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The administrative penalty framework in Bulgaria

This chapter introduces the origins and development of administrative penalty law in Bulgaria and describes the applicable legal framework including its recent reforms. It addresses the relevance of ensuring the quality of administrative penalties for public sector integrity. The section also outlines the underlying goals of the analysis, the scope of the report as well as the challenges and ways of improvement for the regulations.

1.1. The relevance of administrative penalties for public sector integrity

Public entities are increasingly vested with the power to sanction illegal conducts which the legal system considers deserving punishment but not the consequences provided for by the criminal law system. As a consequence, besides compliance promotion activities, administrative penalties are commonly used by public entities to enforce legal instruments and regulations in nearly any area of public administration such as procurement, environment, real estate and city development, communications, competition, consumer protection, tax matters, financial markets, and road circulation. Such penalties have also grown following their provision in EU legal instruments, which envisage them in areas such as competition law, regulation of markets (energy, financial services, transport), and consumer protection.

Failure to promote compliance, enforce regulatory requirements and impose administrative penalties, where needed, in a way that is fair, transparent and proportional to imposed risk, not only endangers/compromises/threatens the achievement of laws and regulations' goals, but it also has a severe impact on citizens' trust in public sector action and on the confidence in the investment climate and the rule of law. This is especially the case when the challenges in administrative enforcement are due to corrupt behaviour of control and sanctioning administrative authorities taking advantage of legal gaps and loopholes. Indeed, risks of corruption and ineffective enforcement can be higher when the legal framework is unclear, fragmented, incomplete or lacks objectivity, risk-responsiveness and proportionality.

The National Strategy for Prevention and Counteracting Corruption of Bulgaria of 2015-2020 (Anti-corruption Strategy 2015-2020) identified the prevention and sanctioning of corruption in the bodies in charge of enforcing the administrative legal framework as one of its priorities. In particular, the Anti-corruption Strategy noted that among the conditions favouring the emergence of corrupt behaviour within these bodies and throughout the related proceedings there are weaknesses in the legislation on administrative penalties. This was confirmed by the Anticorruption Strategy 2021-2027, which set as one of its priority objectives the improvement of the legislation on the control and sanctioning of the administration with a view to limiting the scope for corrupt practices. Although Bulgaria has put efforts and introduced reforms that have addressed some of the challenges of the legal framework in the last years, several issues remain.

1.2. The origins and development of administrative penalty law in Bulgaria

The Administrative Violations and Penalties Act ('AVPA')¹ is the key legal instrument governing administrative penalties and the application thereof in Bulgaria. The AVPA establishes the basic principles and foundations for the application of administrative penalties, while the types of administrative violations and penalties are established in more than three hundred sectorial laws that regulate different areas of public domain.

The AVPA was adopted in 1969, one year after the adoption of the Criminal Code, and the connection between the two legal instruments concerning basic concepts and legal foundations has been preserved ever since. Since 1989 it has been amended and supplemented more than 40 times and created a fragmented legal framework, whereas many of these amendments addressed specific problems that appeared at a particular moment and were not coherent with broader Bulgarian legislation. The weaknesses of the legal framework have been the subject of continuous academic and political debates aimed at improving the legal framework for the administrative penalties system. In recent years, several reforms have either been proposed or adopted and the most recent changes will enter into force on 23 December 2021 (Box 1.1).

Box 1.1. Recent reform of administrative penalty law in Bulgaria

In 2011, under the aegis of the Ministry of Justice, a Strategic document for continuing the reform of the administration of justice and the justice system in the field of administrative penalties for the period 2011-2014 was developed. This document outlined the legislative and organisational measures for prevention of and response to administrative violations. As part of these efforts, between 2012 and 2015 a working group established in the Ministry of Justice prepared a draft Code of Administrative Violations and Penalties which aimed at codifying the general rules applicable to administrative violations, administrative penalties and coercive administrative measures; the procedure for establishing the administrative violations, the procedure for imposing, appealing and application of administrative penalties and coercive measures; the guarantees for the protection of the rights and legitimate interests of citizens and their organisations. Eventually the draft code has not been submitted to the National Assembly for discussion.

In the period between 2016 and 2017, the former Centre for Prevention of and Counteraction to Corruption and Organized Crime prepared the report "Identification of existing corruption risks and practices in the supervisory and sanctioning activities of the administration. A proposed solution". This report identified the weaknesses related to the regulation and implementation of state policy in the administration's supervisory and sanctioning activities and proposed several measures to overcome them, which have also been considered in drafting the current report.

