2 Persons liable for administrative penalties in Bulgaria

This chapter deals with the challenges emerged in relation to the categories of persons which can be liable for administrative violations. In particular, the analysis focuses on various aspects related to the administrative liability of legal persons - including specific typologies such as entities without legal personality, branches of legal entities and foreign legal entities. It also addresses the regime applicable to those who have oversight responsibilities over employees or subordinates as well as instigators, facilitators and admitters. While challenges in these areas exist in other OECD countries, a more comprehensive legal framework in Bulgaria in this area could help address the gaps and inconsistencies emerging from the analysis and the application.

2.1. Bulgaria could expand the liability of legal entities to branches of legal entities and entities without legal personality in the AVPA

The liability of legal entities and sole traders for non-fulfilment of an obligation to the state and the municipalities is regulated by art. 83 AVPA. In particular:

> *"A pecuniary sanction may be imposed on legal entities and sole traders for any failure to discharge their obligations to the state or the municipality stemming from and in connection with the performance of their activities in such cases as are provided for in a relevant law, by-law or decree of the Council of Ministers or ordinance of the municipal council."*

Through the latest amendments to the AVPA, which have entered into force on 23 December 2021, the rules governing the liability of legal entities and sole traders were supplemented by two new paragraphs laying down the rules on the liability in the event of legal succession of a legal person. According to the new provisions, in case of legal succession after the act establishing the administrative violation has been drawn up, the administrative penalty proceedings continue with the successor as its subject.

Although the latest amendments to the AVPA fill certain legal gaps as regards the liability of sole traders and legal entities, the question of the liability of branches of companies and the liability of entities without legal personality such as partnerships under civil law remains to be addressed.

With regards to branches of legal entities and sole traders, in some cases they are not registered as a separate legal entity and their functions are purely commercial. In such cases, the liability for failure to fulfil an obligation to the state or municipality lies with the company or the sole trader. This practice was also mentioned by the respondents in the course of interviews. However, in a number of situations, the branch of the legal entity or sole trader is a separate legal entity, which also raises the question of its financial liability for failure to comply with an administrative obligation. In this case the branch has its own legal status and property, so the legal liability does not arise for the parent legal entity but for the branch.

The absence of a legal framework for the liability of the branches of legal entities should be pointed out as a legislative gap, which leads to contradictions in the practice of administrative sanctioning authorities and courts. This legislative gap is also highlighted by the respondents to the OECD questionnaire. For example, it has been mentioned that branches of commercial companies and branches of foreign traders can be employers, but are not liable for administrative violations committed by them, as there are no applicable administrative penalty provisions in Article 412a of the Labour Code. This legislative gap is also established in other laws, but since it relates to the general question of persons subject to administrative penalty liability, this could be consistently addressed in the AVPA as proposed in Box 2.1. These proposed amendments would also allow providing clarity on the issue of legal representation of the branches of national and foreign legal entities, including the servicing the summons, notices and other documents addressed (cf. Box 4.10).

Box 2.1. Proposed Articles on liability of branches

Article 83, para 1a AVPA: "The provision of para 1 shall also be applied to the branches of the national and foreign legal entities, which have the status of trader according to art. 1 of the Commercial Act and any other civil organisation with economic activity."

Article 83, para 1b AVPA: "In case the branch of national or foreign legal entity does not have a status of a trader under art.1 of Commercial Act, the legal entity shall be held liable."

Source: OECD proposal

In spite of the general nature of article 4 of AVPA – which provides jurisdictional basis to commence administrative penalty proceedings, it would be appropriate to ensure that branches of both Bulgarian and foreign legal entities are explicitly included among the entities liable for administrative violations as done by Lithuania through Article 37 of the Lithuanian Law of Public Administration and in line with the definition of economic operator used in EU Law (Box 2.2).

Box 2.2. Scope of liability of legal persons in Lithuania

According to Article 37 of the Lithuanian Law on Public Administration, administrative penalties can be imposed on any "economic entity", which is a natural or legal person or any other organisation, a branch of the legal person or any other organisation which carries out economic activity. The relevant provisions read as follows:

"Article 2 The basic concepts of this law:

(14) Economic entity - a natural or legal person or other organisation, a subdivision of a legal person or other organisation carrying out economic activities in the territory of the Republic of Lithuania, which is supervised by public administration entities."

The definition of economic operator in the Lithuanian Law on Public Administration allows for the liability of foreign legal entities as well as entities that have legal personality according to national law.

