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The *ratio legis* behind the allocation and organisation of Belgian administrative enforcement powers: A case study.[1]

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Abstract

Driven by different trends within national criminal law as well as the increasing influence of EU law, the Belgian administrative enforcement system continues to expand. This growing enforcement pressure raises a twofold question, pertaining to the legislative design of administrative enforcement: which considerations have been decisive in the past for the allocation and organisation of administrative enforcement powers and which considerations should be decisive in the future? The examination of past and future considerations will allow for the elaboration of minimum administrative law limits that should be taken into account by the competent regulator when intending to allocate and organise administrative enforcement powers. This paper addresses the primary question, laying foundational groundwork essential for (future) examination of the second question.

In Belgium alone, different authorities are competent to enforce administratively for different subject matters. This fragmented administrative enforcement landscape can explain why Belgian legal doctrine lacks comprehensive theoretical frameworks pertaining to the subject of administrative enforcement in its entirety. This study aims to contribute to narrowing the aforementioned research gap. While this study adopts a holistic approach, it also concentrates on specific enforcement authorities, such as the national Financial Services and Markets Authority and the (catch all) competence of Belgian local authorities to impose administrative sanctions.

The allocation of the last mentioned competence appears to have been based on considerations from a mere criminal law perspective rather than reasons related to administrative law. Additionally, the question as to why this particular administrative authority should be assigned this power was not addressed when allocating the power. It should therefore be examined whether and to what extent this has also been the case for other enforcement authorities.

Keywords

Administrative enforcement, Belgium, depenalization, *ratio legis*, allocation of enforcement competences, organisation of enforcement competences.

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I. Introduction

Definition of administrative enforcement

The Cambridge Dictionary defines enforcement as “the process of making people obey a law or rule, or making a particular situation happen or be accepted”.[3] Enforcement (of law) can subsequently be understood as making sure the law will be obeyed, or in short: upholding the law. Hence, the definition of enforcement is based on the aim thereof, given that enforcement is aimed at maximizing obedience to the law. The word enforcement within a (Belgian) legal context, refers in most of the cases to the enforcement of law, and this generally without specifying the latter. For the remainder of this paper, enforcement will be used in this sense.

Enforcement can happen through private or public law. This paper will only focus on the latter, which is classically divided into criminal and administrative enforcement. This paper will elaborate further on this classical and theoretical division and will focus on administrative enforcement, as it is defined at a national level. In Belgium, however, there exists no legal or even unanimously accepted definition of administrative enforcement. Elaborating on the sense in which enforcement in a legal context is usually used, administrative enforcement, can be defined as enforcement by an administrative authority. Thus, the primary actor has to be an entity resorting under the executive power (organic criterion).

The next question then becomes which (administrative) actions can/should be considered as being (administrative) enforcement. However, with regards to this question, some discussion exists within Belgian legal doctrine. To put it shortly, there are three possible interpretations. In the strictest sense, (administrative) enforcement only pertains to the imposition and execution of (administrative) sanctions following the violation of a rule. In this sense, enforcement is always repressive. In a less strict view, (administrative) enforcement additionally includes supervision, detection, prosecution and the imposition and execution of measures. In the broadest sense, (administrative) enforcement pertains to all (administrative) actions that are aimed at maximizing obedience to the law. Thus, in both broader interpretations, (administrative) enforcement isn’t merely repressive, but has a preventive aspect as well.

Given that norm-compliant behaviour is not only achievable through purely repressive, but also through preventive actions, the broadest definition of (administrative) enforcement is in my opinion, the most accurate one. The foregoing does not preclude that the focus of the remainder of this paper will be on administrative entities that are able to enforce (at least *inter alia*) repressively.

Selection of administrative enforcement entities

Given the fragmented landscape of administrative enforcement in Belgium, it was necessary to choose some instances which have been allocated the power to enforce administratively. The selection of administrative enforcement entities (hereinafter: AEE) happened on the basis of various selection criteria.[4]

However, due to the scope of this paper as well as the time limit, this paper only includes three (Belgian) AEE: the Financial Services and Markets Authority (FSMA), the data protection authority (DPA) and the (catch all) competence of Belgian local authorities to impose administrative sanctions[5]. Throughout further future research other AEE will be covered as well, implying that the current results might not yet be very representative for the Belgian administrative enforcement system in its entirety.[6]

II. Chapter 1: *Ratio legis* of the “catch-all” (administrative) enforcement system[7]

Local administrative sanctions in short

[3] ‘Meaning of enforcement in English’, *Cambridge Dictionary*, < https://dictionary.cambridge.org/dictionary/english/enforcement> accessed 28 August 2024.

[4] Among others: the level of enforcement (Belgian, Flemish, provincial, local), the subject-matter, whether or not their creation was initially obligated by EU-law, the legal form of the administrative enforcement entity, …

[5] Note that this is not a “AEE” in the exact same sense as it is used throughout this paper. Local authorities have been allocated more administrative enforcement competences over the last years. However, this research only focusses on one specific enforcement competence of the local authorities, being their ability to impose administrative sanctions. Here again, there is more than one legal base which allocates the competence to impose administrative sanctions to the local authorities, however, this research will only focus on the “local administrative sanctions” as meant in the Act of 24 June 2014 concerning the local administrative sanctions [2014] BS 1 July 2013, 41293 (hereinafter: the Act of 2013), because this functions as the catch-all system (*infra*).

[6] Note as well that this research paper is “work in progress” and that these results are not definite yet, even for the researched AEE.

[7] This chapter draws partly on an earlier publication (in Dutch). See: Loth Van der Auwermeulen and Mariet Stiers, ‘Bestuurlijk handhaven middels gemeentelijke administratieve sancties: samen of alleen?’ in Liesbeth Todts en Steven Van Garsse (eds.), *Actualia Handhavingsrecht II,* Larcier Intersentia, 2024, 1-20.

A local[8] regulation can state whether violations thereof will be sanctioned administratively or criminally[9]. Thus, the municipal council is able to decide by means of a local regulation whether or not violations will be sanctioned with a local administrative sanction. However, initially, there was an important limitation to this possibility: (administrative or criminal) sanctions can only be provided for by the local regulation insofar a legislative norm does not already foresee in administrative or criminal sanctions for these violations.[10] Thus, whenever no legislative norm provided for administrative or criminal sanctions for the violations, the municipal council could provide for these sanctions in a local regulation. This implied that the system of local administrative sanctions in fact functions as a safety-net or catch-all system for all behaviour that is not sanctioned administratively or criminally.