Most recently, with Decision no. 69 of 5 February 2018, the Council of Ministers of Bulgaria approved the Interdepartmental Working Group report on the topic of "Independence of the Judiciary and Corruption" which contained specific anti-corruption measures concerning the supervision and administrative penalty activities of the administration. In connection with the approved anti-corruption measures, a number of amendments to the AVPA have been approved by the National Assembly in December 2020 and the new amendments will enter into force on 23 December 2021.

1.3. Advancing the reform of the administrative penalty framework

Following request from Bulgaria and with the support of the European Commission under the Structural Reform Support Programme, starting from October 2020 the OECD has been providing technical support to the Government of Bulgaria in view of addressing existing challenges of the legal framework on administrative penalties and proposing legislative amendments in light of EU Member States' experience and good practices. As part of this project, the present report analyses the administrative penalty framework of Bulgaria and identifies key challenges and recommendations to address them. These recommendations will form the basis upon which the OECD will develop concrete proposals for Bulgaria's consideration.

In particular, the report addresses the issues emerged from an in-depth analysis of the AVPA and several special administrative laws in diverse sectors such as:

- Accounting Act;
- Act on the Operation of the Collective Investment Schemes and of Other Undertakings for Collective Investment;
- Bulgarian Identity Documents Act;
- Civil Aviation Act;
- Commercial Act;

- Commodity Exchanges and Markets Act;
- Consumer Protection Act;
- Credit Institutions Act;
- Customs Act;
- Cybersecurity Act;
- Decree for Combating Petty Hooliganism;
- Excises and Tax Warehouses Act
- Foreigners in the Republic of Bulgaria Act;
- Forest Act;
- Labour Code;
- Law on Excise Duties and Tax Warehouses;
- Law on the Protection of Classified Information;
- Payment Services and Payment Systems Act;
- Public Offering of Securities Act;
- Renewable Energy Act;
- Road Traffic Act;
- Road Transport Act;
- Roads Act;
- Tax-Insurance Proceedings Code;
- Tourism Act;
- Wine and Spirit Drinks Act.

The report also benefitted from the information collected through a questionnaire that was responded by around 30 public entities – including ministries, agencies as well as entities at the regional and municipal level – between December 2020 and March 2021 and during a virtual fact-finding mission involving several institutions held in March 2021. A workshop was also organised with key institutions in September 2021 to discuss the report findings and draft recommendations, and the report reflects the feedback shared by participants.

1.4. Scope of the report

The report is divided in three thematic areas related to the legal framework – subjective scope; typologies and levels of sanctions; procedural aspects – and provides recommendations as to how to address the identified challenges and enhance the fairness, effectiveness, objectivity, proportionality and responsiveness of its administrative penalty system, thereby mitigating the risks of corruption associated with its application. The report takes into consideration the OECD Toolkit and Best Practice Principles on Regulatory Enforcement and Inspections (OECD, 2014^[1]; OECD, 2018^[2]). It also introduces good practices from other EU Member States, in particular from six countries – Austria, Czech Republic, Germany, Lithuania, the Netherlands and Spain – which are expression of a mix of leading and diverse models developed in the European Union to sanction administrative violations and whose practices are – on a case-by-case basis - relevant and compatible for Bulgaria’s legal tradition and context.

The report focuses on the challenges and room for improvement of the legal framework, which a fundamental piece of the administrative penalty system. However, future work could address other key related areas of the system, in particular the institutional and governance ones. In Bulgaria, expertise in administrative penalty law exists within the institutions which are counterparts of the project – Office of the

Deputy Prime Minister for Judicial Reform (until May 2021) and Directorate for Modernization of Administration within the Council of Ministers – and the latter institution yearly collects some data on administrative penalties and proceedings as part of the Annual State of the Administration Report. The Anticorruption Strategy 2021-2027 has also planned the establishment and implementation of a single register of administrative and criminal proceedings, whose design and implementation will be the responsibility of different actors including the National Anti-corruption Council, the Administrative Reform Council, the State Agency for e-Government, the Chief Inspectorate of the Council of Ministers (Box 1.2).

Box 1.2. The objectives of the planned register for administrative penalty proceedings according to the Anti-corruption Strategy 2021-2027

The register of administrative penalty proceedings aims to address the problems of the administration's control and sanctioning activities related to: the lack of a uniform database of related proceedings; the lack of control over the performance of checks on compliance with administrative regimes; the lack of discretion as to the timeliness and uniform application of the law; the lack of complete and comprehensive information on the enforcement of the penalties imposed and the outcome of the enforcement of debts from fine; and the lack of a legal basis for the digitisation of administrative and criminal information and the exchange of information between administrative bodies.

