

Evidence gathering in punitive administrative proceedings in Belgium: This is not criminal law?

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*Hrvatsko prekršajno pravo u europskom kontekstu
– izazovi i perspektive (PrePraHR)*

International conference organised by the University of
Zagreb
Zagreb and online, 3 July 2026





Outline

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 - Context of the research (funding, scope, aim)
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 - Sectorial approach: ‘united in diversity’?
 - Law in books vs law in action
- Evidence gathering in punitive administrative proceedings
 - Competent authorities
 - Investigative powers
 - Procedural safeguards
- Conclusions



Introduction (1)

• Punitive administrative law or ‘quasi-criminal’ law

- Definition?
 - Different terms
 - National – EU
 - Blurred boundaries
- Challenges
 - Objectives: efficiency and specialisation
 - Proportionality: only less serious misconduct?
 - Not quite true (anymore)
 - Sometimes harsh (mainly) financial sanctions
 - What about procedural rights?

V. Franssen and C. Harding (eds),
*Criminal and Quasi-Criminal
Enforcement Mechanisms in
Europe: Origins, Concepts, Future*,
Hart Publishing, 2022.

V. Franssen and S. Vandeweerd,
“Supranational Administrative
Criminal Law”,
*Revue
internationale de
droit pénal*, 2019,
Vol. 90, Issue 2, 13-
83.



Introduction (2)

- Context of the research (funding, scope, aim)
 - PI: Prof. Stanislaw Tosza (UniLu)
 - Funding: OLAF
 - Aim
 - Understand how electronic evidence is gathered in punitive administrative proceedings, considering there is little research on this topic whereas this topic is the subject of extensive research in the field of criminal procedure
 - Scope
 - Electronic evidence gathering from online service providers and other third parties (but not financial institutions)
 - Six sectors: customs law, VAT law, competition law, banking law, financial markets law, data protection
 - Comparative legal research (BE, DE, FI, FR, IT, LU, NL, PL)
 - Law in books and law in action (case law, semi-structured interviews)

Punitive administrative law in Belgium

– main features (1)



- Lack of general framework
 - >< other EU countries (e.g. NL, DE)
 - Legal literature is limited
 - >< general administrative law

Punitive administrative law in Belgium

– main features (2)



- Sectorial approach: ‘united in diversity’?

- **Competition, banking, financial markets, data protection**

- Common features, profoundly marked by EU law
- Structured in similar way >< reality on the ground (resources, practices)
- Art. 6 ECHR (criminal prong) applies

- **VAT law**

- ‘Typical’ tax law, with some EU influence
- Administrative or criminal in nature

- **Customs law**

- Old legal framework without clear distinction between administrative and criminal proceedings
- Administrative authority with (criminal) prosecution powers
- Criminal law, but highly derogatory rules
- (Reform underway → ULiège-University of Antwerp interuniversity chair on customs law)



V. Franssen,
« Les défis de la
douane », *Le
Quinzième Jour*,
May 2026, 6-9.

Punitive administrative law in Belgium

– main features (3)



- Law in books vs law in action

- Legal framework not always very explicit – e.g.
 - Territorial scope of investigative powers
 - >< CCP: more explicit (in some cases) and more extensive
 - Terminology
 - BE legislator not a huge fan of definitions (slowly changing – e.g. new Criminal Code)
 - Same terms do not necessarily mean the same
 - Principle of conceptual autonomy of criminal law
 - E.g. providers of electronic communications services
- Central role of the case law
 - Especially with respect to Art. 6 ECHR rights – e.g.:
 - Right to remain silent
 - Rights of defence
 - Admissibility of evidence

Evidence gathering in punitive administrative proceedings (1)



- Competent authorities

- **Customs law**

- General Accise and Customs Authority (GACE)
 - Limited role for Public Prosecutor's Office

- **VAT law**

- General Tax Administration and Special Inspection Service
 - Strictly regulated cooperation mechanism with Public Prosecutor's Office

- **Competition law**

- Belgian Competition Authority (BCA)
 - Limited competence of Public Prosecutor's Office (bid rigging)

Evidence gathering in punitive administrative proceedings (2)



- **Competent authorities**

- **Financial markets law**

- Financial Services and Markets Authority (FSMA)
 - Partly overlapping competence with Public Prosecutor's Office

- **Banking law**

- National Bank of Belgium (NBB)

- **Data protection law**

- Belgian Data Protection Authority (DPA)

V. Franssen and M. Vandormael, "The Belgian market abuse legal framework: navigating legal complexities and uncertain dual enforcement dynamics at the intersection of criminal and administrative law", in A. Błachnio-Parzych and L. Cornacchia (eds), *Legal Protection against Financial Market Abuse: International and Local Perspectives*, Routledge, 2026, 117-

Evidence gathering in punitive administrative proceedings (3)



- Investigative powers

- **Customs law:** broad and derogatory
 - E.g. search of private premises either without ex ante judicial authorisation or with more limited judicial control
 - E.g. seizure of goods without the intervention of a judge nor a public prosecutor

- Procedural safeguards

- **Customs law**
 - E.g. no formally regulated right to access to the file
 - E.g. limited procedure to lift a seizure (against payment, only for goods)
 - E.g. Salduz? Yes, in practice, but not laid down in the law
 - E.g. admissibility of evidence: CCP applies (Art. 32 Preliminary Title of the CCP – 3 scenarios)

Evidence gathering in punitive administrative proceedings (4)



- Investigative powers

- **VAT law**

- E.g. request information/documents

- Procedural safeguards

- **VAT law**

- E.g. admissibility of evidence: in practice largely similar to criminal procedure, though less clear in case law and not explicitly provided by law

Evidence gathering in punitive administrative proceedings (5)



- Investigative powers

- **Financial markets law**

- E.g. questioning of suspects, seizure of goods (with ex ante judicial authorisation! >< CCP), production of identification data and metadata...

- Procedural safeguards

- **Financial markets law**

- Art. 6 ECHR applies
 - E.g. right to remain silent
 - Sometime more procedural protection than in criminal law
 - E.g. admissibility of evidence: aftermath of CJEU, *La Quadrature du Net I*

Evidence gathering in punitive administrative proceedings (6)



- Investigative powers

- **Competition law**

- E.g. questioning of suspects, request/seize documents, dawn raids...

- Procedural safeguards

- **Competition law**

- Follows EU law
 - Art. 6 ECHR applies
 - E.g. ex ante judicial authorisation, proportionality
 - But same terms/rights may not have the same extent as in the field of criminal law
 - E.g. right to remain silent

Conclusions



Evidence gathering in punitive administrative proceedings in Belgium – some take-aways

- Complex and fragmented legal landscape
- This is not criminal law?
 - Criminal law in the meaning of Art. 6 ECHR
 - Implications? Depends... -> '*à géométrie variable*'
 - Knowing one's rights is not always easy...
- Exchange of information (admin./criminal)
 - Complex and not well regulated...
 - Not very protective

Thank you for your attention!

Questions?

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For more details:

V. Franssen and M. Vandormael, "Gathering of electronic evidence in punitive administrative proceedings in Belgium", in Tosza S. and Lannier S. (eds.), *Gathering Electronic Evidence from Online Services Providers in Administrative Punitive Proceedings*, University of Luxembourg, 2025, 87-129.

