## Administrative sanctioning systems in the EU Member States: a general overview

Dr. Carole M. Billiet

AEAJ Workshop in Riga (Latvia) on 7-8 September 2017, 'Administrative sanctions – orders and execution measures – in case of environmental infringements'

- 1. Administrative sanctions: a general typology
- 2. Administrative sanctions in the EU Member States (MS): the EU substratum
- 3. Administrative sanctioning systems in the EU MS: features and issues
- 4. Some final points

#### 1. Administrative sanctions: a general typology

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- "Administrative sanction"?
  - A reaction of an administrative authority to a law infringement
    - A law infringement is an explicit legal condition to use the competence
  - Using a unilateral binding administrative decision
  - Burdening the person to whom it is addressed ('something unpleasant')

#### Three types

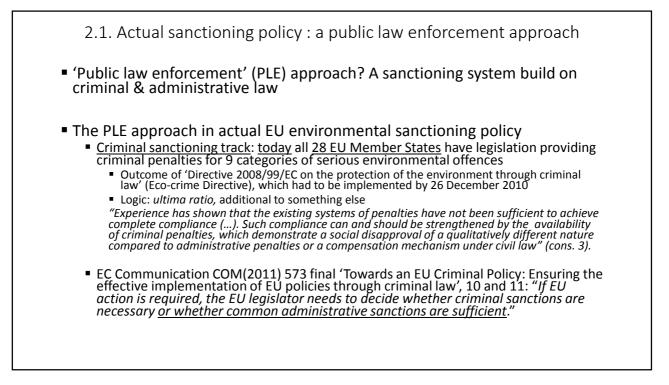
- Situational acting on <u>the factual situation</u> created by the law infringement
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- Right-depriving –acting on <u>rights</u>, typically rights conferred by whatever authorization, for instance an environmental permit

  - Suspension & withdrawal
  - But also: rights to access to a profession, public tenders, ...
- Monetary <u>hurting the purse</u> of the offender
  - Administrative fines
- Some generally remedial >< other generally punitive</p>
  - Situational & Right-depriving >< monetary</p>

# 2. Administrative sanctions in the EU Member States (MS): the EU substratum

2.1. Actual sanctioning policy : a public law enforcement approach2.2. Administrative sanctions: EU legislation2.2.1. A quick overview

2.2.2. Impact on actual enforcement and judicial control



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"The efficiency of <u>the sanction system must be considered (...). The type</u> of sanction that is considered to be the most appropriate to reach the global objective of being effective, proportionate and dissuasive should <u>be chosen.</u> An administrative sanction can often be decided and executed without delay, and lengthy and resource demanding procedures can thereby be avoided. Administrative sanctions may for this reason be considered in areas where, for example, the offence is not particularly severe or occurs in large numbers as well as in areas where administrative sanctions and procedures are suitable for other reasons (e.g. complex economic assessments). In many cases, administrative law also provides for a broader range of possible sanctions, from fines and suspension of licences to exclusion from entitlement to public benefits, which can be tailored to the specific situation. In many cases, administrative sanctions may therefore be sufficient or even more effective than criminal sanctions."

## 2.2. Administrative sanctions: EU legislation 2.2.1. A quick overview

Adding facts to policy statements: the EU built up a scattered, discrete but quite relevant layer of administrative sanctions from the early days of EU environmental law onwards, within regulations and directives

- Directive <u>78</u>/176/EEC on waste of the titanium dioxide industry
  - Art. 8.1 (a) and (b): "<u>The competent authority in the MS (...) shall take</u> all appropriate <u>steps to</u> remedy one of the following situations and, if necessary, <u>shall require</u> the <u>suspension of</u> <u>discharge, dumping, storage, tipping or injection operations</u>" if (a) monitoring results show that authorization conditions are not met; (b) acute toxicity test show that toxicity limits are infringed.
- Actual EU Environmental law <u>a few examples</u>
  - Situational
  - Right-depriving
  - Situational or right-depriving
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Situational sanctions

- Industrial Emissions Directive 2010/75/EU, Art. 8.2, al. 1, (b) and (c) : "In the event of a breach of the permit conditions, MS shall ensure that (b) the operator immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time; (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance"
- Regulation 1013/2006 on shipments of waste, Art. 24.3, al. 1: "If an illegal shipment is the responsibility of the consignee the competent authority of destination shall ensure that the waste in question Is recovered of disposed of in an environmentally sound manner: (a) by the consignee (...)"
- Directive 1999/13/EC on the limitation of emissions of volatile organic compounds, Art. 10 (a) and (b): "MS shall take the appropriate measures to ensure that, if it is found that the requirements of this Directive have been breached: (a) the operator (...) takes measures to ensure that compliance is restored within the shortest possible time; (b) <non-compliance + immediate danger to human health> operation of the activity is suspended"

- Right depriving sanctions
- Directive 2009/31/EC on the geological storage of carbon dioxide, Art. 11.3, (b) and (c): "The competent authority shall (...) as a last resort, withdraw the storage permit (...) (b) if <self-reporting or environmental inspections> show non compliance with permit conditions (...); (c) if it is aware of any other failure by the operator to meet the permit conditions"
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- Directive 2006/21EC on the management of waste from extractive industries, Art. 14: possibility to forfeit the mandatory guarantee, imposed to make sure that the obligations under the permit issued, including after-closure provisions, are complied with.

