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'Ensuring objectivity and impartiality in Belgian administrative enforcement: a case study of legal mechanisms'

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***Key words**: Impartiality - Objectivity - Bias - Administrative enforcement - Belgium - Legal Mechanisms - Institutional Practices - Judicial Oversight - Data Protection Authority - Flemish Regulator for the Media - Local Administrative Sanctions.*

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Introduction

In Belgium, a growing number of administrations are being allocated the power to impose administrative sanctions and/or measures, making administrative enforcement an important alternative and complementary to criminal enforcement. While objectivity and impartiality are established principles within the criminal enforcement system, the question arises as to how objectivity and impartiality are ensured within administrative enforcement as well as how bias is prevented and addressed.

To a greater or lesser extent, administrations operate within a political framework, which may give rise to perceptions of political influence. The question pertaining to their objectivity and impartiality has therefore always existed and remains highly relevant. However, given the rise of administrative enforcement and the possible impact thereof on natural and legal persons, the question appears to be of even greater importance when the administration is also competent to enforce through administrative measures and/or sanctions. Our paper will therefore determine legal mechanisms aimed at ensuring impartiality and objectivity as well as preventing and addressing bias within administrative enforcement.

Given the fragmented nature of administrative enforcement in Belgium, an all-encompassing study of all relevant legal frameworks concerning administrative measures and/or sanctions in Belgium is not feasible. Therefore, we will conduct a case study of certain administrations able to enforce through administrative sanctions and/or measures: the national Data Protection Authority, the Flemish Regulator for the Media and the Local Administrative Sanctions System. This selection was based on various criteria, which will be set out below.

The objective of this paper is to provide more insight into how objectivity and impartiality and the absence of bias are ensured within the selected administrations. Our paper also wants to examine whether some uniformity can be found on the aforementioned aspects in the fragmented administrative enforcement landscape.

1 Methods

Selection of administrations

The first selection criterion is the **level** of enforcement, as administrative enforcement can happen on different levels. This is especially true in Belgium, with its particular state structure. Research results on administrative enforcement on one level, might therefore not be (as) representative for enforcement on other levels. For different levels, different legislators might be competent, making researching different levels all the more important. This study will therefore focus on the three most important levels of

administrative enforcement within Belgium: central level of the federal state (Belgium), decentral level of the federal state[1] (Flemish[2]) and the local level.

The second selection criterion is the **subject-matter** for which the administrations are competent. Researching subject-matters that differ enough from each other, might also increase the degree of representativeness of the results. All three selected administrations enforce on different subject-matters.

Different **legal forms** of the administrations is the third selection criterion. The legal form might influence the degree to which the executive power might have an influence on the decision making of the administration (degree of (in)dependence, *infra*).[3] Even though independence is not as such the object of this research, it is inevitably interlinked with impartiality. More specifically, the degree of independence influences to the degree to which the executive power[4] can impact the decision making process. Given that administrations are essentially a part of the executive power, they are - in principle - not independent. Nevertheless, the legislator might foresee in explicit safeguards concerning the independence of certain (parts of) administrations. Thus, the degree of (in)dependence of administration can differ. In case there would be no independence requirements, ideological views of a certain political party of the executive power might (give the impression that they) play a role in decision-making. Subsequently, the administration concerned might (appear to be) partisan. Selecting administrations with different legal forms can therefore reveal similarities and differences between those forms with respect to their impartiality and objectivity.

Based on the abovementioned criteria, this study tries to formulate an answer to the central research question in the following administrations: the national Data Protection Authority, the Flemish Regulator for the Media and the Belgian local authorities who are competent to impose local administrative sanctions.

Methodology of research questions

Given the fragmentation of administrations competent to enforce administratively, the applicable legal frameworks and the competent judicial authorities, are fragmented as well. Therefore, different legal frameworks might use different definitions of objectivity, impartiality and bias. Formulating working definitions of the aforementioned concepts will therefore enable us to conduct this research equally thorough in all researched administrations and will ensure that our research also covers aspects which might not be *explicitly* indicated as for example ensuring objectivity, but nevertheless *directly* impact objectivity of the administrative enforcement body.

To this and, our research will depart from the definitions of the Cambridge Dictionary. The Cambridge Dictionary defines objectivity as '*the fact of being based on facts and not influenced by personal beliefs or feelings*' and impartiality as '*the fact of not supporting any of the sides involved in an argument*'. Their definition of bias is: '*the action of supporting a particular person or thing in an unfair way, because of*

[1] Belgium is a federal state where the power is divided between the central (federal) government and 'decentral' governments. The division of powers on this so-translated 'decentral level of the federal state', is divided between 'communities' and 'regions'. Belgium has three communities: the Flemish, the French speaking and the German speaking community. Belgium also has three regions: the Flemish, the Walloon and Brussels capital Region. However, to increase readability, in what follows, this study will only refer to the 'Flemish level', without specifying whether it is a competence of the communities or regions.
[2] This study focusses on the Flemish level, because this is the most relevant level for Hasselt University, as Hasselt is situated both in the Flemish Region as well as the Flemish Community.
[3] Given that some legal forms are more independent from the executive than others.
[4] Or possibly even the legislative power.

allowing personal opinions to influence your judgement'.[5] The aforementioned definitions clearly indicate that the three concepts are interlinked with one another. Taken together, objectivity, impartiality and (the absence of) bias, relate to a fair decision (making process). This decision should be based on facts, not on personal preferences. This study thus researches the ways in which legal frameworks can ensure such fair decision making, both preventively and reactively.