At EU level, according to settled case-law of the European Court of Justice, the concept of 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, and any activity consisting in offering goods and services on a given market is an economic activity. In particular, the Court maintained that the term 'undertaking' should be understood as designating an economic unit even if in law that economic unit consists of several natural or legal persons, and that if such an economic entity infringes the competition rules, it is for that entity, consistently with the principle of personal liability, to answer for that infringement. Thus, the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material aspects, the instructions given to it by the parent company, having regard in particular to economic, organisational and legal links between those two legal entities. That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking. Thus, the fact that a parent company and its subsidiary constitute a single undertaking enables the European Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement.

Source: OECD research; (OECD, 2016[1]); Judgment of the Court of First Instance (Second Chamber) of 12 December 2006. SELEX Sistemi Integrati SpA v Commission of the European Communities, https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62004TJ0155.

The lack of legislation as regards the liability of entities without legal personality such the one provided for by art. 357 of the Law on Obligations and Contracts should be pointed out as a gap in the legislation on administrative penalties, as also highlighted in the course of the fact finding interviews.

According to art. 357, para. 1 of the Law on Obligations and Contracts, 'under the contract of partnership two or more persons agree to unite their activities for achieving a common business objective.' The partnership is not a legal entity; it is subject to civil law or civil liability for failure to fulfil an obligation arising from a contract with another individual, but it is not liable for failure to fulfil obligations towards the state or municipalities.

A major challenge to the legal framework is that the entities such as those under art. 357 of the Law on Obligations and Contracts do not own any property. According to art. 359, para. 1 of the Law on Obligations and Contracts, 'Everything acquired by the partnership is jointly owned by the partners'. Art. 359, para. 2 stipulates that, unless otherwise agreed, the shareholders' shares are equal.

Another entity without legal personality is the consortium referred to in art. 275 of the Commercial Act. According to the definition in art. 275 of the Commercial Act, a consortium is a contractual association of traders who carry out a certain activity. On the basis of art. 276 of the Commercial Act, the substance of this legal form can be implemented in two ways - as partnership under civil law or as a commercial company. In the first case, the consortium is a partnership (to which the provisions of art. 357 to 364 of the Law on Obligations and Contracts apply) and is not a legal entity, and in the second, the consortium takes the form of a commercial company in one of its five types permitted under the Bulgarian law.

Insofar as it is possible that the activities of a partnership under civil law also lead a failure to fulfil an obligation towards the state or a municipality, the possibility of assigning them a status of legal entities for the purposes of administrative penalties could be considered. Hence, where an entity without legal personality has failed to fulfil an obligation to the state or the municipality, its liability is objective and its status for the purposes of administrative penalties should be considered the same as that of legal entities. In order to introduce the liability of such entities Article 83 of the AVPA could amended as proposed in Box 2.3.

Box 2.3. Proposed Article 83(5)

"**Article 83, para. 5.** The provisions of paragraphs 1 and 2 shall also apply to:

1. Companies under the Law on Obligations and Contracts and consortia of commercial companies, when they are not commercial companies, where there has been a breach of obligation towards the state or the municipality in the course of their activities, unless otherwise stipulated by a special law;

2. Persons under subparagraphs 1, registered in another state, performing activities in the Republic of Bulgaria through a branch, unless otherwise stipulated by a special law."

Note: This proposal was discussed in the working group responsible for the latest amendments of the AVPA, but eventually was not adopted.

2.2. Bulgaria could provide for a more comprehensive liability regime for legal entities that enriched themselves or would enrich themselves from a crime

Bulgarian law provided for the liability of legal entities that have enriched themselves or would enrich themselves from a crime committed, for the first time in 2005 with the entry into force of the Law on Amendments of the AVPA, promulgated, SG 79 of 4 October 2005, which established the provisions of Art. 83a-83e of the law. In 2015 and 2020, the institute was seriously reformed. However, not all weaknesses in the legal framework have been dealt with, and the ongoing application of the institute by the courts is likely to reveal additional weaknesses not yet established by legal theory.

The liability of legal persons under Chapter 4 of the AVPA arises from a crime committed by a natural and criminally responsible person, from which those legal entities have benefited or could benefit. This gives rise to two types of legal liability: criminal liability for the natural person who has committed the crime and administrative liability for the legal person who has benefited or could benefit. In other words, the liability of the legal person is not criminal but pecuniary, which is in line with the legal provisions adopted by other EU countries such as Germany and Italy.