The aforementioned principle that local administrative sanctions can only be imposed when no other law or decree imposes sanctions (administrative or criminal), has been weakened in that sense that currently there are also "mixed violations", which can be sanctioned criminally or administratively. Important is that a local administrative sanction can only actually be imposed, when the public prosecution does not prosecute.[11]

The *ratio legis* behind the allocation of the competence to impose administrative sanctions to the local authorities

In Belgium, local authorities have been allocated the competence to impose (local) administrative sanctions in 1999.[12] Before then, local authorities were only able to provide for local regulations, in which it could be stated that certain violations were to be sanctioned criminally. The competence to document the violation in an official report as well as the competence to impose a sanction, were not[13] allocated to the local authorities.

These local regulations had to have as main goal the protection of the public order *sensu lato.* The local authorities could thus only foresee in criminal sanctions, to be imposed by a (criminal) judge. However, these "criminal" sanctions in which the local authorities could provide, were only the lowest of the (current[14]) three possible levels of criminal sanctions.

For the public prosecution, when placed within the whole framework of criminal enforcement, violations of local regulations were minor violations, and therefore not considered to be a priority. Given the limited resources of the public prosecution, this implied that more serious forms of crime were prioritized and therefore a lot of violations of local regulations remained unsanctioned.

The aforementioned situation *de facto* made local regulations unenforceable. Hence, the legislator deemed it necessary that local authorities (more specifically, the municipal council) not only could provide for criminal sanctions to be imposed on violations of their local regulations, but also administrative sanctions, which could be imposed by the local authority itself. Aside from this, the legislator also enlarged the material scope of the local regulations, from then on not restricted to the protection of the public order *sensu lato* but also able to tackle all forms of public nuisance, which would cover cases of hindrance or damage experienced as a result of certain actions.[15]

The initial *ratio legis* to allocate the competence to impose administrative sanctions to the local authorities, was thus primarily prompted by the capacity problems of the criminal law system. However, the legislator does not explicitly expound on why local authorities must (in principle[16]) be the competent authority to enforce administratively. The question of which authority should dispose of these administrative enforcement competences was not even addressed during the preparatory works in parliament.[17] Implicitly and indirectly, the legislator refers to the historical foundation for municipal councils to provide for a local regulation aimed

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[8] For the purposes of this paper, "local" refers to the level of the municipalities and cities.
[9] In this sense criminally merely refers to the fact that the sanction is imposed by a (criminal) judge, as opposed to an administrative sanction which is imposed by an administration. In this context it does not refer to the height of the sanction.
[10] Art 2, first paragraph of the Act of 24 June 2013.
[11] Art 3 Act of 2013.
[12] Act of 13 May 1999 introducing local administrative sanctions [1999] BS 10 June 1999, 21629 (hereinafter: the Act of 1999).
[13] Note, however, that the local police was competent to report violations.
[14] However, recently a new act, heavily reforming Belgian criminal reform, has been accepted and will enter into force in April 2026. This reform puts an end to the classic three-division between "*overtreding*", "*wanbedrijf*" and "*misdaad*" (from lowest to highest offence and thus highest possible sanction), but more evidently provides for sanctions of eight levels, the lowest being sanction of level one and the highest being the sanction of level eight. See art 36 of the Act of 29 February 2024 introducing a new Book I of the Criminal Code [2024], BS 8 April 2024, 40520.
[15] Explanatory memorandum to the bill introducing local administrative sanctions [1998-1999], Parl.St. Chamber 2031/1, 1-3 and 9.
[16] The local authorities however, can decide that the civil servant, competent to impose the administrative sanction, does not adhere to the local authority, but for example to the province.
[17] Elias Van Gool, *De GAS-procedure - Rechtsbescherming bij gemeentelijke administratieve sancties*, Larcier, 2015, 19.

at the protection of the public order *sensu lato* in which criminal sanctions could be "imposed" on violations of provisions thereof. Apart from this, the legislator also states that the legislative change (including the allocation of administrative enforcement competences to the local authorities) should give local authorities more leverage in their enforcement policies.[18] Nevertheless, this still does not provide for an explanation as to why the administrative enforcement competences had to be allocated to the local authorities.

Additionally, due to the catch-all nature of the system, all behaviour for which no legislative norm had provided for a criminal or administrative sanction (anymore, in case of depenalisation[19]) now has become sanctionable at a local level (insofar as the local regulation which sanctions this behaviour, protects the public order or tackles forms of public nuisance). This means that all depenalisations will be able to expand the field of application of local administrative sanctions, as long as the local authority (more specifically, the municipal council) can link the depenalised behaviour to tackle public nuisance. The catch-all nature of the system implies that, expansions of the field of application of local administrative sanctions, in my opinion, may risk being implemented without careful deliberation to the effects thereof for the administrative system.

The *ratio legis* behind the organisation of the competence to impose administrative sanctions to the local authorities

The competent body of the local authorities, differs depending on the administrative sanction to be imposed. An administrative fine can only be imposed by a "sanctioning civil servant", whereas the other possible (limitatively listed) administrative sanctions can only be imposed by the municipal executive. It concerns the administrative suspension or revocation of an authorisation or permit granted by the local authority, or the closure of an establishment. This division of competences between the sanctioning civil servant and the municipal executive has existed since the introduction of the possibility for local authorities to impose administrative sanctions in 1999 and has remained unaltered[20] since.[21]

Why this division of competences was deemed necessary, however, was not elaborated on by the legislator, neither in 1999, nor in 2013. In one of the preparatory works, it is briefly mentioned that the municipal executive is a "predominantly political body", but without connecting this political nature to the aforementioned division.[22] The observation that the municipal executive is a predominantly political body, however, is correct and by not allocating the competences to impose a suspension, revocation or closure to the same body as the one which is competent to impose administrative fines, it is clear that these competences have been divided intentionally. The legislator seemed to have deemed a political body more suited for these specific enforcement competences than a sanctioning civil servant.[23]

Note that the sanctioning civil servant, does not necessarily have to be a civil servant adhering to the local authority itself. It can for example also be a provincial civil servant.[24] Following the advice of the Council of State in this respect,[25] it was also explicitly stated that the civil servant imposing the administrative fine could not be the same person as the civil servant recording the violation.[26] The latter initially had to adhere to the

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[18] Explanatory memorandum to the bill introducing local administrative sanctions [1998-1999], Parl.St. Chamber 2031/1, 1-3.