The central research question of this paper is therefore: '**How do the relevant legal frameworks directly ensure that administrative measures and/or sanctions are based on facts and/or are not influenced by the person(s) (contributing to) making this decision in the selected administrations'**. The notion legal framework, refers mainly to legal frameworks, however due attention will also be given to the possible role judicial oversight might play in developing the aforementioned mechanisms. In general, the methods used in this paper concern traditional legal research methods, such as the identification of relevant legislation as well as interpretation thereof, based on preparatory works, case law and/or legal doctrine. This allows us to provide an accurate legal overview.

Subsequently, the central research question breaks down into several sub-research questions. The first sub-research question asks: '**How does the relevant legal framework directly ensure that administrative measures and/or sanctions are based on facts and/or are not influenced by the person(s) (contributing to) making this decision in this particular administration?**'. This will be answered separately for each of the selected administrations.

Here, first of all, this study analyses the relevant legal framework. Relevant provisions can stem from a multitude of regulatory levels. Therefore, an analysis will be carried out of relevant EU and national law, general principles of good administration, regional law, local regulations as well as internal regulations.

This study will only elaborate on relevant aspects thereof. This relevance will be determined by asking the question: can this *directly* ensure that administrative measures and/or sanctions are based on facts and/or are not influenced by the person(s) (contributing to) making this decision in the selected administrations. For the purposes of this paper, 'direct' safeguards refer to the safeguards able to *enhance* objectivity and impartiality *under any circumstances*[6]. Several possible indirect safeguards, will therefore not be touched upon.[7]

Due to the limited scope of this paper, it is not feasible to also conduct a thorough analysis of relevant jurisprudence. However, our study will occasionally also touch upon the possible role jurisprudence might play in developing the relevant concepts. A second important limitation for this paper is that, as for the deontological provisions, only those will be included to which the primary legislation[8] on the selected

[5] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/enforcement, accessed 28 May 2025.
[6] And thus independently from other factors.
[7] An example might help clarify this. Indirect safeguards concern e.g. the right to be heard. Indeed, this could help ensure that the authority decides (more) objectively and impartially (and without bias), but it only does so indirectly: it might enhance it, but it does not necessarily do so.
[8] Being the DPA-act, the Media Decree and the LAS-act (*infra*).

administration explicitly refers. This is not so much motivated by substantive methodological reasons[9], but rather by reasons of feasibility of this study.[10]

The last sub-research questions then, asks: **'What are the differences and similarities between the relevant legal frameworks?**'. The answer to this will be based on the answers to the foregoing sub-research questions. Our study will compare the aforementioned results to one another using a well-structured table. The similarities and differences will become apparent from this table, but will also be elaborated on further. This will allow us to draw some preliminary conclusions as to how uniform (or not) the legal frameworks might be. It will also enable us to identify possible challenges and merits of certain frameworks.

In what follows, our study will briefly elaborate on each of the selected administrations, before analysing its relevant legal framework. Subsequently, a comparison between the three selected administrations will be made. Finally, this paper will conclude by summarising the main results of this study very briefly and where possible indicating gateways for future research. However, since the 'general principles of good administration' play an important role in each of the selected administrations and thus are part of each of their relevant legal frameworks, it appeared us logical to start with a general part on the aforementioned principles and their possible role in ensuring administrative measures and/or sanctions are based on facts and/or are not influenced by the person(s) (contributing to) making this decision in this particular administration.

2 General principles applicable to all administrations

2.1 General principles of good administration

General principles of good administration (hereinafter: GPGA) constitute a category of legal principles specifically applicable to administrations. They are seen as a specification of the general requirement of reasonableness for government action and indicate how administrations should behave when given discretionary powers, for example when taking administrative decisions, such as administrative measures and sanctions.[11] In Belgium, there is no exhaustive list of these principles. Some of them have been expressed in specific legal provisions, but there is no general codification of all GPGA. The GPGA are norms derived by the courts from principles underlying written law. The principles therefore generally remain unwritten. Accordingly, the principles must be understood as evolving.[12]

Although there is more or less agreement in legal doctrine on a number of principles, it remains difficult or even impossible to provide for an exhaustive list of the aforementioned principles. Furthermore, it's not always clear where one principle ends and another one begins, given that some principles contain more specific rules than others. Lastly, it is contested for some of these principles whether or not they can deviate