In the first ten years of the introduction of the pecuniary liability of legal persons for a criminal offence in Bulgaria the concept has not delivered the expected results. The most significant problem for the realisation of the liability of these legal entities was the linking of the proceedings under Article 83a of the AVPA to the criminal proceedings against the responsible natural person. Therefore, in 2015 the institute was seriously revised. Both the substantive rules governing the liability of legal persons who have benefitted or would benefit by the commission of a criminal offence and the proceedings for the realisation of their liability have evolved and this has led to a sharp increase in the number of cases, which in turn revealed gaps and weaknesses in the regulation, which were not addressed by the 2015 reform.

This created the need for another legislative initiative to supplement and improve the institute's rules, which was carried out by the Law Amending and Supplementing the AVPA, promulgated in State Gazette No 109 of 22 December 2020. However, they have not address all the existing challenges and legal gaps which are illustrated in the following paragraphs. Additional areas of improvement with regards to the scope of corporate liability for foreign bribery and related offences have also been identified by the OECD Working Group on Bribery in its Phase 4 Report.[1]

2.2.1. Bulgaria could regulate the liability of the legal entities in greater detail

Currently the liability of the legal entities under Art. 83a and the following of AVPA arises in case of a crime has been committed by natural persons from which legal entities have profited or could have profited. The subjects of crime are exhaustively listed in art. 83a, para 1, items 1-4 of the AVPA. However, the liability of legal entities under the Bulgarian law is not criminal. It is probably due to these considerations that the institute was systematically regulated by the AVPA. However, the current legal framework does not allow for a detailed regulation of several specific aspects related to the liability of legal entities. In order to address them more comprehensively, Bulgaria could either amend Chapter IV of the AVPA on "Administrative punitive sanctions to legal persons and sole entrepreneurs" or regulate the liability of legal entities in a separate legislative instrument. While the stand-alone statutes on liability of legal persons are not common in the EU, Bulgaria could consider the examples of Italy and Slovenia if it decides to opt for the latter option. (Italy, 2001[2]); (Slovenia, 2005[3])

2.2.2. The catalogue of crimes determining the liability of legal entities could be expanded

Under the current regulation, not every crime provided for in the Special Part of the Penal Code determinates the liability of legal entities. Such are only those listed in Art. 83a, para. 1 of AVPA - fraud, extortion, human trafficking, money laundering, etc. Among these crimes are all crimes against EU funds.

However, the range of crimes that determine the liability of legal entities is considered to be incomplete. Thus, in the catalogue of crimes under Art. 83a, para. 1 of AVPA there are crimes from which legal entities could not possibly derive any benefit, even in theory (for example, rape under Article 152 of the Penal Code); at the same time, other crimes that could lead to illegal benefits for legal entities (e.g. certain crimes related to documents), are not listed. In regulating the range of offences leading to liability for the benefiting legal entity Bulgaria could consider two models:

1. A comprehensive and detailed list of crimes whose catalogue can be expanded, as done in Italy; (Italy, 2001[2]) or
2. Liability of the legal entity in each case of a crime committed as done in Slovenia. (Slovenia, 2005[3]).

2.2.3. The range of persons whose criminal activity leads to the liability of legal entities could be clarified to cover cases where they assist or attempt the commission of a crime

According to art. 83a, para 1 of AVPA, the possible subjects of the crime from which the liability of the legal entities is derived, are four categories of natural persons: 1. a person empowered to determine the will of the legal person; 2. a person who represents the legal person; 3. a person elected as a controlling or a supervising body of the legal person; 4. a worker or employee to whom the legal person has assigned certain duties, whereby the crime has been committed in the process of performing this work or in connection with it. These categories of persons could be held criminally liable under the Bulgarian Penal Code, as otherwise the Bulgarian law enforcement authorities would not be empowered to hold the legal entity liable. It means that if the person committed the crime is not legally responsible under the Criminal Code, the Bulgarian court could not decide if the act is a crime, including in the context of the institute of art. 83a of AVPA.

There is no obstacle to engaging the responsibility of the corporation when the persons from the first three categories are only facilitators or instigators in the commission of the crime from which the legal entity has benefited. However, if the person referred to in Art. 83a, para 1, item 4 is only an instigator, liability of the legal entity does not arise pursuant to Article 83(a)(3). Such difference is difficult to explain so the legislator could consider extending the scope of the institute to all categories of persons listed in Article 83(a)(1). Indeed, it is quite possible that they can all be instigators or facilitators in committing the crime to the benefit of the legal entity – employer.