[19] Depenalisation is defined in different ways. For the purposes of this paper, depenalisation is seen as the 'movement' whereby a conduct is removed from criminal law, but other enforcement systems, such as administrative, can still take enforcement action against the conduct. Depenalisation should be distinguished from decriminalisation, which results not only in a removal of the conduct from the criminal enforcement system, but from all enforcement systems (even though it can be questioned in how far this is actually possible). Depenalisation can then be divided into so-called 'hard' and 'soft' depenalisation. In the case of soft depenalisation, the behaviour can be enforced through enforcement systems other than the criminal law, for example through an administrative sanction or other enforcement mechanisms such as the administrative measure. In hard depenalisation, on the other hand, only the latter is still possible. Soft depenalisation thus differs from hard depenalisation in that in soft depenalisation, in addition to administrative measures, administrative sanctions are also possible to enforce the conduct. This paper will focus on soft depenalisation, and whenever "depenalisation" is used, it refers to soft depenalisation.

[20] With the understanding that an additional function exists (since 2014) for the mediating officer, who has been allocated mediating competences. See: art 8 Act of 2013. For the remainder of this paper, this function will be excluded from the research, as it does not concern administrative enforcement competences in the strict sense.

[21] See: art 3, second paragraph Act of 1999; art 6, first paragraph and art 45 Act of 2013.

[22] Report on behalf of the committee on home affairs, general affairs and public office [1998-1999], Parl.St. Chamber 2031/4, 6.

[23] For a critical perspective on this, see also: Brecht Warnez, *De lokale bestuurlijke ordehandhaving in Vlaanderen. Een kritische analyse van de actoren en hun bevoegdheden*, die Keure, 2020, 293-296.

[24] This was already the case in the initial act introducing local administrative sanctions. See: art 3, §6 Act of 1999.

[25] Advice Council of State of 3 February 1999, [1999], 28.776/4, 38.

[26] Art 3, second paragraph, *in fine* Act of 1999; art 6, third paragraph Act of 2013; Explanatory memorandum to the bill introducing local administrative sanctions [1998-1999], Parl.St. Chamber 2031/1, 4.

local police, but the law of 2013 lists different categories of “recorders”, differing depending on the kind of violation (e.g. “mixed violation”).[27]

Initially, in 1999, the procedure to impose administrative sanctions was rather concise, but was already considered to be rather severe. This “severeness” was needed in order to guarantee the rights of defence.[28] With the law of 2013, a new legal framework was established, including more precise procedural provisions, which was aimed at modernising the procedure with safeguards for the rights of defence.[29]

III. Chapter 3: *Ratio legis* of the DPA

The DPA in short

The DPA is the supervisory authority responsible for monitoring the application of (primarily) the General Data Protection Regulation (hereinafter: GDPR).[30] The DPA is the successor of the previous “Privacy Commission”[31] and was created by the Act of 3 December 2017 (hereinafter: DPA-Act[32]), as a collateral body of the Chamber of representatives.[33] The DPA is a federal institution with legal personality and carries out its tasks exclusively in the public interest.[34] The DPA has been allocated the competence to impose administrative sanctions, including administrative fines (*infra*) and thus is allocated administrative enforcement powers in the strict sense, making the DPA an AEE suitable for this research.

As supervisory authority, the DPA is responsible for monitoring the application of the GDPR[35] and of the DPA-Act as well as other laws relating to the protection of the processing of personal data.[36] The DPA is composed of six bodies: an executive committee**,** a general secretariat, a first-line service, an authorisation and advice service, an inspection service and a disputes chamber. This paper will focus mostly on the Disputes Chamber, as this is the administrative disputes body of the DPA.[37]

Ratio legis of its forerunner

The forerunner of the DPA, the Privacy Commission, was established by Royal Decree of 1982 establishing a database on public sector employees and by Act of 1983 regulating a state register of natural persons.[38] Both legal bases provided that advisory Privacy Commissions where to be created. Later, when the further composition and operation of this commission was to be determined, it was considered to be “effective and logical” to allocate the entirety of competences concerning privacy to one body: the advisory Privacy Commission.[39] This commission was established in anticipation of a pending more general legal basis for this commission, but already anticipated of the competences that would be allocated to it by the Privacy Act, which was in preparation at that time. There was not a lot of discussion about the establishment thereof. Only one question was raised as to the necessity of the creation of such a commission, upon which it was emphasized that this would be an “extra-guarantee” for both citizens and the administration.[40]

The Privacy Commission gave advice and dealt with complaints pertaining to the protection of privacy. The first Privacy Commission thus did not dispose of any administrative enforcement powers in the strict sense.

The Privacy Act was adopted in 1992 and provided for the anticipated more general basis for the Privacy Commission. For the design of this Act, it was possible to draw on the organisation of the commission as it

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[27] See currently: art 20 and following of the Act of 2013.
[28] Explanatory memorandum to the bill introducing local administrative sanctions [1998-1999], Parl.St. Chamber 2031/1, 5.
[29] Explanatory memorandum to the bill concerning local administrative sanctions [2012-2013], Parl.St. Chamber 2712/1, 5
[30] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ 2 119/01 (hereinafter: GDPR).
[31] In Dutch: “Commissie voor de bescherming van de persoonlijke levenssfeer”.
[32] Act of 3 December 2017 establishing the Data Protection Authority [2017] BS 10 January 2018.
[33] The latter has led to discussion within Belgian doctrine whether or not the DPA could therefore still be considered an AEE. Given that a prerequisite in order to be an AEE is that the instance itself falls within the executive power.
[34] Art 3, last paragraph, art 4, §1, second paragraph and art 5 DPA-Act.
[35] Art 51.1 GDPR.
[36] Art 4, §1 DPA-Act.
[37] Art 7 DPA-Act.
[38] Art 6 Royal Decree n°141 of 30 December 1982 establishing a database on public sector employees [1982] BS 13 January 1983; Art 12 Act of 8 August 1983 regulating a State register of natural persons [1983] BS 21 April 1984.
[39] Report to the King on the Royal Decree of 10 April 1984 regarding the composition and operation of the ‘Advisory Commission on the Protection of Privacy”, [1984], BS 26 April 1984, 5483-5484.
[40] Report on behalf of the Committee on Internal Affairs, General Affairs and the Civil Service on the bill to regulate a National Register of Natural Persons, [1982-1983], Parl.St. Chamber 513/6, 18-19.