[9] However one could – albeit debatably - argue that there is to some extent an indication that those provisions (to which the primary legislation does not explicitly refer), are deemed somewhat less important to the actual specific competence at stake: imposing administrative measures and/or sanctions.
[10] The added value of also including the other deontological provisions is too minimal for the purposes of this paper, as opposed to the lengthiness of a list of those deontological obligations in the already limited space within this paper.
[11] POPELIER P., 'De beginselen van behoorlijk bestuur: begrip en plaats in de hiërarchie van de normen' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur*, die Keure, 2025, 10.
[12] See e.g.: COOLSAET A. and OPDEBEEK I. 'De hoorplicht' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur*, die Keure, 2025, 430; DE SOMER S. and OPDEBEEK, I, *Algemeen bestuursrecht*, Larcier-Intersentia, 2019, 373.

from the law.[13] Thus, there is still a lot of uncertainty around the general principles of good administration. However, these principles are one of the most important sources of administrative law and are invoked very often in court.[14] For the purposes of this study, the following principles that are generally accepted[15] as a GPGA will be considered.[16] the principle of due care, substantive principle of motivation reasons, the principles of reasonableness and proportionality, the principle of equality, the principle of legal certainty and legitimate expectations, the right to be heard, the rights of defence, the principle of impartiality, the principle to act within a reasonable time.[17]

Only the ones that are addressed in what follows, are, to the extent that is explained below, relevant principles for this paper and thus can directly help ensure that administrative measures and/or sanctions are based on facts and/or are not influenced by the person(s) (contributing to) making this decision.

2.1.1 Principle of impartiality

First and foremost, the principle of impartiality has a significant role to play. It forbids partisan decision-making, as well as the *impression* of partiality. The impartiality-principle ensures subjective or personnel impartiality of the person(s) involved in the decision-making on the one hand and functional impartiality on the other. The latter refers to e.g. the organisation and composition of the administration.[18] However, several aspects reduce the possible impact of the principle.

First of all, the legal status of the principle is contested. According to some authors as well as the Council of State, the principle of impartiality cannot be applied *contra legem*.[19] In other words, if the relevant legislation would explicitly provide for certain situations that could allow for (the perception of) partiality, the aforementioned situations cannot be deemed contrary to the principle of impartiality, as they are explicitly foreseen by law and the principle cannot deviate from legislative acts. However, POPELIER for example, argues that the impartiality-principle does have constitutional value and therefore can be applied *contra legem,* referring to jurisprudence from the Constitutional court.[20] However, as the Council of State is the competent court for appeal against the administrative enforcement decisions of the FMR and the local

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[13] POPELIER P., 'De beginselen van behoorlijk bestuur: begrip en plaats in de hiërarchie van de normen' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 26-35.
[14] POPELIER P., 'De beginselen van behoorlijk bestuur: begrip en plaats in de hiërarchie van de normen' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 10.
[15] Whether or not the 'principle of fair play' can actually be considered a GPGA, is contested. Even the Council of State is unclear in its jurisprudence as for the status of this principle. Some authors within legal doctrine have uncovered a difference in jurisprudence between the French and Dutch-speaking chamber of the Council of State and argue that only the French chamber recognises fair play as a GPGA. Given the contested nature of the principle, it is not included in this research. See e.g.: POPELIER P., 'De beginselen van behoorlijk bestuur: begrip en plaats in de hiërarchie van de normen' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur*, die Keure, 2025, 8 with reference to CAMBIEN T. and QUINTIN R., 'Les exigences de bonne administration et de bonne citoyenneté comme fondements de principes généraux de droit administratif' in BEN MESSAOUD S. and VISEUR F. (eds.), *Les principes généraux de droit administratif*, Larcier, 2017.
[16] And subsequently be deemed (ir)relevant for the purposes of this paper.
[17] See e.g.: DE SOMER S. and OPDEBEEK, I, *Algemeen bestuursrecht*, Larcier-Intersentia, 2019,357 and following; POPELIER P., 'De beginselen van behoorlijk bestuur: begrip en plaats in de hiërarchie van de normen' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 3 and following.
[18] See e.g.: DE SOMER S. and OPDEBEEK, I, *Algemeen bestuursrecht*, Larcier-Intersentia, 2019, 388-397; TODTS L., *Bestuurlijke en strafrechtelijke vrijheidsbeperkingen ter handhaving van de openbare orde,* die Keure, 2021, 436-445.
[19] DE SOMER S., 'Het onpartijdigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 515-517; TODTS L., *Bestuurlijke en strafrechtelijke vrijheidsbeperkingen ter handhaving van de openbare orde,* die Keure, 2021, 440-441.
[20] POPELIER P., 'De beginselen van behoorlijk bestuur: begrip en plaats in de hiërarchie van de normen' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 28, with reference to Constitutional Court 29 October 2003, nr. 14/2003, B.5; Constitutional Court 19 January 2005, nr. 11/2005, B.5.5.

administrative sanctions (other than fines), possible discussions about the constitutional value (or not) of the principle of impartiality will therefore most likely often result in a negative answer.