2.2.4. Bulgaria could introduce additional and more precise criteria for the individualisation of administrative penalties for legal entities as well as incentives to assist enforcement agencies

The principle of individualisation of the penalty is laid down in Article 27 para. 2 of AVPA:

> *Art. 27. (1) The administrative penalty shall be determined according to the provisions of this Act within the limits of the penalty provided for the committed violation.*
>
> *(2) Taken into consideration in determining the penalty shall be the burden of the offence, the motives for its commitment and other attenuating and aggravating circumstances, as well as the proprietary status of the offender.*
>
> *(3) The attenuating circumstances shall substantiate the imposition of a lenient penalty and the aggravating - of a more serious sanction.*
>
> *(4) The replacement of the penalties stipulated for the violations by a more lenient in kind shall not be admitted except in the cases stipulated by art. 15, para 2.*
>
> *(5) (Suppl. – SG, 109/20, in force from 23.12.2021) Not admitted shall also be determining of penalties under the stipulated lowest size of the sanctions of pecuniary sanction and temporary deprivation of right to practice a definite profession or activity, apart from the cases, provided by the law.*

These principles are an expression of the traditional concept that the penalty, as an appropriate measure of liability, must be proportionate to the seriousness of the offence committed and the offender's personality have to be taken into account. However, the individualisation of the liability of the entities referred to in Article 83 AVPA should follow different rules on individualisation. These may be the seriousness of the failure to comply with the obligation towards the state or municipalities, including the length of the period in which a breach occurred, the harmful effects of the failure to comply, the financial situation of the legal entity and the sole trader, facts and circumstances relating to the previous sanctioning of the entity, etc.

A good basis for formulating a legislative proposal is the provision of Article 83a para. 5 AVPA (order, SG No 109/22.12.2020, in force since 23.12.2021), which will support Bulgarian courts in determining the amount of sanctions against a legal person. According to such provision:

> *In determining the amount of the pecuniary sanction, the gravity of the committed crime, the financial condition of the legal person, the assistance for detection of the crime and for compensation of the damages from the crime, the amount of the benefit and other circumstances shall be taken into account.*

This reform provided for specific rules to individualise the responsibility of legal entities that have enriched themselves or would enrich themselves from a crime. However, the liability of legal persons should be individualised only where the advantage — actually obtained or possible — is of a pecuniary nature and is lower than the special maximum of the penalty of BGN 1 000 000; where the advantage is not of a material nature, and where the value of the financial advantage cannot be established. On the other hand, the penalty should not be individualised when the pecuniary advantage is BGN 1 000 000 or more, as in these cases art. 83A, para. 1 of the AVPA does not allow for the discretion of the court — the legal person should be subject to a financial penalty up to the maximum amount provided for by the law.

Another important point is that only the pecuniary penalty is to be individualised, and not the other cumulative penalty imposed on legal persons — the confiscation of the advantage in favour of the state. The latter only corresponds to the size of the advantage and does not take other circumstances into account.

In spite of the progress in individualising the administrative penalties for legal entities, Bulgaria is still lacking a 'responsive enforcement approach' according to which, enforcement actions should be differentiated depending on the profile and behavior of legal entities to promote compliance more effectively. Bulgaria could consider the guidance provided by the Council of Europe to further improve the determination of the amount of sanctions against legal persons (Box 2.4). in view of including consideration of issues such as the duration of the breach, the degree of responsibility of the legal person, specific indicators to measure the financial condition of the legal person, the losses to the third parties and previous breaches of the legal persons.

Box 2.4. Toolkit and guidance of the Council of Europe on individualisation of penalties for legal persons based on the Fourth EU Anti-Money Laundering Directive

When determining the type and level of sanctions or measures, the competent authorities shall take into account all relevant circumstances, including where applicable:

- the gravity and the duration of the breach;
- the degree of responsibility of the legal person held responsible;
- the financial strength of the legal person held responsible, as indicated by, for example, the total turnover of the legal person held responsible;
- the benefit derived from the breach by the legal person held responsible, insofar as it can be determined;
- the losses to third parties caused by the breach, insofar as they can be determined;
- previous breaches by the natural or legal person held responsible.

Source: (Council of Europe, 2020[4]).

