

COMMON MARKET LAW REVIEW

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Aims

The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Oswald Jansen (Ed.), *Administrative Sanctions in the European Union*. Cambridge: Intersentia, 2013. 642 pages. ISBN: 978-1-78068-136-8. EUR 135.

One of the central features of EU administrative law, including the rules on administrative sanctions, is that most of them have been developed from a comparative perspective. Principles of EU administrative law have been developed not only from general principles of EU (“constitutional”) law, but also from Member State administrative law and from public international law regimes. These concepts have often been adopted to EU administrative law in a cross-disciplinary approach having initially been developed in other branches of law such as, for example, criminal law, trust law and contract law.

For that reason, the book edited by Jansen with its distinctively comparative approach tracing the law of administrative sanctions in various countries and the EU is a highly welcome addition to the legal literature. It is a book which was long in the making, published in 2013, it goes back to a conference in 2004. The nearly decade-long gestation period of this book from conception to publication is of course a disadvantage in that most public law regimes in the EU and its Member States are subject to constant evolution and re-development. Some chapters, probably written within the initial time frame set by the editor, have a certain patina to them. Other chapters such as that on the UK (by McEldowney) are much more up-to date, including references up to 2011.

The book is structured in a straight forward approach in which a first general report on the definition of administrative sanctions (by Paliero, setting out to establish a typology of legal systems and approaches) is followed by country reports and a report on the EU. These individual chapters in some cases are a treasure trove of knowledge about different legal systems’ approaches to the issue of sanctions, the conceptual understanding behind the approaches and – where applicable – an introduction to the understanding of multi-level governance structures within the legal system. In reading through the chapters, many such interesting elements of one or another legal system surface, which is to me a proof of the wealth of concepts arising from this book. In that context, one of the book’s real strengths lies in uncovering a contextual approach of national systems of administrative sanctions. This makes some chapters read more like small-scale introductions to the legal systems, including the issue of remedies and oversight mechanisms. A good and very readable example for this is the case study of Sweden (by Blanc-Gonnet Jonason).

Next to learning about a specific national approach, the book’s country-by-country reports primarily allow for a cross-country comparison of basic concepts of sanctioning. To name just one example of a possible case study, take the necessity of establishing fault or guilt of a party subject to an administrative sanction. The country analysis of Spain (by Robollo Puig, Izquierdo Carrasco, Alarcón Sotomayor and Bueno Armijo) for example explains the particularities of the Spanish approach to this concept – which would appear to be much closer to criminal law concepts than many other systems compared in this book. To further complement this chapter, as a non-Spanish speaker, one would want to consult further comparative or introductory work on this country’s administrative law to verify having sufficiently understood this concept to draw conclusions. This is then a very strong basis for further comparisons with other legal systems described in this book. Other comparisons can be drawn between countries with a more pronounced internal structure or federally organized countries, such as in the case reports on Austria (by Höpfel and Kert), Belgium (by Put and Andries), Germany (by Dannecker) and the EU (by de Moor-van Vugt) and the more unitarily organized countries and systems.

However, as mentioned, when consulting this book, it is important to understand the dynamic nature of EU public law and the mutual influences the European multi-level legal order has. Nonetheless, although the contributions to this book were written pre-*Fransson* (C-617/10 *Åkerberg Fransson*), several chapters such as for example the one on the Netherlands by Jansen address the relation of administrative and criminal sanctions and the principle of *ne bis in idem* in that respect.

Despite there not always being a uniform systematic structure to the country chapters, the advantage of the comparative point of view arises particularly as one reads the book; the common concerns of administrative sanction procedures naturally provide for recurring topics which offer themselves nicely to comparative assessments. The advantages are evidently that the chapters are adapted to the specificities of each legal system – on the other hand, the possibility of direct, inter-system comparison suffers. Some chapters, for example, address issues such as rectification of administrative decisions, boards of appeal of agencies and similar matters, while other chapters focus more on issues of judicial review or other elements of the systems. Other chapters, in the context of a more general introduction to the field, for example the chapters on the Austrian, Finnish, Spanish and the Swedish legal system, also discuss rules on mutual assistance within the various levels of authorities within the State and between authorities in the EU. Other chapters also cover the requirement to conducting an inspection into a matter prior to sanctioning and the duties associated with this.

Overall, therefore, this book is undoubtedly a valuable addition to the comparative public law literature. It covers a previously un-explored area of great practical importance. It will be an important recourse for understanding differences and commonalities in approaches between legal systems as well as a source of knowledge for further EU-based law making.

Herwig C.H. Hofmann
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