Secondly - according to the Council of State and in line with its interpretation on the value of the principle of impartiality - application of the principle must be compatible with the specific nature, in particular the structure, of the administrative body concerned.[21] This reduces the possible implications of the impartiality-principle can have on the selected administrations. This reaffirms the importance of the organisational structure of the administration: a higher degree of impartiality can be ensured when the structure of the administration allows for it.[22]

The expected attitude of the citizens is also debated. Where the Council of State in some jurisprudence has required that the citizen did try to get a recusal of the partisan person within the administration, other jurisprudence seems to step away from this condition.[23] Therefore, it is unclear what the actual requirements for citizens are as well as what the consequences of a violation of the principle of impartiality are when the citizen has not done so.

Additionally, when it concerns decisions of a so-called collegial body[24] (such as the municipal executive[25]), it has to be proven that the partiality of one of the members, in fact could have influenced the (im)partiality of the entire body.[26]

It can thus be concluded that the principle of impartiality for administrations is less strict than it is for judges.[27] On top of that, the principle of impartiality's legal status remains unclear, as well as the consequences when there has been a violation of it.

2.1.2 Principle of substantive motivation

Following this principle, the administration needs to base its decision on pertinent and sufficient reasons. The reasons must be correct and thus based on actual, concrete, relevant facts, that have been established by the administration with the required care. Those reasons should additionally be able to carry the decision. The actual existence of those reasons must be duly proven, by mentioning them in the decision or as apparent in the administrative file.[28]

In many administrative decisions that are in fact affected by subjectivity, partiality or bias, the citizen might be able to demonstrate that the administration did not take certain relevant facts into consideration, which subsequently resulted in a decision that's been made too one-sidedly. In that case the judge will have to

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[21] Which is settled case law of the Council of State, according to TODTS. See: TODTS L., *Bestuurlijke en strafrechtelijke vrijheidsbeperkingen ter handhaving van de openbare orde,* die Keure, 2021, 440 with reference to Council of State 3 October 2014, nr. 228.633. See also e.g.: DE SOMER S. and OPDEBEEK, I, *Algemeen bestuursrecht*, Larcier-Intersentia, 2019, 395-396; GORIS, J., *Georganiseerde bestuurlijke beroepen. Naar een algemene theorievorming*, die Keure, 2012, 248.
[22] See in the same sense: DE SOMER S., 'Het onpartijdigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 521.
[23] DE SOMER S., 'Het onpartijdigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 509-510.
[24] Which means that the members thereof, cannot, in principle, take decisions alone.
[25] Art. 52 Decree of 22 December 2017 on the local authority, *BS* 15 February 2018 (hereinafter: DLA).
[26] DE SOMER S. and OPDEBEEK, I, *Algemeen bestuursrecht*, Larcier-Intersentia, 2019, 395.
[27] See e.g.: DE SOMER S. and OPDEBEEK, I, *Algemeen bestuursrecht*, Larcier-Intersentia, 2019, 396; GORIS, J., *Georganiseerde bestuurlijke beroepen. Naar een algemene theorievorming*, die Keure, 2012, 248.
[28] STIJLEMAN A., 'Het motiveringsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 235.

establish that the motives for the decision were defective.[29] A similar situation would be the one where the administration did not base its decision on actual *facts.* The principle of substantive motivation therefore could serve as an important guarantee that administrations take their measures or sanctions without any bias, impartially and objectively.

The extent to which this can actually serve as a safeguard, however, can sometimes depend on the intensity of judicial overview. More specifically, when the correctness of the facts is being debated, the extent to which this serves as a safeguard is actually dependent from the extent to which the judge will actually also review the facts as such. Several authors have already indicated that the latter is not always the case.[30]

2.1.3 Principles of reasonableness and proportionality

The principle of reasonableness ensures that the decision is in reasonable proportion to the facts underlying it. It presupposes that the facts are correct and relevant, but there's an apparent disproportion between those facts and the decision.[31] The discretionary powers of the administration thus are not unlimited, but should act within reasonable limits.[32] The principle of proportionality is more specific than the principle of reasonableness to which it adheres and more specifically requires decisions to be proportionate, either to the facts in case of an administrative sanction, or the envisioned goal by the administration in case of administrative measures.[33] It could therefore very well be that the facts have been found objectively, but that the decision that eventually followed, cannot reasonably follow from those facts. This could e.g. be caused by the personal opinions of the decision-makers. In that case, the decision is not proportionate to the facts, and could have been influenced by e.g. impartiality.

Here, again, the extent to which this serves as an actual safeguard is sometimes dependent from the intensity of the judicial overview (see *supra*).