Although Article 83a paragraph 5 now includes assistance for detection of the crime as one of the criteria to individualise penalties, additional provisions could be introduced to incentivise legal persons to assist enforcement agencies as done in other EU countries which included co-operation as one of the mitigating factors in determining the degree of the penalty (Box 2.5).

Box 2.5. Incentive mechanisms for legal entities in Slovenia and Spain

The law in Slovenia provides for certain mechanisms to encourage legal persons to assist law enforcement authorities. Thus, if, following the commission of the offense, a management or supervisory body voluntarily turns in the offender, a reduced penalty may be imposed on the legal person. If, after the commission of the offence, the management or supervisory body of a legal person voluntarily and immediately orders the recovery of an unlawfully obtained property or provides compensation for the damage caused by the offense or reports information as regards the liability of other legal persons, the legal person may not be punished.

According to the Slovenian legislation, the court may impose a conditional sentence on a legal person instead of a pecuniary sanction. In case of a conditional conviction, the court may set a pecuniary sanction of up to EUR 500 000 and at the same time order that the sentence not be enforced if the legal person does not commit a new offense for a period set by the court, which may not be shorter than one year and longer than five years (probation period).

Similarly, in Spain legal entities can try to mitigate sentence by “confess[ing] the offence to the authorities, before knowing that there is a criminal procedure” against it and by “collaborat[ing] in the investigation ... at any time within the proceedings” by “producing ... new evidence”.

Source: (OECD, 2016[1])

2.2.5. The legal framework could introduce separate sanctions when a legal entity has benefited from two or more crimes

It is quite possible for the legal entity to have benefited from two or more crimes committed by one or more natural persons among those specified in Art. 83a, para. 1 of the AVPA. At the legislative level, however, the question of whether in these cases a single sanction or a separate sanction for each of the crimes is imposed, has not been resolved. Bulgaria could thus consider introducing rules according to which for every violation the legal entity is subject to a separate sanction, which is also served separately. This approach is established for the individuals responsible under the Penal Code. In case of multiple crimes before a sentence has been enacted for any of them, the court, upon determining the penalty for each crime individually, shall impose the most severe of them. In this way, the principle of "absorption" of punishments was introduced. This principle is also applicable if a convicted person is sentenced with two or more different sentences, he will have to endure the most severe of them.

2.2.6. The regulation of the statute of limitations for legal entities could align with the regime applicable to natural persons

A significant weakness of the regulation of the liability of legal entities for a crime under the AVPA since the establishment of the institute fifteen years ago has been the lack of explicit regulation of the legal facts, the occurrence of which leads to extinction of the liability of legal entities that have enriched themselves or would enrich themselves from a crime.

The legal gap in this regard has led to an extremely contradictory practice in the application of the law. Thus, in some judicial acts it was accepted that the statute of limitations is inapplicable to legal entities, precisely because of the lack of legal regulation, in others - that the liability of legal entities is extinguished

with the expiration of the terms equal in duration to those established for the criminally responsible natural persons, and in third - that the limitation periods established for repayment of the liability of the legal entities for administrative violations shall apply.

With the reform of the administrative penalty framework in 2020, the established legal gap was partly addressed with the introduction of a new para. 8 in Art. 83a of the AVPA. According to this para. 8, the administrative liability of the legal entity shall be repaid upon expiration of a term equal in duration to that under Art. 81, para. 3 of the Penal Code, as of the date of commission of the crime from which the legal entity has enriched itself or would enrich itself.

To further complement the existing gaps, Bulgaria could consider adopting the model established for natural persons to calculate the limitation periods, the expiry of which extinguishes the liability of legal persons. The length of those periods should correspond to the penalty provided for the offense committed and not to the limitation periods for the offenses punishable by pecuniary sanction. This will avoid the possibility of contradictory interpretation on the question of how the length of the limitation period is calculated, the expiration of which extinguishes the possibility to engage the liability of the legal entity that has enriched itself or would enrich itself from a crime - whether in view of the rules under Art. 81, para. 3, supra art. 80, para. 1, items 1–5 of the Penal Code, depending on the punishment provided for the committed crime, or in view of the rule under Art. 81, para. 3, supra art. 80, para. 1, item 5 of the Penal Code, which regulates the limitation period for crimes punishable by a pecuniary sanction.

