoted by these prohibitions. If the forms of assistance are necessary to prevent the circumvention of prohibitions serving a fundamental freedom, regulations to prevent the circumvention of prohibitions may also be enacted in the form of independent legal acts on the basis of Article 114(1) TFEU.
- It is also possible to use bases of competence from the individual policy areas of the TFEU for measures of information, notification and enforcement assistance. As with Article 114(1) TFEU, the factual connection with the subject matter is decisive for the use of a specific competence standard with regard to information, notification and enforcement assistance.
- If and to the extent that existing legal acts are to be amended, it must be examined whether the prerequisites of one (or more) bases of competence exist. If the legal act to be amended is based on the internal market competence of Article 114(1) TFEU, an amendment of the legal act supplementing regulations on information, service and enforcement assistance can also be based on this basis. This also applies if no regulations on administrative assistance have existed to date.
- In the case of existing legal acts based on a specific competence norm, this cannot be answered uniformly. A legal act based on Article 114(1) TFEU and covering one or more policy areas seems preferable. Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws serves as a model here. In any case, all concerned legal acts providing for sanctions must be transferred to an annex.

- Beyond the Union's competences, the way remains open via bilateral or multilateral agreements, which can close the gaps that Union law must inevitably leave.

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