

ANNEX TO UNIT 12. SELF-ASSESSMENT QUESTIONNAIRE 2012.

1. Is it possible to apply the Framework Decision in order to execute a traffic fine in Italy when it was imposed in Spain?

Answers:

a) Yes, as it is an administrative penalty imposed by virtue of a precept that has the same status as a law.

b) Yes, as it can be appealed before a judicial body.

c) No, because it cannot be appealed before a criminal court.

d) No, because it is not imposed by criminal legislation.

Comment:

c) Article 1.a) of the Framework Decision states that administrative penalties will only be covered by this text when it is possible for them to be judged (or appealed) before a criminal jurisdictional body. The Spanish transposition law only authorises judicial authorities to transmit the decisions.

2. Is it possible to apply the Framework Decision to a penalty imposed by a criminal judge for breach of the peace in a trial?

Answers:

a) Yes, as it is an administrative penalty imposed by virtue of a precept that has the same status as a law.

b) Yes, as it was imposed by a criminal judicial body.

c) No, because it cannot be appealed before a criminal court.

d) No, because it is not imposed by criminal legislation.

Comment:

c) Article 3.1 of Law 1/08 limits the concept of financial penalty to the fine imposed as a result of the commission of a criminal offence or an administrative offence, provided that, in relation to the latter, the administrative penalties can be appealed before a criminal court; meaning that it excludes, for the purposes of the Spanish jurisdiction, decisions handed down by a criminal body set out in Article 1.a.iv) of the Framework Decision, that could, in theory, allow the enforcement of non-criminal financial penalties imposed by a criminal judicial body.

3. In a drug case, in addition to imprisonment, a person is ordered to pay a fine corresponding to the drug's worth in addition to the confiscation of the sum obtained from their sale, lodged in a current account in Rouen, where the sentenced person lives. Is it possible to request enforcement of the fine and confiscation pursuant to the Framework Decision?

Answers:

a) Yes, because they are sentences of a financial nature imposed by a criminal court.

b) No, because due to the existence of a prison sentence, separate enforcement is not possible.

c) Yes, but it should be specified that the amount confiscated should be used to pay the fine.

d) None of the above.

Comment:

d) They are all incorrect because, while it is possible to request the enforcement of the fine, it is not possible to request confiscation, which is expressly excluded from the concept of "financial penalty" under Article 1.b.

4. A request is received, from Edinburgh Sheriff's Court, for the enforcement of a fine imposed on a British citizen for pick-pocketing a wallet valued at 150 pounds, in Palma de Mallorca, from another British citizen; the judgment became final in 2006. Would it be enforceable in Spain under the Framework Decision?

Answers:

a) No, because the jurisdiction for enforcing said offence lies with the Spanish courts.

b) No, because it is a minor offence and the sentence would have lapsed.

c) Yes, as it is a penalty issued by a criminal court.

d) Yes, because in addition to being issued by a criminal court, it is a financial penalty according to the Framework Decision.

Comment:

b) Indeed, pick-pocketing, and for the amount mentioned, is a minor offence (petty theft) and the sentence lapses after one year. As the Spanish courts are also competent, Article 7.2.c) of the Framework Decision would apply, something that is also included in Article 14.1.d of the Spanish law.

5. We receive from Latvia a request to enforce a decision consisting of a €300 fine against a Portuguese citizen residing in Seville. The certificate states that the person concerned was a tourist who has been tried for a traffic offence, although there is no statement of whether or not he spoke Latvian. What should we do and what would the consequences be?

Answers:

- a) Refuse enforcement, after informing the Latvian judge.
- b) Consult the Latvian judge and, unless he can certify that an interpreter intervened, refuse enforcement. As a result of this, Latvia recovers its jurisdiction to enforce.
- c) Consult the Latvian judge, and if he fails to answer, enforce the decision.
- d) Consult the Latvian judge, and if he fails to answer, refuse enforcement. As a result, the capacity of enforcement is not recovered.