Specific sanctioning obligations in	Specific sanctioning obligations in
regulations	directives
Art. 288, al. 2 TFEU: "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all MS."	Art. 288, al. 3 TFEU: "A directive shall be binding, as to the results to be achieved, upon each MS to which it is addressed, but shall leave to the national authorities the choice of form and methods."
Prohibition to copy, yet additional MS-law to	"as to the results to be achieved": ECJ, reaches out to
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Examples mentioned above: limited discretion; obligation to sanction.	Examples mentioned above: (lack of) discretion in choice to enforce, in choice of the sanction contents /
One authority cannot hide behind the inactivity of another.	the type of sanction One authority cannot hide behind the inactivity of
Administrative courts: law applicable in the	another
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Backdrop: the general obligation to sanction developed by the ECJ
'The Greek Maize Case' (ECJ 21 September 1989, Commission of the EC against the Hellenic Republic, C-68/88), building on the principle of sincere cooperation:
"23. It should be observed that where Community legislation does not specifically provide any penalty for a infringement or refers for that purpose to national laws, regulations and administrative provisions, Article [4.3 of the TEU] requires the MS to take all measures necessary to guarantee the application and effectiveness of Community law.
24. For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.
25. Moreover, the national authorities must proceed, with respect to infringements of Community law, with the same diligence as that which they bring to bear in implementing corresponding national laws."

### 3. Administrative sanctioning systems in the EU MS: features and good practices

3.1. Dominant features

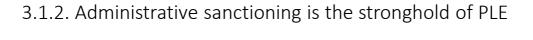
3.1.1. Administrative sanctioning toolkits contain punitive and remedial sanctions

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Useful source: implementation study Eco-crime Directive, national reports (2012 and 2013-2016). See <u>http://ec.europa.eu/justice/criminal/criminal-law-policy/environmental-protection/index\_en.htm</u>

3.1.1. Administrative sanctioning	nant features toolkits contain punitive (minimally nedial sanctions
YES, both punitive and remedial administrative sanctions	NO, remedial administrative sanctions only
Austria, Belgium (Federal State, Brussels-Capital Region, Flemish Region Walloon Region), Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Italy, Latvia, Lithuania, The Netherlands, Poland, Portugal,	Denmark, Finland, Croatia, Ireland, Luxembourg, Malta
Romania, Slovakia, Slovenia, Spain, Sweden, UK	France? Hungary?



Today, administrative sanctioning is the stronghold of PLE and as such matters tremendously to environmental law enforcement

- Some countries barely have a criminal sanctioning practice
  - Austria, Czech Republic, Latvia
- Some countries rely on administrative penalties to punish legal persons, traditionally key offenders in environmental crime
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- Administrative sanctioning is equipped with a wide array of sanctions, with a remedial sanctioning tradition
- Administrative sanctioning is systematically operated, at least partially by specialized enforcement actors
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3.2. Good practices	
<ul> <li>Codification of administrative sanctions</li> <li>Portugal (2006, amended 2009)</li> <li>Issue: scattered and inconsistent sanctions</li> <li>Pimping the toolkit, allowing for a cost-effective and proportionate sanctioning response</li> <li>UK, England and Wales (reforms 2007-2010)</li> <li>Issue: lack of means (manpower, budgets,) and lack of action due to disproportional sanctioning options</li> </ul>	
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4. Some final points

1/ Administrative sanctions are an essential building block of EU environmental enforcement policy

a/ in ongoing policy developments

b/ in a well-established legislative tradition

'The Hidden Face of the Moon'?

2/ Specific administrative sanctioning obligations stipulated in Regulations and Directives are a source of sanctioning duties at the level of MS. They create (Regulations) or 'coat' (Directives) two choices: the discretion to act (or not) against the offences aimed at and the discretion in the choice of the type of sanction.

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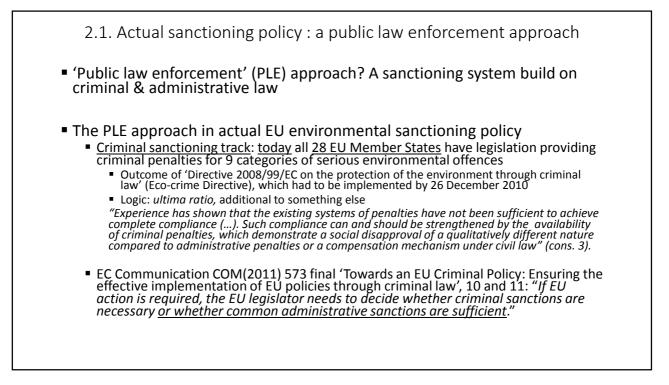
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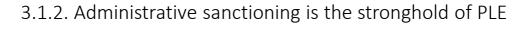
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