2.2.7. Bulgaria could provide for detailed rules on the appointment and incompatibility of legal entities' representatives

Although the proceedings before the courts for imposing a pecuniary sanction on legal entities that have enriched themselves or would enrich themselves from a committed crime was deeply reformed in both 2015 and 2020, its regulation remains insufficient in relation to the procedural representation of legal entities before the court, for example when the guilty natural person is a legal representative of a legal entity.

Currently, the legal provisions of the Criminal Procedure Code are applicable, although these rules are intended to regulate the procedural legal relationship between the court and the defendant - a natural person. In this context, Bulgaria could consider introducing some specific rules on appointing or incompatibilities of legal persons' representatives along the example provided by the legal framework of Slovenia and Romania (Box 2.6).

Box 2.6. Rules on representation of legal persons in Slovenia and Romania

The Slovenian Law of Liability of Legal Persons for Criminal Offences Act 2005 regulates the representation of legal persons in articles 31 – 32. They include the prohibition for the accused legal person to be legally represented by someone called as a witness in the same matter or by the person against whom proceedings are being brought because of the same criminal offence, except if this is the only member of the accused legal person.

According to Romanian law, the legal person is called upon to participate in the proceedings. It is represented by its legal representative; if criminal proceedings are initiated against the legal representative of the legal person for the same or related offenses, the legal representative designates a representative; in the latter case, if the legal person has not appointed a proxy, a certified proxy is appointed by the public prosecutor or by the court. The participation of the prosecutor in these cases is mandatory.

Source: OECD Research; (Slovenia, 2005[3])

Although the proceedings before the courts for imposing a property sanction on legal entities that have enriched themselves or would enrich themselves from a committed crime have been seriously reformed in both 2015 and 2020, its regulation remains extremely concise.

2.3. The AVPA could ensure coherency in the special legislation concerning the liability regime of admitters and managers who ordered the commission of an administrative violation

The general norm which provides for administrative penalty liability of the managers is Article 24, para. 2 of the AVPA:

> *Liable for administrative violations committed in carrying out the activity of enterprises, establishments and organisations shall be the workers and employees who have committed them, as well as the chiefs who have ordered or admitted their commitment."*

In accordance with art.10 of the AVPA, the liability of so-called 'admitters' - those who have not prevented the commission of administrative offences by their subordinates - is envisaged as an administrative violation in a number of special administrative laws.

> *In cases of administrative violations instigators, facilitators and concealers, as well as those who have admitted them shall be punished only in the cases stipulated by the respective law or decree.*

Under the Bulgarian legal system, the institution of complicity includes incitement, assistance and commission. In criminal law, accomplices are always punished by the penalty provided for in respect of the offense committed, and their liability is ancillary, that is, it only arises if the offender commits the offence for which he is instigated or assisted. Administrative penalty law establishes the opposite principle and provides for administrative liability for complicity only in the cases provided for by the special laws. This legislative solution deserves support as not all administrative laws regulate public relations which can be damaged in the course of activity of undertakings, establishments and organisations — where admission is possible. However, in the various legislative acts, the grounds for the liability of the principal and the admitter are different. In some laws, the principal and the admitter are legally liable only where an employee has committed an administrative offence. In other cases, the liability of the principal and the admitter arises together with the liability as manager of a legal person if, as such, the perpetrator has admitted that the legal person does not to fulfil its obligations under art. 83 of the AVPA to the state or the municipality. The best approach is to establish liability for an admitter or the person who orders the violation or failure to fulfil an obligation as established, for example, in Article 96, para. 5, subparagraph 1, letters (b) — (d) of the Road Transport Act:

> *He who commits the following shall be punished by a pecuniary sanction or a financial penalty of BGN 1000:*
>
> *1. (amended, — SG No 9/2017) which:*
>
> *....*
>
> *(b) allows or orders for the public transport or transport at their own expense of passengers or goods by means of a vehicle which is not technically fit for purpose;*
>
> *(c) allows or orders for the public transport or transport at their own expense of passengers or goods by means of a vehicle which has not been subjected to a pre-road technical inspection;*
>
> *(d) (new — SG Issue No. 60/2020, in force as of 07.07.2020) allows or orders transportation by a motor vehicle the driver of which is not provided with a certified copy of a Community licence.*

Another such example is Article 143, para. 1, subparagraph 9 of the Civil Aviation Act: 'The following shall be liable to a pecuniary sanction of BGN 3 000 to BGN 10 000: he who performs, orders or permits a flight with an aircraft in conditions not compatible with its exploitation features;'.