Comment:

d) It is unlikely that a Portuguese tourist in Latvia will speak Latvian, so there are indications that an infringement of fundamental rights under Article 20.3 of the Framework Decision may have taken place (included in the Spanish draft bill). But before the refusal, the issuing judge should be consulted (Article 7.3), in order to have an opportunity for justification. The consequence of refusal is that the capacity of enforcement is not recovered (Article 19.2.a).

6. A request is sent from an Amsterdam court to a Brno court, requesting the enforcement of a decision consisting of a fine against a company with its registered seat in the latter city. Is it enforceable?

Answer:

- a) No, because the Czech Republic made the corresponding reservation in its declaration.
- b) No, because the criminal liability of legal persons is not envisaged in the Czech Republic.
- c) Yes, because Article 9.3 of the Framework Decision does not distinguish between physical and legal persons.
- d) Yes, if the legal representative of the legal person is registered in the Czech Republic.

Comment:

a) It is not sufficient for criminal liability not to be recognised in the national legislation: this cause for exclusion must expressly be established, as the Czech Republic did in its transposition declaration.

7. A request is received from Salzburg to enforce a €500 fine derived from a crime, against a Belgian citizen living in Bilbao. When asked to pay the fine, he states, showing a bank statement, that €200 has been withheld in his account in Liege as enforcement of this fine. What would we do?

Answers:

a) Deduct the amount withheld and ask that he pay €300, proceeding with enforcement of this amount.

b) Consult with the Austrian court so that it provides information on the partial enforcement, deducting the €200 from the enforcement.

c) Enforce the payment of the €500 notifying the Austrian court so that it takes it into account, given its partial enforcement in a third country.

d) Consult with the Austrian court and refuse enforcement, as the amount owed is not correct and there has been prior enforcement, returning the request to Austria.

Comment:

b) Article 9.1 of the Framework Decision states that in such cases, after the consultation set out in Article 7.3, any amount of the penalty already collected in any Member State in any fashion will be deducted.

8. We want to enforce a fine against a French citizen residing in the Netherlands. What do we have to send?

Answers:

a) Certificate translated into Dutch and a French translation of the judgment.

b) Certificate in Spanish and a certified copy of the judgment translated into Dutch.

c) Certificate translated into English and a certified copy of the judgment.

d) Certificate translated into Dutch and a certified copy with a translation into said language.

Comment:

c) It is only obligatory to attach the translation of the certificate into any of the accepted languages (Article 16.1 of the Framework Decision), attaching a certified

copy of the judgment, which need not be translated. Lastly, the Netherlands has agreed to accept certificates in English.

9. We want to enforce a penalty consisting of a fine in relation to a citizen resident in Innsbruck. Where should we send the request?

Answers:

- a) To the Federal Justice Ministry of the Republic of Austria.
- b) To the Federal Prosecutor's Office of the Republic in Vienna.
- c) To the High Court of the federated state of Tyrol.
- d) To the Innsbruck Regional Court.**

Comment:

d) According to the declaration made by Austria on 14 March 2008, the competent courts for enforcement are, in the case of judicial decisions, the regional courts described in the annex.

10. We receive from Bordeaux a request for the enforcement of a fine in relation to an Irish citizen resident in Malaga, where he renders services for an international trading company, and when an attempt is made to enforce the penalty, it transpires that he resides in the Hague. What would we do?

Answers:

- a) Enforce it anyway.
- b) Enforce it, unless we have proof that another enforcement order exists in a third country.**
- c) Return the request to the body of origin, indicating the current residence.
- d) Send it to the executing authority in the Netherlands, notifying the Bordeaux court of this referral.

Comment:

b) The Framework Decision (Article 4.1) does not establish the criterion of exclusive jurisdiction for the state of residence of the person concerned, so if he has income or assets in Malaga, the fine should be enforced, unless we are aware that it is also being enforced in another place at the same time (Article 4.4); in which case it should not be sent to the Netherlands, although it would be appropriate to notify the French court of this circumstance, as it may prefer to seek enforcement in the Netherlands and withdraw the request made to Malaga (Article 12.1 of the Framework Decision).

Segovia, 15 March 2010.