

Specific sanctioning requirements in environmental EU-regulations

Carole M. Billiet

U.Gent & MHHHC

EUFJE, Brussels 18 October 2010



environmental
LAWFORCE



U. Gent - K.U.Leuven



Contents

1. Our research
2. General findings
3. Similar yet deeply different
4. Fully operational or not
5. Implementing : what should be
 - Tango or tangle?
 - How and when?
 - No implementation = no enforcement
6. Sanctioning regulations: what happens
7. Using the sanctions



1. Our research

Research: sequel to previously discussed research

- Specific sanctioning requirements (“SSR”)
- EU environmental regulations
Systematic screening

2. General findings (1)

Similar to those regarding SSR in directives

- Presence: rather scarce & set at random
- Scope: limited to one or some breaches of the regulation concerned
- Nature: no explicit criminal or administrative nature, yet frequently an implicit administrative nature
- Margin of discretion: ranging from wide to almost non-existent

2. General findings (2)

Types and examples

- SSR aiming at remediation

E.g. CITES-regulation 338/97, art. 16.4

- SSR hitting the offender in his rights

E.g. Waste shipments regulation 1013/2006, art. 9.8

- SSR leaving a choice between both previous

E.g. Ecolabel regulation 66/2010, art. 10.5

3. Similar yet deeply different

Art. 288 al. 2 TFEU: “*A regulation ... shall be binding in its entirety and directly applicable in all MS*”

Regarding a.o. SSR:

- No copying in MS legislation

- Often a need for implementation
 - Explicitly
 - The *Full effect* - requirement

4. Fully operational or not?

Fully operational

- Seldom
- For instance

Needing implementation

- Most often
- For instance

5. Implementing : what should be

5.1. Tango or tangle?

The tango

Implementing provisions: 4 types

- Institutional
- Substantive - the finer work

- Clearing out
 - Codification of (environmental) enforcement law

- Enforcement

The tangle

- On the one hand
 - EU-regulations, with norms, obligations to do and not to do, applying to the EU-citizens + some SSR

- On the other hand
 - Each MS, obliged to meet a general sanctioning obligation, while properly implementing scarce SSR needing so

5. Implementing : what should be

5.2. *How and when?*

How?

General

- Basic principle: MS are free
- Yet, there are instrumental requirements
 - Full effect – concern
- And substantive limits
 - Fundamental rights
 - General principles of law
 - Treaty freedoms

With regard to enforcement

Non-discriminating, effective,
proportionate, dissuasive
Ecocrime-directive

When?

- Full effect concern
- Double timing, mostly short
 - Date entry into force
 - As precised
 - Otherwise: 20th day after publication (297 TFEU)
 - Practice: 3th or 20th day
 - Date where applicable
 - E.g. “... shall enter into force third day following ... publication ... (2006).
...shall apply (2007)”

5. Implementing: what should be

5.3. *Without implementation no enforcement*

- Criminal sanctions
 - ECJ 7 January 2004, *Rolex*, case C-60/62
 - ‘*Nullum crimen, nulla poena, sine lege*’ – art. 7 ECHR & art. 15 ICCPR (art. 49 Charter)
- Administrative sanctions
 - Punitive
 - Remedial

6. Implementing: what happens (1)

- Based on analysis Belgian – Federal & Flemish – environmental legislation
- A very poor balance
 - Too late
 - Too little
 - Too lazy
 - Too light

6. Implementing: what happens (2)

- Too late
 - Forgetting to implement
 - Implementing too late – 1 to 3 years
- Too little
 - No attention paid to Commission regulations
- Too lazy
 - No follow-up of generations, e.g. Ecolabel, CITES
- Too light
 - Hard depenalization
 - Waste shipment regulation
 - Soft depenalization
 - The rise of the administrative transaction



7. Using the sanctions

In the light of the ECJ case law (RM)

- Awareness of the existence of a few fully operational SSR
- Other SSR: awareness of shortcomings and question marks regarding the legislative work