had existed before, but inspiration could also be drawn from the structure of privacy commissions in other countries as well as the international community, in particular the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, CETS, No 108 (hereinafter: Convention 108).[41] This Convention already provided in its articles 18-20 for a "Consultative Committee" which was given mainly an advisory and mediating role with regard to the application of the Convention (and thus with regard to the protection of privacy). Belgium signed the Convention in 1982 and ratified it in 1993.[42] The Belgian Privacy Act was designed along the lines of core elements of this treaty, including control by an independent commission.[43]

Noteworthy in this respect is that an Additional Protocol to Convention 108 was adopted in 2001 requiring each party to the protocol to have a fully independent supervisory authority.[44] Belgium signed this protocol on 30 April 2004, but never ratified it, which implies that the protocol never entered into force for Belgium.[45] In 2018 another protocol was adopted to Convention 108,[46] which stipulated in its article 19 that supervisory authorities within the meaning of the 2001 protocol should have *inter alia* the power to take decisions related to violations of the provisions of the Convention (including this protocol), such as the imposition of administrative sanctions. Again, Belgium signed this protocol (on 10 October 2018), but did not ratify it.[47]

The influence of the aforementioned Convention (and its protocols) on the competences and structure of the Privacy Commission thus remained primarily indirect and inspirational.

After 1992, the Commission was reformed lightly in order to comply with European Directive 1995/46/EC. This Directive required each Member State to provide that one or more public authorities would be responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive.[48] The EU considered "the establishment in Member States of supervisory authorities, exercising their functions with complete independence, [to be] an essential component of the protection of individuals with regard to the processing of personal data".[49] Belgium transposed the aforementioned Directive by Act of 11 December 1998, thereby designating the Privacy Commission as the competent supervisory authority within the meaning of the Directive.[50]

Due to this European influence as well as other Belgian laws, the competences of the Privacy Commission continued to expand. In view of these expansions, but also of other evolutions that increased the Commission's workload – in particular the increasing digitalisation, increasingly empowered citizens and European influence[51] – three sectoral committees were set up within the Privacy Commission during 2003.

The Privacy Commission itself had already indicated that it was no longer capable of properly implementing all the competences assigned to it by law and had also indicated the risk - associated with the then prevailing trend of the creation of bodies that were independent of the Privacy Commission but had a similar task - as

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[41] Explanatory memorandum to the bill on the protection of privacy in relation to the processing of personal data, [1990-1991], Parl.St. Chamber 1610/1, 3.

[42] COUNCIL OF EUROPE, 'Chart of signatures and ratifications of Treaty 108', www.coe.int/en/web/conventions/cets-number-/-abridged-title-known?module=signatures-by-treaty&treatynum=108.

[43] Explanatory memorandum to the bill on the protection of privacy in relation to the processing of personal data, [1990-1991], Parl.St. Chamber 1610/1, 3.

[44] Article 1 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows of 8 November 2001, CETS, No 181 (hereinafter: 2001 Protocol).

[45] Article 1 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows of 8 November 2001, CETS, No 181 (hereinafter: 2001 Protocol).

[46] Namely the Protocol amending the Convention for the Protection of individuals with regard to Automatic Processing of Personal Data of 10 October 2018, CETS, No 223 (hereinafter: 2018 Protocol).

[47] Even if this had been ratified by Belgium, the protocol would not have entered into force yet, given that it hasn't entered into force yet in its entirety. See: COUNCIL OF EUROPE, 'Chart of signatures and ratifications of Treaty 223', www.coe.int/en/web/conventions/cets-number-/-abridged-title-known?module=signatures-by-treaty&treatynum=223.

[48] Art 28.1 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 (hereinafter: Directive 95/46).

[49] Recital 20 of Directive 95/46.

[50] Act of 11 December 1998 transposing European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1998] 3 February 1999.

[51] More precisely, the explanatory memorandum refers in particular to Directive 95/46 and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector [1997] OJ L24/1. The latter Directive was abolished and replaced by Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [2002] OJ L201/37. However, it is mainly the first-mentioned Directive that is of importance, as it requires Member States to entrust a supervisory authority with monitoring the application on its territory of the provisions adopted by the Member States to implement this Directive.

being “detrimental to the required uniform approach that should characterise, particularly at the institutional level, the control of respect for privacy”.[52]

Last but not least, the Privacy Commission, which was initially established at the Ministry of Justice, was transferred to the House of Representatives in 2003.[53] The reasons for this transfer resided primarily in the independence requirements (imposed by EU law) on the commission. The independence on the Ministry of Justice in institutional, administrative and financial terms was considered to be complicated. Additionally, the powers of the Chamber of Representatives in terms of political and budgetary control - and, more generally, its place in the Constitution - would also justify the Privacy Commission transferring to the Chamber from now on.[54]

The Privacy Commission was generally responsible for providing advice and making recommendations on all matters relating to the application of fundamental principles of privacy protection, under the Privacy Act or other laws containing provisions relating to the protection of privacy in relation to the processing of personal data. In addition, complaints could also be sent to the commission, on the basis of which the commission could then perform any mediation role it deemed useful. If the parties reached an agreement, the commission could issue an official report of this. If the parties did not reach an agreement, the commission would issue an opinion on the merits of the complaint, possibly accompanied by recommendations. The power of the different sectoral committees[55] can be summarized as an authorisation power to grant access to certain information.[56]

The Privacy Commission could thus be summarized as being an advisory, mediatory and supervisory body, but without disposing of administrative enforcement competences in the strict sense.

The *ratio legis* behind the allocation of administrative enforcement competences to the DPA

The Privacy Commission was one of the only supervisory authorities within the EU (in the sense of EU Directive 95/46) that did not dispose of any administrative enforcement powers in the strict sense.[57] This has changed for the successor of the Privacy Commission, since the GDPR imposes an obligation on all[58] Member States to ensure that their supervisory authority has the power to impose administrative sanctions, including administrative fines.[59] Because of this pronounced European dimension, the question in this area does not merely arise as to the *ratio legis* of the Belgian legislator, but in addition to this and even more importantly, also to the *ratio legis* of the European legislator.

The preamble of the GDPR states that requiring all supervisory authorities to be able to impose administrative fines is part of the effort to strengthen the enforcement of the rules contained within the GDPR as well as to harmonise and strengthen the administrative sanctions for violations of the GDPR.[60] Indeed, one of the main reasons for the existence of the GDPR itself is to achieve greater harmonisation between different approaches

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[52] Advice of the Privacy Commission of 11 February 2002 on the draft law establishing a Crossroads Bank for Enterprises, No 07/2002, https://www.gegevensbeschermingsautoriteit.be/publications/advies-nr.-7-2002.pdf, 11.

