

However, in one of his more recent publications, entitled 'Enforcing European Community rules', Harding makes an assessment of the procedures and sanctions adopted in contemporary competition law and points to a 'quasi-criminal' model, adding that criminal law is being introduced to the Community legal system 'by the backdoor'<sup>39</sup>. He describes this existing legal state of affairs as an 'uneasy mix of criminal and administrative enforcement'<sup>40</sup>.

The conviction that fines and infringements under competition law are criminal law stems from various sources. The thesis that competition law has an inherent 'criminal law nature' is considered to be a reflection on the nature of infringements which lead to punishment, the rules applicable to define liability for such infringements, the nature of punishments, and the nature of procedures applicable to establish such liability. A major factor in this respect is that the legal systems of some States specifically define selected particularly gross breaches of competition law as offences<sup>41</sup>.

It is also stressed in the literature that the criminal law nature of competition law and of relevant sanctions may be supported by the fact that the legal liability for infringements is often based on criminal law principles, such as the significance of wilfulness and negligence giving rise to alleged breaches, and consideration of the various degrees of involvement of undertakings in such breaches. The legal literature on Community competition law also points out the existence of various defences taken from criminal law, such as necessary self-defence or a state of necessity<sup>42</sup>.

When elaborating on the criminal law nature of fines imposed under Regulation 17/62, Wils stresses their non-compensatory character and the fact that their aim is to punish and to prevent further breaches. In his opinion, their penal nature is also supported by the setting of their ceiling amounts<sup>43</sup>.

The arguments for recognition of the criminal nature of competition law infringements should not be taken to mean that the proponents of such a position share a conviction that the power of the Commission to conduct cases and to impose fines on undertakings should be questioned. Wils stresses that the compliance of the procedures under which the Commission issues its decision to impose fines with the provisions of Article 6 of the ECHR

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<sup>39</sup> C. Harding, 'Models of Enforcement: Direct and Delegated Enforcement and the Emergence of a "Joint Action" Model', [in:] C. Harding, B. Swart (eds.), *Enforcing European Community Rules. Criminal Proceedings, Administrative Procedures and Harmonization*, Aldershot, Brookfield, Singapore, Sydney 1996, pp. 25–26.

<sup>40</sup> C. Harding, 'Models of Enforcement...', p. 39.

<sup>41</sup> C. Harding, 'Models of Enforcement...', p. 31 and following. On this subject see also J. Maitland-Walker, *Competition Law in Europe*, Butterworths 1995.

<sup>42</sup> See also on this subject, M. Wagemann, *Rechtsfertigungs- und Entschuldigungsgründe im Kartellrecht der Europäischen Gemeinschaften*, Heidelberg 1992, p. 87 and following.

<sup>43</sup> W.P.J. Wils, 'La compatibilité...', p. 334.

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**Compliance and Enforcement of European Community Law** J. Vervaele,1999-05-04 This collection of papers reflects the growing interest among European Union law scholars and practitioners in the impact of Community law on the main fields of the Member States legal orders constitutional law administrative law criminal law and private law In particular the requirements of an effective compliance with and enforcement of Community law have contributed to a Europeanization of those areas of national law This book brings together case studies from such diverse policy areas as customs law foodstuffs and waste transport as well as more general analyses from both a comparative legal and a political science point of view

*Criminal and Quasi-criminal Enforcement Mechanisms in Europe* Vanessa Franssen,Christopher Harding,2022-02-24 This book looks at the interplay between criminal and other branches of public law pursuing similar objectives referred to as quasi criminal law The need for clarifying the concepts and the interlink between criminal and quasi criminal enforcement is a topic attracting a lot of discussion and debate both in academia and practice across Europe and beyond This volume adds to this debate by bringing to light the substantive and procedural problems stemming from the current parallel or dual use of the different enforcement systems The collection draws on expertise from academia practice and policy its high quality analysis will appeal to scholars practitioners and policymakers alike

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Research Handbook on the Enforcement of EU Law Miroslava Scholten,2023-09-06 This comprehensive Research Handbook investigates the success of EU law enforcement processes Going beyond traditional analyses of administrations and courts in isolation it focuses on the increased cooperation seen between national and EU authorities and on the widening variety of means used to enhance compliance with EU norms

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procedure more than any other legal discipline resists harmonisation However the problems Member States face these days are largely identical a general increase in crime an insufficiency of financial means for the different enforcement levels increasing complexity of legislation and the fact that the general public seems to be gradually losing confidence in the criminal justice system There is a growing need for an understanding of foreign criminal justice systems within the European community This book seeks to contribute to a greater knowledge by offering a general introduction to the criminal procedure systems of the Member States of the EC It will be of great interest to students practitioners who tend to be increasingly confronted with cases involving foreign criminal justice systems and lawyers

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