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Sanctioning. Glorious simplicity

Most of us are familiar with the contents of Directive 2008/99/EC on the protection of the environment by through criminal law (Eco-crime Directive). The Eco-Crime Directive requires EU Member States to take the necessary measures to ensure that serious environmental offences, which it lists, are punishable by penalties that are “*effective, proportionate and dissuasive*” (Articles 5 and 7). Regarding offenders who are natural persons, criminal penalties meeting these criteria must be provided. It is less widely known that this sanctioning obligation is a specification of the general enforcement obligation that the European Court of Justice (ECJ) derived from the principle of loyal cooperation laid down in Article 4(3) TEU. According to the ECJ, EU Member States have an enforcement obligation with regard to all EU-embedded law and the enforcement must be non-discriminatory (compared to the enforcement of pure national law violations of a similar nature and importance), effective, proportionate and dissuasive.

On 24 January 2017 the Dutch court of Zeeland – West-Brabant, a first instance court, issued a judgement in a criminal case (ECLI:NL:RBZWB:2017:288) that holds a little gem: an explicit check of the inflicted penalty to the enforcement criteria developed by the ECJ and imposed by the Eco-Crime Directive. The offences under consideration included violations of Article 2(35) of Regulation (EC) No 1013/2006 on shipments of waste, which are serious offences as regards the Eco-Crime Directive. While sentencing the offender, a natural person, to twelve months of prison sentence (nine effective, three conditional), the court considered “*that the imposition of this penalty meets the obligation of Member States that violations of EU law have to be followed by an effective, proportionate and dissuasive sanction, which is comparable to the sanctions for equally serious violations of similar national rules*” (p. 38/46, own translation). This penalty motivation is a *primeur* for the Netherlands.

The thrilling thing about this explicit check, incorporated in the motivation of the sentence, is that it could offer the beginning of a solution to the sanctioning inconsistencies that are observed throughout the EU with regard to environmental crime. Sanctioning inconsistencies notoriously exist from Member State to Member State but are also present within one same Member State. They involve the sanctioning practices in the administrative as well as criminal sanctioning tracks. Regarding the criminal sanctioning track they even exist within the resort of one same court of appeal, up to the level of the different chambers of one same criminal court. The inconsistencies not only impede on the EU level playing field of corporations but also feed the perception of a lack of equity and justice with civil society and corporations alike.

If each criminal judge and administrative sanctioning authority could, whenever sanctioning environmental offences, consider the non-discriminatory, effective, proportionate and dissuasive character of the sanctions to be imposed, a sanctioning practice could emerge where inconsistencies are softened. It would definitely be Good Practice to start considering the EU sanctioning requirements in each criminal judgment and administrative sanctioning decision when motivating the sanctions. For prosecutors it would be Good Practice to motivate the sanctioning requests using those same EU-criteria.

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