[53] Art 2 Act of 26 February 2003 amending the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data and the Act of 15 January 1990 establishing and organising a Database of the Commission for the Protection of Privacy and extending its powers [2003] BS 26 June 2003.

[54] Explanatory memorandum to the Bill amending the Act of December 1992 on the protection of privacy in relation to the processing of personal data and the Act of 15 January 1990 on the establishment and organisation of a Database for Social Security adapting the status of the Commission on the Protection of Privacy and extending its powers [2001-2002] Parl.St. Chamber 1940/1, 6 and 10.

[55] Provisions concerning the specific competences of some of the sectoral committees (in order: the sectoral committee for the “national register for natural persons” the “database for undertakings” and for the “database for the federal state”): Art 16, 2° and 6° of the Act of 8 August 1983 regulating a national register of natural persons, inserted by the Act of 25 March 2003 amending the Act of 8 August 1983 regulating a national register of natural persons and the Act of 19 July 1991 on population registers and identity cards and amending the Act of 8 August 1983 regulating a national register of natural persons [2003] BS 28 March 2003; art 27 *juncto* 18 of the Act of 16 January 2003 establishing a database of undertakings, modernising the trade register, establishing accredited business counters and containing various provisions [2003] BS 5 February 2003; art 36*bis*, in particular the third paragraph of the Privacy Act, as inserted by the Act of 26 February 2003 amending the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data and the Act of 15 January 1990 establishing and organising a database of the Privacy Commission and extending its powers [2003] BS 26 June 2003.

[56] See similar with this view: Explanatory memorandum to the draft bill amending the Police Service Act, the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data and the Code of Criminal Procedure [2013-2014] Parl.St. Chamber 3105/001, 64-65.

[57] Explanatory memorandum to the bill establishing the Data Protection Authority [2016-2017] Parl.St. Chamber 2648/1, 52; Dirk De Bot, *De toepassing van de Algemene Verordening Gegevensbescherming in de Belgische context*, Wolters Kluwer, 2020, 1184.

[58] However, an exception was made in this respect for two Member States (Denmark and Estonia) whose legal systems do not allow for the administrative fines as described in the GDPR. Recital 151 of the GDPR shows how this can be overcome in these Member States.

[59] Art 58.2, (i) GDPR.

[60] Recital 148 and 150 of the GDPR.

to privacy protection across Member States, as Directive 95/46 proved to be insufficient since even after its introduction and transposition, the levels of protection of personal data within the EU remained divergent.[61]

Supervisory authorities were already given the power to impose administrative fines in the proposal that led to the GDPR, although this power was phrased slightly differently at the time than it is in the finally adopted version of the GDPR. This proposal was a response to the European Council's request to the Commission to assess the functioning of EU instruments on data protection and, if necessary, to propose alternatives of (non-)legislative nature. This was followed by more than two years of intensive stakeholder consultations.[62] In 2010, the Commission stated in a communication that all stakeholders agreed that the role of data protection authorities should be enhanced, in order to better enforce data protection rules. In addition, the Commission itself also emphasised that the national data protection authorities play a crucial role in enforcing these rules and stated that "[t]hey are independent guardians of fundamental rights and freedoms with respect to the protection of personal data, upon which individuals rely to ensure the protection of their personal data and the lawfulness of processing operations. For this reason, the Commission believes that their role should be strengthened […] and they should be provided with the necessary powers and resources to properly exercise their tasks both at national level and when co-operating with each other.".[63]

Subsequently, the European Data Protection Supervisor (EDPS) formulated an opinion urging the expansion of the powers of national supervisory authorities so that each of them would have the power to impose corrective measures and sanctions.[64] The EDPS stressed that such fully harmonised powers to investigate and impose sufficiently deterrent corrective measures and sanctions would enhance legal certainty.[65] To ensure the practical application of data protection rules, the EDPS stressed that supervisory authorities should make full use of the aforementioned powers. Enforcement at national level should therefore be encouraged, according to the EDPS.[66]

The *ratio legis* behind the organisation of the DPA

Although none of the articles of the GDPR explicitly[67] requires the national supervisory authority within the meaning of the GDPR to be the same as the national supervisory authority within the meaning of Directive 95/46, the Belgian legislator opted for this, but not without making the necessary amendments.[68] The powers available to the current DPA are more extensive than those available to the Privacy Commission.

Unlike its predecessor, the DPA now has powers of administrative enforcement (in the strict sense). In other words, the body changed from a mainly advisory body to a monitoring and sanctioning body.[69] This gave rise

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[61] Recital 9 of the GDPR.

[62] Explanatory Memorandum of Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final 2012/0011 (COD), 3.

[63] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *A comprehensive approach on personal data protection in the European Union*, COM (2010) 609 final, 4 and 20.

[64] Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *A comprehensive approach on personal data protection in the European Union*, OJ C 181/1, 22 June 2011, [2011/C 181/01], 14, 15, 18 and 23.

[65] Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *A comprehensive approach on personal data protection in the European Union*, OJ C 181/1, 22 June 2011, [2011/C 181/01], 18.

[66] Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *A comprehensive approach on personal data protection in the European Union*, OJ C 181/1, 22 June 2011, [2011/C 181/01], 21.

[67] However, the explanatory memorandum to the article regarding the independence of these supervisory authorities states the following: "Article 46 obliges Member States to establish supervisory authorities, based on Article 28(1) of Directive 95/46/EC and enlarging the mission of the supervisory authorities to co-operation with each other and with the Commission.".

[68] Without going into debt and without further expanding on my view of the desirability of this, the Member States had the possibility – at least in my opinion – to choose to indicate another entity as DPA than the one they had formerly indicated as supervisory authority in the sense of the Directive 95/46. Member states could, in my opinion, for example have chosen to set up an authority competent for more than only the supervision on the GDPR as required by the GDPR. This view also finds support in art 58.6 GDPR, which states that the national supervisory authorities may also be competent for other tasks in addition to those which the GDPR explicitly provides that the supervisory authority must have.