The analysis of the special administrative legislation shows that these examples are rather exceptional. Most administrative laws establish liability for admitters and, quite rarely, for managers who have ordered their subordinate employees to commit violations. Thus, the special administrative legislation treats the inaction of executives who have not prevented their subordinates from committing violations more severely than the actions of the same executives where they have ordered the commission of administrative offenses. This demonstrates the lack of a uniform approach to persons subject to administrative penalty liability and leads to gaps and inconsistencies in the legal framework.

For example, the Cybersecurity Act, art. 120, para. 1 and 2, liability is provided for the perpetrator and the admitter, but not for the person who ordered the violation:

> *(1) Anyone who commits an offence under Article 31 shall be liable to a pecuniary sanction of BGN 100 to 500.*
>
> *(2) The penalty referred to in paragraph 1 shall also be imposed on the head of an organisational entity or of an information security officer who commits an offence under Article 31.'*
>
> *It is, however, quite logical that the head of the organisational unit not only admitted, but also ordered the commission of the violation.*

Another weakness is that the extent of the admitter's liability has been resolved differently. In some laws there is no differentiation between the penalties for admission and commission. For example, art. 130, para. 1 of the Law on the Protection of Classified Information stipulates that a person who commits or admits an infringement under art. 108, para. 3 of the same Act is punishable by a pecuniary sanction of BGN 500 to 2 000 if the act does not constitute a criminal offence. In this and a number of other laws, the liability of the admitter and the liability of the perpetrator are differentiated, with the liability of the admitted being more or less severe than that of the perpetrator. For example, art. 124, para. 1 of the Law on the Protection of Classified Information stipulates that 'Any person who commits an offence under art. 86 shall be liable to a pecuniary sanction of BGN 3 000 to 10 000' and paragraph 3 provides for a pecuniary sanction between BGN 300 and BGN 2 000 for admission. This inconsistent approach to the liability of the admitter (as well as that of the principal) is also observed in other legal acts such as the Road Traffic Act.

It would therefore be appropriate to find a solution to that question in the general administrative law which should stipulate, in the cases provided for by the special legislation, that the admitter and the principal be punished by the same penalty as provided for the offence committed by their subordinates. The same approach applies to the criminal liability of the admitter for a crime under art. 285 of the Penal Code, whereas the admitter is punished by the same penalty provided for the crime committed, and has been adopted by other EU countries (Box 2.7).

Box 2.7. Aiding and abetting in Austria, Czech Republic and Germany

In Austria, according to Article 7 of VStG who deliberately causes another person to commit an administrative offence or who deliberately facilitates an administrative offence committed by another person is subject to the punishment determined for such offence even in case the actual offender is not liable to punishment.

In the Czech Republic, pursuant to Section 13 (4) of Act No. 250/2016 Coll., where a law so provides, the offender is also a natural person who deliberately causes in another person decision to commit an offence (abettor) or makes possible or easier committing offense by another person (aider) if it is a finished offense or an attempt to commit it, if an attempt is sanctioned.

In Germany the concept of "perpetrator" is unified, with no distinction between other forms of participation (e.g. co-perpetrator, instigator, accessory). Each participant is deemed to have committed a regulatory offence regardless of how he/she contributed to fulfilling the factual elements of the offence (section 14 OWiG).

Source: (European Committee on Crime Problems, 2020[5]).

Another option is the use of a legislative technique when describing the composition of offenses for perpetrators, principals and admitters: 'whoever orders, admits or commits...' Such technique is used by a number of laws, for example, the already mentioned provision of art. 130, para. 1 of the Law on the Protection of Classified Information or Art. 143, para. 1, item 9 of the Civil Aviation Act, which provides for a pecuniary sanction of BGN 3 000 to 10 000, for a person who: perform, order or admit a flight to be performed in a technically defective aircraft; an aircraft to be flown in conditions that do not comply with its performance.

The same approach could be applied not only in order to establish the administrative liability of the admitters, but also with regard to authorising officers, in cases where the operating rules imply a hierarchical relationship between employees on the one hand and senior officials on the other.

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Note

[1] According to the OECD Working Group on Bribery, the legal framework does not provide for an effective jurisdictional base to commence proceedings against legal persons, including where the legal person uses non-nationals to bribe on its behalf abroad; unduly restricts proceedings to cases where the natural person perpetrator is prosecuted or convicted; and poses serious impediments to the effective sanctioning of legal persons for foreign bribery. (OECD, 2021[6])