2.1.4 Principle of due care

According to the principle of due care, every administration must behave as a normal, careful and reasonable administration would in the same circumstances. This principle is referred to as 'the mother of all principles'[34], given that all GPGA can be seen as specific translations of it.[35]

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[29] See in the same sense: DE SOMER S., 'Het onpartijdigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), Beginselen van behoorlijk bestuur, die Keure, 2025, 521.
[30] See: TODTS L., 'Het proportionaliteitsbeginsel in het gemeentelijke ordehandhavingsrecht: naar een meer gelijklopende proportionaliteitstoets' in OPDEBEEK I. and DE SOMER S. (eds.), Bestuurlijke handhaving. Hoe door de bomen het bos nog zien?, die Keure, 2018; 289-292; STIJLEMAN A., 'Het motiveringsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 273-275; VAN DE WEYER P-J., 'De rechtspraak van het Marktenhof in het licht van het recht op een effectieve rechtsbescherming', *Tijdschrift voor het recht van netwerkindustrieën,* issue 3, 155-175.
[31] STIJLEMAN A., 'Het motiveringsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 242.
[32] TODTS L., 'Het redelijkheids- en evenredigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 277-278.
[33] See, concerning local administrative enforcement: TODTS L., 'Het proportionaliteitsbeginsel in het gemeentelijke ordehandhavingsrecht: naar een meer gelijklopende proportionaliteitstoets' in OPDEBEEK I. and DE SOMER S. (eds.), *Bestuurlijke handhaving. Hoe door de bomen het bos nog zien?,* die Keure, 2018, 187-189.
[34] See e.g.: LEUS K., 'Het zorgvuldigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 193.
[35] LEUS K., 'Het zorgvuldigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 196 with reference to: LANCKSWEERDT E., 'Democratische vernieuwing in gemeenten door lokale burgerfora', *T.Gem.* 2021/3-4, 115-128, 120 and 128.

It is hard and for the purposes not feasible to give an exhaustive overview of what this principle entails. However, generally speaking the principle obliges administrations to prepare their decisions carefully. It thus guarantees a careful investigation of the facts, including gathering sufficient information in order to be able to make an informed decision. Their decision must be based on correct findings of facts.[36]

It is clear that all of these elements, in their own way, can help ensure objective, and thus unbiased and impartial decision-making.

2.2 Explicit motivation

Apart from the GPGA concerning the substantive motivation of administrative measures and sanctions, a legislative act from 1991 obliges *all administrations*[37] to formally motivate their administrative measures and sanctions.[38] This motivation must be included in the decision and must state the legal and factual considerations underlying the decision, which must be sufficient.[39] The difference with the principle of substantive motivation is that here, the motivation must be part of the decision itself and thus the mere fact that the motivation could be derived from the administrative file, does not suffice.[40] It cannot be clearly separated from the principle of substantive motivation given that here as well, the decisions should be based on facts that are sufficient, which is also a substantive condition for the motivation.[41]

However, here too, the same remarks as for the principle of substantive motivation can be made regarding the extent to which this would always be able to serve as a safeguard (*supra*).

3 National Belgian Data Protection Authority (DPA)

3.1 The DPA in short

The DPA monitors the application of the General Data Protection Regulation (hereinafter: GDPR[42]), the Act of 3 December 2017 (hereinafter: DPA-Act[43]) as well as other laws relating to the protection of the processing of personal data.[44] In order to do this, the DPA has e.g. been allocated the competence to impose administrative sanctions and/or measures. The DPA is a so-called 'collateral body' of the House of representatives[45] and is composed of (at least)[46] six bodies: an executive committee, a general secretariat,

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[36] LEUS K., 'Het zorgvuldigheidsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 196.
[37] In the sense of art. 14 of the Act on the Council of State, as which all researched administration qualify.
[38] Art. 2 Act of 29 July 1991 on the explicit motivation of administrative actions, *BS* 12 September 1991 (hereinafter: Explicit Motivation Act).
[39] Art. 3 Explicit Motivation Act.
[40] STIJLEMAN A., 'Het motiveringsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 238.
[41] STIJLEMAN A., 'Het motiveringsbeginsel' in COOLSAET A. and DE SOMER, S. (eds.), *Beginselen van behoorlijk bestuur,* die Keure, 2025, 238.
[42] Art 51.1 GDPR.
[43] Act of 3 December 2017 establishing the Data Protection Authority, *BS* 10 January 2018.
[44] Art 4, §1 DPA-Act.
[45] The latter has led to discussion within Belgian doctrine whether or not the DPA could therefore still be considered an 'administrative' enforcement body. A prerequisite to be able to enforce administratively, is that the instance itself falls within the executive power. Without going into too much detail, this study adopts the same view as expressed by the Council of State (division administrative jurisprudence) as well as the explanatory memorandum, which is that the Disputes Chamber of the DPA is an administrative body. See: Explanatory Memorandum to the Bill establishing the Data Protection Authority, *House of Representatives*, 2016-2017, nr. 2648/1, 8 and Council of State 5 may 2022, nr. 253.657, consideration 13.3.2.
[46] In order to strengthen the independence and efficient functioning of the DPA, the legislator grants it a certain margin to determine its own internal functioning and organisation. Article 7 determines the minimum framework of the DPA, but the DPA can decide to establish additional internal bodies (see art. 7, §3 DPA-act). See also: Explanatory

a first-line service, an authorisation and advice service, an inspection service and a disputes chamber.[47] This paper will focus *mostly* on the Disputes Chamber, as it is the only body competent to impose administrative sanctions as well as measures.[48]

