

Abstract

The enforcement of pecuniary sanctions - Fines and forfeiture measures

The Court sent the federal Parliament its audit report on the enforcement of the pecuniary sanctions represented by fines (part I) and forfeiture measures (part II). The aim was to check whether steps had been taken to enforce all judgments, to assess to what extent sanctions had been carried out and to make sure that stakeholders accounted for the outcome.

Fines

The audit showed that nearly one offender out of two failed to pay fines. Furthermore, it also found that the additional imprisonment sentence imposed in the event of non-payment was no longer enforced and that the withdrawal of the driving licence, the other additional penalty, was seldom carried out at the time the audit was carried out.

The Court noted that the system in place did not guarantee that all sentence judgments were communicated by the court registries to asset collectors that initiate in each case a procedure to obtain the payment. In addition, excessively long payment periods were observed at several stages of the process and nothing could ensure that the collection of all fines was performed with all necessary steps, what influenced fairness.

Every government department or public authority has to account for its activities. Yet, no party did. The failure to do so was making it impossible to steer the process.

Several observations noted in 2000 during a previous Court's audit concerning the collection of non tax debt and fines were still valid. The Court therefore identified actions it regarded as priority and fundamental actions. Such actions should allow to calculate the recovery rate of fines and improve the activities' monitoring and processing times. The Court also recommended the development of projects in the mid-term, such as process coordination under the authority of a person in charge answerable to the Justice department, the integration of the information system and quality reporting.

Forfeiture measures

Similarly to sentences to pay fines, the system in place was found unable to guarantee that all forfeiture measures were followed by a first enforcement action.

Many parties were involved in the enforcement of forfeiture measures; they were also strongly decentralized and belonged to independent hierarchical authorities. Moreover the tasks and the information flows were varying along with the nature of the assets to forfeit and whether a prior forfeiture had been operated.

To remedy this the law had created the Central Office for Seizure and Confiscation (COSC) within the public prosecutor's office acting as a specialized agency intended to steer and support judicial authorities and serve as a relay function between public prosecutors and collectors. However, a confounding of roles appeared to exist here. Although set up in 2003, the COSC was found to be deprived of the resources and authority necessary to complete its

coordination tasks. Asset collectors responsible for assuming ownership of forfeited pecuniary assets perform their activities in an autonomous way, without any control or guidance by the “General administration of patrimonial documentation”.

The Court considered that the process was affected by risks such as the risk of offenders going unpunished when they did not comply, of the State not assuming ownership of forfeited assets - or doing so belatedly - and of assets being misappropriated. It recommended taking measures to limit these risks and suggested the Justice department should be the sole authority in charge of the forfeiture process, to reinforce the coordination and the management of the enforcement of those penalties, to set up an integrated information and reporting system and to produce faithful, sincere and complete financial statements.

The ministers' reply to the audit

According to the Finance Minister, the Federal Public Services Finance and Justice should provide solutions in the short, medium and long term to the issues raised in the report. With regard to improving the recovery of fines, the minister announced new initiatives, which are part of a new draft law, to allow a simplified garnishment as well as accessibility to updated data on the offender's income or estate. As to the forfeiture measures the minister asserted that collaboration with the COSC would be optimized and that the “patrimonial offices” would be adequately structured. He also stated that he would inform Parliament about the forthcoming measures.

As to the failure to enforce the additional imprisonment sentence, the Justice Minister replied that an active policy as regards to community work had been drawn up and that the enforcement of the additional driving disqualification penalty was now in place. She added that she also found that a centralised process under a single authority answerable to the Justice Minister was a desirable and logical trend but that it could only be implemented in the long term, as is the case with many Court's recommendations. She mentioned more specifically that the Government had decided to substantially reinforce the COSC's instruments and suggested a number of measures, also recently enacted by the legislative body, aimed at improving, among others, the transmission of final forfeiture decisions to the COSC.