[69] Explanatory memorandum to the bill establishing the Data Protection Authority [2016-2017] Parl.St. Chamber 2648/1, 3 and 12.

to several changes to the Privacy Commission. For instance, this was one of the motives for changing the name of the body.[70]

Moreover, the legislator argued that mainly because of the new power to impose administrative sanctions for the body, changes in the structure of the body became necessary. In other words, because of the new powers, the authority needed a new structure. Thus, the sectoral committees - mainly introduced by various laws during 2003 - were abolished. Subsequently, the new structure of the DPA was based on two, according to the legislator, comparable "independent administrative authorities": the FSMA and the Belgian Institute for Postal Services and Telecommunications (BIPT).[71] Based on these considerations, the legislator opted to compose the DPA of six bodies (*supra*).[72]

IV. Chapter 2: *Ratio legis* of the FSMA

Due to the scope of this paper, this part will only focus on the *ratio legis* behind the organisation of the FSMA, rather than also including the *rationale* behind the allocation of enforcement powers to the FSMA. This particular focus is pertinent since the *rationale* behind the organisation of the FSMA is not only relevant to the FSMA itself, but also to the DPA, since the Belgian legislator partly[73] based the structure of the DPA on the FSMA.[74] Researching the organisation of the FSMA will thus not only benefit the research results for the FSMA, but also for the DPA.

The FSMA in short (history and current structure)

Initially, the first predecessor of the FSMA - the "Bank Commission" - was established in 1935.[75] This Commission was renamed "Banking and Finance Commission" (hereinafter: BFC) in 1990.[76] In 2004, the "Controlling Service for Insurances" was integrated in the BFC, causing the Commission to be named "Banking, Finance and Insurance Commission" (BFIC).[77]

After the financial crisis, the Belgian legislator decided to reform the up until then integrated system of financial supervision to a bipolar supervisory system, following the "Twin Peaks Model".[78] This model divides financial supervision among two "autonomous" supervisory authorities.[79] In short, one of these authorities will supervise the prudential rules[80] and the other authority will supervise the rules of conduct[81]. The prudential supervisory powers were allocated to the National Bank of Belgium (hereinafter: NBB), whereas the other supervisory powers were allocated to the BFIC (later to be the FSMA). The aforementioned Twin Peaks Model

[70] Another consideration here was the higher identifiability of the national supervisory authority competent in Belgium by other Member States, given that European cooperation plays an important role in the GDPR. See: Explanatory memorandum to the bill establishing the Data Protection Authority [2016-2017] Parl.St. Chamber 2648/1, 10-12.
[71] Explanatory memorandum to the bill establishing the Data Protection Authority [2016-2017] Parl.St. Chamber 2648/1, 16.
[72] Explanatory memorandum to the bill establishing the Data Protection Authority [2016-2017] Parl.St. Chamber 2648/1, 16.
[73] The Belgian legislator not only based the organisation of the DPA on the organisation of the FSMA, but also on the organisation of the Belgian Institute for Postal services and Telecommunication (BIPT).
[74] Explanatory memorandum to the bill establishing the Data Protection Authority [2016-2017] Parl.St. Chamber 2648/1, 16.
[75] Art 35 Royal Decree n° 185 of 9 July 1935 concerning bank control and issuance regime for titles and securities [1935], BS 10 July 1935, 4362.
[76] Art 235 of the Act of 4 December 1990 on financial transactions and the financial markets [1990] BS 22 December 1990, 23690.
[77] Art 1 Royal Decree implementing art 45, second paragraph of the Act of 2 August 2002 on the Supervision of the Financial Sector and Financial Services [2003] BS 31 March 2003, 16241. See also: art 331, first paragraph Royal Decree of 3 March 2011 on the evolution of the supervisory architecture for the financial sector [2011] BS 9 March 2011.
[78] After the financial crisis no financial supervisory structurer (integrated or bipolar) appeared superior to the other. The choice for the bipolar, or "Twin Peaks" model, was driven by the results of the research conducted by the Special Parliamentary Commission (established by Parliament in order to research the financial and banking crisis) and by the results of the report of the High Level Committee for a new Financial Architecture (chaired by Baron Lamfalussy, indicated by the Belgian federal government in order to develop a blueprint for a new Belgian financial supervision). See: Explanatory memorandum to the bill amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and of the law of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions, [2009-2010], Parl.St. Chamber 2408/1, 6-7.
[79] In the strict interpretation of the Twin Peaks Model a clear and rigid separation exists between both supervisory authorities. However, the Belgian legislator, following the example of the Netherlands, adopted a slightly more flexible approach to this Model. In this version, both authorities remain principally autonomous and independent from each other, but collaborate on certain matters where mutual information sharing is more efficient. See: Report to the King on the Royal Decree of 3 March 2011 regarding the evolution of the supervisory architecture for the financial sector [2011], BS 9 March 2011, 15626.
[80] Prudential rules are specifically aimed at ensuring the soundness of financial institutions by imposing requirements on their solvency, liquidity and profitability, among others. See: Report to the King on the Royal Decree of 3 March 2011 regarding the evolution of the supervisory architecture for the financial sector [2011], BS 9 March 2011, 15626.
[81] Rules of conduct are specifically aimed at ensuring loyal, fair and professional treatment of clients by imposing requirements in areas such as the expertise of the firm, its management and the careful treatment of the client or consumer in terms of the rules of conduct. See: Report to the King on the Royal Decree of 3 March 2011 regarding the evolution of the supervisory architecture for the financial sector [2011], BS 9 March 2011, 15627-15628.

was imported gradually. The first necessary steps were undertaken by law in 2010. A year later, a royal decree (to be approved by law) actually implemented the model.[82] This last step in the implementation of the Twin Peaks Model also lead to the change of the name of the BFIC to the "Financial Services and Markets Authority" (FSMA).[83]

This research focusses on the FSMA, an autonomous institution with legal personality.[84] Given that - among other reasons - the FSMA has been allocated administrative enforcement powers in the strict sense, the FSMA also makes for an AEE suitable for this research. Additionally, and as already indicated, the results for the *rationale* behind the organisation of the FSMA could be complementary to the research results for the DPA.