Based on the above, the DPA forms an administration suitable for this research.

3.2 Objectivity, impartiality and/or prevention of bias within the DPA

This part analyses how the relevant legal framework ensures that the Belgian DPA takes administrative measures and/or sanctions based on facts, without being influenced by the person(s) (contributing to) making this decision.

As already indicated, relevant provisions can stem from a multitude of regulatory levels. Therefore, an analysis will be carried out of relevant regulations on European and national level. Given that the DPA is an administration at the national level, local regulations nor regional law will be of relevance here.

Our analysis started at the European level (General Data Protection Regulation[49], hereinafter: GDPR).[50] It started here because possible obligations might still rather be obscure. Subsequently, our analysis dived into national law (national legislation as well as an internal regulation), where the obligations most probably would be more detailed.

In what follows, the aforementioned parts are integrated in one analysis which contains references throughout the text to the legal source from which the obligation arises. This ensures that emphasis is on the substantive obligations rather than the legal sources that impose them. The substantive conditions are grouped under a more general heading, such as 'independence'. This implies that a different classification would also have been possible.

3.2.1 Independence

Independence of the authority

First of all, the DPA has to perform its tasks and exercise its powers in accordance with the GDPR, completely independent.[51] Until 2003, the (predecessor of the) DPA[52] was established at the Ministry of Justice. Because of the European independence requirements, the DPA was transferred to the House of

Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001, 12.

[47] Art 7 DPA-Act.

[48] Art 100 DPA-Act.

[49] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, PB.L. 4 may 2016, L119/1.

[50] The GDPR obliges EU Member States to indicate one or more supervisory authorities (art. 51.1 GDPR). The DPA is one of the supervisory authorities for Belgium. Next to the DPA, there are other supervisory authorities in Belgium as meant within the GDPR, competent for specific matters. These fall outside of the scope of this paper. If there would be more authorities in one Member State, as is the case in Belgium, they have to appoint one of the authorities as leading authority (art. 5.1.3 GDPR).

[51] Art. 52.1 GDPR.

[52] More specifically its forerunner, the Privacy Commission.

Representatives , where it is currently still established.[53] The DPA has its own legal personality.[54] In exercising its tasks and powers the (members[55] of) DPA remains free from any (in-)direct external influence and does not seek or accept instructions from anyone. [56]

The DPA-act also explicitly states that the DPA performs its tasks exclusively in the public interest.[57]

Independence of internal bodies

As already mentioned above, the DPA consists of several bodies. For the purposes of this paper, it is important to note that the first-line service, the inspection service and the disputes chamber, perform its tasks mostly independent from one another. The first-line service receives complaints and requests sent to the DPA and autonomously investigates whether the complaint or request is admissible.[58] The inspection service is, as the investigative body of the DPA, competent to take several investigative and provisional measures at its own initiative or by referral of other bodies of the DPA.[59] The investigative measures may give rise to an official report establishing an infringement, which shall be presumed accurate unless proven otherwise.[60] Appeal against the provisional measures of the inspection service is possible with the disputes chamber.[61] As the administrative disputes body of the DPA, the disputes chamber can impose administrative measures and sanctions independently from other bodies of the DPA.[62]

Since the 2023 amendment, the DPA-act is considered to be a minimal framework for organisational structure, which the DPA can further specify in its internal regulations.[63] However, one of the elements the legislator still did deem necessary to specify on a legislative level, was the structural implementation of the so-called 'Chinese wall' between inspecting and deciding on the consequences of the investigation.[64] The DPA-act now states that: 'The internal regulations stipulate that the inspection service and the disputes chamber must operate strictly separately from each other' (own emphasis).[65] While the legislator initially