The register will function as a single electronic database through an integrated information system that supports it, enabling the entry, processing, storage, and verification of recorded circumstances and aggregation of the results of the activities of the bodies entrusted with control and sanctioning powers.

The register will allow for timely reporting to the administration of expiry of procedural limits in view of better controlling the relevant activity of the administration, in particular over the bodies in charge of control and sanctioning powers.

Another objective of the register is to allow the structured storing and digitisation of the activities related to the issuing of final decisions of the sanctioning authority and the decisions establishing administrative infringements.

Source: (Government of Bulgaria, 2021^[3])

Based on a preliminary research, European countries do not seem to assign a specific responsibility on administrative penalty policy as such to a single institution. At the same time, they ensure coherence of administrative penalties through their policy on legal and regulatory quality, which is usually the responsibility of center-of-government institutions or ministries of justice. For example, Austria, Germany, the Netherlands and Spain have developed technical guidance on the framing of legislation and in some cases specific guidelines concern the drafting of provisions creating administrative penalties, on enforceability and the choice between sanctioning systems (Box 1.3). Additional research and work could thus identify how Bulgaria could improve the governance of the administrative penalty system and define specific responsibilities on issues such as ensuring coherence of the relevant legal framework, providing guidance in preparing draft regulations providing for administrative penalties by single Ministries as well as centralising and using data on penalties and related proceedings.

Box 1.3. Ensuring quality of administrative penalty legislation in Austria, Germany, Spain and the Netherlands

The Federal Chancellery (Bundeskanzleramt) of Austria published a manual for legislative drafting (Handbuch der Rechtssetzungstechnik) and other legislative guidelines (Legistische Richtlinien). One of these guidelines involves the wording of provisions on obligations and prohibitions and their punishment. The Verfassungsdienst of the Bundeskanzleramt is entrusted with Legistik, the legislative technique and quality.

The Federal Ministry of Justice of Germany has published a Manual for Drafting Legislation (Handbuch der Rechtsförmlichkeit). Several instructions focus on Administrative Penalties (nr. 43, 59 and 81 of Appendix 2) of this Manual contains the 'Principles Regarding the Need for Sanctions in the Form of Administrative Fines, Especially in Relation to Measures of Administrative Compulsion' (available in English). Germany also developed a Manual on supplementary criminal provisions (Handbuch des Nebenstrafrechts, 2018) and the Guidance on Framing Criminal and Administrative Fines Provisions in Supplementary Criminal Provisions Outside of the Criminal Code. The Ministry of Justice also has a specific subdirectorates in charge – among other topics – of Germany's key administrative penalty law - the Regulatory Offences Act - under the Directorate General II dealing with Criminal law.

In Spain the Ministry of Presidency (Ministerio de la Presidencia) is entrusted by law with the task to ensure the co-ordination and quality of the State's normative activity. This entails the analysis of the technical quality of proposed legislation as well as the conformity of the proposed regulation with policies to limit administrative burdens and good regulation (Article 26, paragraph 9, Law 50/1997). For this purpose the Coordination and Normative Quality Office (Oficina de Coordinación y Calidad normativa) was created within the Ministry of Presidency. In 2005 the Spanish government set up guidelines to standardise approaches to law drafting (Directrices de técnica normativa). These guidelines do not contain models or guidelines on the drafting and co-ordination of offences and administrative penalties.

The Netherlands has created a Knowledge Center for Policy and Regulation (Kenniscentrum voor beleid en regelgeving) to support employees of central government entrusted with the development of policies and legislation. The prime minister has published Drafting instructions for legislation (Aanwijzingen voor de regelgeving). Legislative lawyers at central government are obliged to follow these instructions. The instructions also address issues such as the enforceability of regulations, the choice of methods of enforcement and between sanctioning systems. They also offer many models to frame specific provisions, such as provisions creating sanctioning powers. Next to this, on 14 April 2011 the Dutch government has issued other compulsory quality standards (*verplichte kwaliteitseisen*). One of these quality standards focuses on the principles determining the choice between sanctioning systems (Uitgangspunten bij de keuze van een sanctiestelsel).

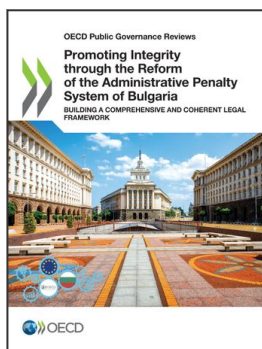
Source: OECD Research; (Government of Germany, 2021^[4])

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Note

¹ This is referred to as 'Law on Administrative Offences and Sanctions' in (OECD, 2021^[5]).



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