The FSMA is currently organised along four bodies: a Management Committee, Supervisory Board, Audit Committee and the Sanction Commission.[85] As its name already suggests, the latter is the most relevant body of the FSMA for the purposes of this paper as this commission is the competent body of the FSMA to impose administrative sanctions. The remainder of this paper will therefore mostly focus on the Sanction Commission of the FSMA. Given the scope of this paper as well as the fact that this commission most probably was of the most inspiration to the organisation of the Belgian DPA.[86]

The *ratio legis* behind the organisation of the FSMA

Even though the FSMA - as it's currently known - was only established in 2011, the structure and organisation thereof are mostly based on its predecessor, the BFIC.[87] As already indicated, the for the purposes of this paper most interesting body of the FSMA is the Sanction Commission. The Sanction Commission already existed before the FSMA replaced the BFIC. However, the BFIC itself did not always dispose of this sanction commission as a fourth body. Before the introduction of the sanction commission, the Executive Committee of the BFIC could decide on the initiation of prosecution and on the imposition of an administrative sanction. The investigation, also lead by the Executive Committee, was therefore "à charge" and "à décharge". However, in the course of 2007, the competence to impose administrative sanctions was transferred from the Executive Committee to a new entity created within the Supervisory Board of the BFIC: the Sanction Commission. The Sanction Commission was composed of the chairman of the Supervisory Board and six members appointed by the Supervisory Board[88] and acted as an independent body within the BFIC.[89] In addition to imposing administrative fines and periodic penalty payments, the Sanction Commission was also allocated the (new) competence to conclude amicable settlements.

The introduction of the Sanction Commission[90] with the aforementioned competences was deemed necessary because of an increase in cases on administrative sanctions and was based on the "experience gained". Whether the experience gained mainly related to the creation of a new power to conclude amicable settlements or to the necessity of creating a sanctions commission was not clarified. However, it was stressed that the time-consuming nature of administrative sanction procedures because of the detailed description of the facts as well as their extensive legal analysis, on the one hand and the procedural aspects of these procedures (such as the right to be heard) on the other, should be given due attention and time. In view of the above and having taken into account the important operational powers of the Directive Committee, the creation of a specialized body was considered necessary.[91]

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[82] Explanatory memorandum to the bill amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and of the law of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions, [2009-2010], Parl.St. Chamber 2408/1, 7.
[83] Report to the King on the Royal Decree of 3 March 2011 regarding the evolution of the supervisory architecture for the financial sector [2011], BS 9 March 2011, 15625.
[84] Art 44 Act of 2 August 2002 on Supervision of the Financial Sector and Financial Services [2017] BS 4 September 2002 (hereinafter: Act of 2002).
[85] Art 47 Act 2002.
[86] Given that the DPA needed a new structure, primarily because of the new competences that had to be allocated to it, such as the competence to impose administrative sanctions, including fines (*supra*).
[87] Report to the King on the Royal Decree of 3 March 2011 regarding the evolution of the supervisory architecture for the financial sector [2011] BS 9 March 2011, 15625.
[88] Art 48, 6th paragraph of the Act of 2 August 2002, as amended by the Program Act of 27 April 2007 [2007] BS 8 mei 2007; BFIC, 'Annual Report' [2007] <www.fsma.be/nl/jaarverslagen> accessed 3 September 2024, 13, 15 en 26.
[89] BFIC, 'Annual Report' [2007] <www.fsma.be/nl/jaarverslagen> accessed 3 September 2024.
[90] The Sanction Commission was introduced by a so called "Program Act". These are laws that normally only contain provisions regarding budget, but that can also contain diverse amending provisions. The Progam Act does not have an explanatory memorandum. The first draft of this Act didn't even foresee in any changes to the Act of 2002. An amendment to that effect was tabled, accompanied by a short justification (*infra).*
[91] Amendments to the Bill of a Program Act [2006-2007] Parl.St. Chamber 3058/6, 11-12.

Only three years after its introduction, the Sanction Commission was reformed again,[92] making the Sanction Commission into an actual (fourth) body of the BFIC, rather than being established within the Supervisory Board.[93] Since then, the composition of the Sanction Commission also changed to ten members, six of whom had to be magistrates[94].[95] [96]

The aforementioned changes that made the Sanction Commission the fourth body of the BFIC/FSMA, weren't subject of much parliamentary debate. Even though one question was raised in the Senate as to the reason for its transfer from the Supervisory Board to an independent, more autonomous position as the fourth body of the BFIC/FSMA. More specifically, the author of this question wondered whether this implies that the Sanction Commission could not be considered an autonomous body before then (even though the body was supposed to act as an independent body within the BFIC, see *supra*). This was answered only indirectly, by stating that the composition of the Sanction Commission will differ from previous one, as the Commission would, from then on, also included magistrates.[97]

However, there's no explanation as to why this was deemed necessary.[98] The 2009-2010 Annual Report of the BFIC states in this respect that the aforementioned changes were made because of and based on the findings of the report of the Special Parliamentary Committee appointed by the Chamber and Senate, the report of the High Committee chaired by Baron Lamfalussy and, finally, on the basis of opinions issued by the BFIC itself.[99] Given that neither of the aforementioned reports mention the introduction of the Sanction Commission, it could be assumed that the changes made to the Sanction Commission were based on the advice of the BFIC itself.[100]

The – in my opinion most probable – possible justification for this change lies in the reinforcement of the autonomous, independent position of the Sanction Commission, not only by changing its composition (and, related to this, explicitly requiring the impartiality and independence of all members of the Sanction Commission)[101], but also by introducing a separate, autonomous entity for this, without (in)direct influence of other bodies of the BFIC/FSMA.

In 2016 the composition of the Sanction Commission changed for the (up until now) last time. This change was prompted by the allocation of a new competence to the Sanction Commission in the context of public supervision on company auditors. Currently, the Commission is composed of two Chambers, each having specific competences. One of them is competent to impose administrative fines within the context of financial

[92] Even though the changes made to the BFIC/FSMA brought by the law of 2010 and Royal Decree of 2011 (the two legal steps in the implementation of the so called Two Peaks model in Belgium), mostly pertained to the competences of the two supervisory authorities, given that prudential supervisory competences were shifted from the former BFIC to the NBB. See: explanatory memorandum to the bill amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and of the law of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions, [2009-2010], Parl.St. Chamber 2408/1, 3.

[93] BFIC, 'Annual Report' [2009-2010] <www.fsma.be/nl/jaarverslagen> accessed 3 September 2024, 76-77.

[94] Specifically it had to concern two magistrates from the Council of State, two of the Court of Cassation and two of the Court of Appeal. The chairman of the Sanction Commission is chosen from the six magistrates by the members of the Sanction Commission. Within the Sanction Commission, sections could be established, chaired by one of the magistrates. See: art 8 Act of 2 July 2010 amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and the Act of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions [2010] BS 28 September 2010, 59140.

[95] BFIC, 'Annual Report' [2009-2010] <www.fsma.be/nl/jaarverslagen> accessed 3 September 2024, 21.