[53] The institutional, administrative and financial dependence on the Ministry of Justice, was considered to be complicated. The political and budgetary powers of control of the Camber also supported this transfer. See: art. 3 DPA-act; art. 2 Act of 26 February 2003 amending the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data and the Act of 15 January 1990 establishing and organising a Database of the Commission for the Protection of Privacy and extending its powers, *BS* 26 June 2003; Explanatory memorandum to the Bill amending the Act of December 1992 on the protection of privacy in relation to the processing of personal data and the Act of 15 January 1990 on the establishment and organisation of a Database for Social Security adapting the status of the Commission on the Protection of Privacy and extending its powers, CHAMBER, 2001-2002, 1940/1, 6 and 10; STIERS M., 'The ratio legis behind the allocation and organisation of Belgian administrative enforcement powers. A case study.' *Jean Monnet Network on EU Law Enforcement Working Paper Series*, 2024, https://jmn-eulen.nl/wp-content/uploads/sites/575/2024/09/Stiers-EULEN-Conference-2024.pdf, 6.
[54] Art. 3 DPA-act.
[55] Members of the DPA (or in terms of the GDPR: members of the supervisory authority), in Belgium only concern the members of the actual executive committee. Therefore, whenever reference is made in this paper to 'members of the DPA', members of the executive committee are meant. It is still relevant to speak either of members of the DPA or members of the executive committee, because the GDPR contains rules on the first mentioned, whereas the DPA-act and internal regulation contains rules on the last mentioned.
[56] The GDPR obliges this from the DPA, whereas the DPA-act obliges this from the members of the DPA. The GDPR also explicitly states that the obligation only applies when the DPA is carrying out its tasks in accordance with the GDPR. See: art. 52.2 GDPR and art. 43 DPA-act.
[57] Art. 5 DPA-act.
[58] Art. 22 and 60 DPA-act.
[59] See e.g. art. 63, 66 and 70 DPA-act
[60] Art. 67, §1 DPA-act.
[61] Art. 71 DPA-act.
[62] Art. 28 and 32 DPA-act.
[63] Explanatory Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001, 5.
[64] Explanatory Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001, 12.
[65] Art. 11, §2 DPA-act.

did not provide a clear *rationale* for the division of powers between the various bodies of the DPA – other than referring to 'comparable authorities'[66] – the 2023 amendments, in contrast, now explicitly indicate that the division of competences between the inspection service and the disputes chamber are aimed at enhancing objectivity, impartiality and independence.[67]

Several provisions of the internal regulation are also aimed at upholding the so-called 'Chinese wall' between inspecting and deciding on the consequences of the investigation. Article 84 of the regulation, for example explicitly states that the inspection service and the disputes chamber act strictly separately from each other. Whereas members from the executive committee in principle are allowed – under certain conditions[68] - to delegate their powers to another member of the committee,[69] this is forbidden between the head of the inspection service (inspector general) and the chair of the disputes chamber.[70]

The internal regulation also contains specific rules regarding the temporary replacement of the inspector-general as well as the chair of the disputes chamber. However, here, the regulation does not explicitly foresee in a prohibition for the inspector-general and the chair of the disputes chamber to replace each other.[71] Here, the 'Chinese wall' therefore is not explicitly upheld by the internal regulation. In practice however, this *could*, and in our opinion, following the DPA-act, even *has* to be the case.[72]

Powers within DPA are thus divided between (at least) six bodies and, in principle, all bodies also act outside of the influence of the executive committee[73]. However, in certain cases, the latter does have the power to take over individual cases from the various internal bodies if it deems a collegial discussion to be appropriate or necessary ('right to evocate').[74] This means that the case will be discussed within the committee.[75] The executive committee can only evaluate the broader implications that the case in question may have for the DPA as a whole, as well as the actions that need to be taken in this regard by the other

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[66] The legislator initially only stated that inspiration was found in the organisation of 'similar authorities', one of those two being the FSMA. For the latter, the legislator decided to divide the power to impose an administrative sanction and the power to investigate whether there has been something worth sanctioning between separate bodies, for reasons of specialisation and in order to be able to give due time and attention to these procedures and the applicable procedural safeguards, as well as independence and autonomy. See: explanatory memorandum to the bill amending the Act of 2 August 2002 on the supervision of the financial sector and financial services and of the law of 22 February 1998 laying down the organic statute of the National Bank of Belgium, and containing various provisions, CHAMBER, 2009-2010, 2408/1, 16-17; STIERS M., 'The ratio legis behind the allocation and organisation of Belgian administrative enforcement powers. A case study.' *Jean Monnet Network on EU Law Enforcement Working Paper Series*, 2024, https://jmn-eulen.nl/wp-content/uploads/sites/575/2024/09/Stiers-EULEN-Conference-2024.pdf, 11-12.

[67] More specifically, the legislator stated the following: 'This should enable the DPA to fulfil its mission objectively, impartially and independently.' See: Explanatory Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001, 12.

[68] The internal regulation provides for the procedure that needs to be followed for this. It also states that such a delegation is only possible for punctual aspects of their function. See art. 18 Internal regulation.

[69] Art. 11, 5° DPA-act.

[70] Art. 18 internal regulation.

[71] Art. 92, §1 and 94, §1 internal regulation.

[72] Art. 11, §2 DPA-act.