[96] The law of 2010 not only changed the Sanction Commission into an actual body of the BFIC, but also revised the procedure to impose administrative sanctions. This new procedure is composed of three different stages: an investigation (no longer also "à décharge"), the initiation of prosecution by the Executive Committee and the imposition by the Sanction Commission of an administrative sanction. This procedural change was also aimed at making the procedure more efficient. See: Explanatory memorandum to the bill amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and of the law of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions, [2009-2010], Parl.St. Chamber 2408/1, 16-17.

[97] Report on behalf of the Committee on Finance and Economic Affairs [2009-2010], Parl.St. Senate 4-1727/3, 11-14.

[98] Nor in the preparatory legislative works, nor in the advice of the Council of State or ECB. See e.g.: Explanatory memorandum to the bill amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and of the law of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions, [2009-2010], Parl.St. Chamber 2408/1.

[99] BFIC, 'Annual Report' [2009-2010] <www.fsma.be/nl/jaarverslagen> accessed 3 September 2024.

[100] However, this is a mere speculation, as the aforementioned advice wasn't specifically addressed, so the advice itself could not be checked.

[101] Initially, only independence was explicitly required. However, impartiality of the members is essential as well. Consequently, the Council of State recommended in its' advisory opinion that impartiality should likewise be explicitly stipulated. See: Advice Council of State of 14 December 2009, [2009] 47.442/2, 11.

supervision[102] and the other chamber is competent to impose administrative measures and fines in the context of public supervision of company auditors. The members of the first Chamber remained the same as with the previous composition of the Sanction Commission: six magistrates and four members specialized in financial services and markets. The Second Chamber is composed of the aforementioned six magistrates and two members, specialized in legal audit of financial statements.[103]

V. Preliminary conclusions

This paper tried to uncover the considerations that have been decisive in the past for the allocation and organisation of administrative enforcement powers, in Belgium. As in many countries, the Belgian administrative enforcement landscape, is a very fragmented one: different instances have been allocated different administrative enforcement powers. This can help explain the research gap in Belgian literature into administrative enforcement in its entirety. This study contributes to addressing this research gap and therefore tries to adopt a holistic approach of the administrative enforcement system. However, the fragmented nature of the administrative enforcement landscape also implies that an all-encompassing answer to the aforementioned question was not feasible, nor for this paper, nor for the bigger PhD-project. This paper focused on three specific AEE and future research will include other AEE, taking into account the selection criteria as discussed in the introduction, in order to draw more generalisable conclusions about the Belgian administrative enforcement system.

With regards to the competence of local authorities to impose administrative sanctions, it can be concluded that the allocation of this competence in 1999 has predominantly been motivated by reasons relating to criminal law, rather than administrative law. The question why administrative enforcement competences should be allocated to local authorities specifically, was not addressed in parliament. Additionally, local administrative enforcement *sensu stricto* is brought about by a sanctioning civil servant when it concerns an administrative fine, but by the municipal executive, when it concerns other administrative sanctions such as the suspension of a permit. This differentiation hasn't been subject to parliamentary debate either, nor has it been motivated by the legislator. Lastly, the catch-all nature of the local administrative sanctions systems, carries a (greater) risk of ill-considered future expansions of the field of application thereof.

The privacy commission, as predecessor of the DPA, was one of the only supervisory authorities within the EU to not dispose of administrative enforcement competences in the strict sense. However, this changed because of an obligation in this respect contained within the GDPR. The European legislator found this necessary in order to strengthen enforcement of the rules contained within the GDPR. The role of the national data protection authorities - as independent guardians of the fundamental rights and freedoms regarding the protection of personal data, on which individuals rely on to protect their personal data and ensure the lawfulness of the processing thereof – had to be strengthened according to all stakeholders, the Commission and the EDPS. Furthermore, according to the EDPS, the national data protection authorities had to be given fully harmonised powers to, among other things, impose sufficiently dissuasive sanctions and should then make full use of these powers. According to the EDPS (and subsequently supported by the GDPR), enforcement should be encouraged at national level, in order to put an end not only in theory but also in practice to the previously prevailing different levels of protection of personal privacy.

Given this harmonisation objective in the field of data protection in general and data protection authorities in particular, it seems logical that, since the majority of data protection authorities in the EU already had the power to impose administrative fines, this possibility was now extended and became mandatory for (almost) all Member States, rather than reducing this power. This explanation would also be in line with the advice of the EDPS.

With regards to the structure of the DPA, the Belgian legislator indicates that the structures of the FSMA as well as the BIPT have been sources of inspiration, but does not provide for any more motivation as to why the DPA was organised in the way it was. It thus became interesting to research the *ratio legis* of the organisation of the FSMA. The latter AEE is organised in four bodies, one of which being the Sanction Commission. Motives from the legislator to foresee in a specialized commission to decide on the imposition of administrative sanctions, was the lengthiness (because of the detailed explanations of the facts as well as the legal analysis) of the procedure and the fact that these procedures should be given due time and attention by a body that only

[102] These are the competences that the Sanction Commission already disposed of, before this legislative change. See: Explanatory Memorandum to the bill on the organisation of the profession and public supervision of auditors [2016], Parl.St. Chamber 54 2083/1, 58.

[103] Art 48*bis* Act of 2002, as amended by the Act of 2 July 2016 [2016] BS 13 December 2016, 84812.

specializes in this. Later on, the sanction commission became one of the actual four bodies of the FSMA. The reason for this change was, again, not explicitly mentioned, but lies in my opinion most likely in the fact that this lead to even more independence and autonomy of the sanction commission.

This *rationale* of specialization and independence of other bodies of the commission, can therefore in my opinion most probably also be found in the creation of the organisation (of the Disputes Chamber) of the DPA.

By analysing the *ratio legis* of the allocation and organisation of the selected AEE, this study tried to shed more light on the past considerations that have been decisive in order to allocate and organise administrative enforcement powers. Even though the findings of this study are first and foremost valid for the AEE dealt with within this paper, the findings could also be a first starting point to interpret and understand other administrative enforcement instances in Belgium and their organisation as well. As stated above, this study only addressed (partly) the first part of a twofold question pertaining to the legislative design of administrative enforcement, namely: which considerations have been decisive in the past for the allocation and organisation of administrative enforcement powers and which conditions should be decisive in the future? The examination of past and future considerations will allow for the elaboration of minimum administrative law limits that should be taken into account by the competent regulator when intending to allocate and organise administrative enforcement powers. Future research will have to elaborate further on the second, and in my opinion even more interesting part of the question. This will be the focus of my subsequent doctoral research.

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