[73] The executive committee consists (in principle) of the director of the general secretariat, the director of the knowledge centre, the director of the first-line service, the inspector general and the chair of the disputes chamber. See art. 7, §2 and 8 DPA-Act. If the DPA decides to establish additional bodies, one of the members of the executive committee, except the chair of the DPA, will become the director of that new body (see art. 7, §3 DPA-act).

[74] Art. 9, §1 *in fine* DPA-act. When exercising this right of evocation, directors of the inspection service and the disputes chamber may not comment on each other's individual files in order to maintain the separation between the two services. This is also referred to as the 'Chinese wall' (*supra*). The internal rules of procedure must determine the working methods of the executive committee with regard to the right of evocation and, in particular, contain the necessary safeguards to ensure that the executive committee can, in practice, observe the separation between the investigation and the decision. See: Explanatory Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001, 10-11.

[75] Art. 16 internal regulation.

internal bodies of the DPA. The preparation, deliberation and decision-making regarding the case in question are thus still carried out entirely autonomously within the competent internal body of the DPA.[76] So, the right to evocate does not alter the 'Chinese wall' and therefore also does not alter objectivity (or bias) or impartiality in any way. However, following this evocation the executive committee could determine for example, the DPA's yearly priorities and/or general guidelines (under the terms of the DPA-act).[77]

It should also be noted that the relevant competence has been allocated directly to the disputes chamber[78], but not to the inspection service. Direct allocation implies that the hierarchical influence that usually applies to civil servants,[79] is not applicable and therefore amplifies the independence. Direct allocation thus enhanced independence and subsequently also enhances impartiality and objectivity.

3.2.2 Financial aspects of the services

Each EU Member State has to provide their supervisory authority with **enough resources** in order to be able to function effectively.[80] Furthermore, each supervisory authority has to have separate, public annual budgets.[81] Each Member State should also foresee in financial control of the authority, without affecting its independence.[82] For the Belgian DPA more specifically, its operations are funded via State budget allocation, with annual budget proposals subject to parliamentary scrutiny. These must be accompanied by other documents, such as a strategic plan and a workload analysis.[83]

In principle, the DPA has to perform its tasks free of charge.[84] Only when the DPA finds and demonstrates that requests are manifestly unfounded or excessive, particularly because of their repetitive character, the DPA may charge a reasonable fee based on administrative costs.[85] The DPA-act clarifies for example that the DPA may charge fees for specific authorisation and advisory functions.[86]

All decisions of the DPA that concern a transfer of money (such as administrative fines and transactions) shall be transferred to the Treasury or collected by the general administration of collection and recovery.[87]

Lastly, each request for a particular advice of an expert always has to include a proposal for **remuneration** for the assignment, which the experts can accept or refuse with justification and propose an alternative[88] amount

3.2.3 Staff, members and experts

[76] Art. 16 internal regulation.
[77] Art. 17 internal regulation.
[78] First to the disputes chamber as such and subsequently, by the appointment procedure, to the members of the disputes chamber.
[79] See: TODTS L., *Bestuurlijke en strafrechtelijke vrijheidsbeperkingen ter handhaving van de openbare orde,* die Keure, 2021, 438.
[80] Art. 52.4 GDPR.
[81] Which might be part of the overall state or national budget. See art. 52.6 GDPR.
[82] *Ibid.*
[83] Art. 49 DPA-Act.
[84] Art. 57.3 GDPR.
[85] Or may even refuse to act on the request. See art. 57.4 GDPR.
[86] Art. 49/1 DPA-act.
[87] Art. 107 DPA-act.
[88] This must, however, always be a multiple of the attendance fee specified in article 4 Internal Regulation. See: art. 3, §2 Internal Regulation.

Although the DPA primarily should rely on internal expertise (of its members[89] and staff[90]), it may also call upon external experts for specific and well-defined consulting assignments.[91] This differentiation is important, as different guarantees apply for the objectivity and impartiality of staff, members and experts.

Integrity

Whenever personnel of the DPA,[92] experts or members of the executive committee, authorisation- and advice service or disputes chamber reasonably belief that there has been/is/probably will be a breach of integrity, this can be reported through specific channels.[93] A breach of integrity is defined rather broadly. It is a threat or violation of the public interest. This could for example concern a breach of directly applicable European provisions, laws, decrees, circulars, internal rules and internal procedures applicable to federal public authorities and their staff.[94] All relevant provisions that ensure objectivity and impartiality (and prevent bias), but are not complied with, in fact thus would constitute a breach of integrity. However, a breach of integrity could also be a serious breach of professional obligations or of the proper management of a federal public authority.[95] This is a more open-ended norm, which allows for a greater scope to 'sanction' partisan, subjective and/or biased behaviour.

Whenever a breach of integrity is reported, two inspectors specifically appointed for this purpose, are competent to investigate the admissibility and validity of the notification.[96] The two designated inspectors are competent to determine whether or not such a violation occurred, but do not comment in their report on the appropriateness of any measures or sanctions with regard to the individual concerned.[97] It is the executive committee who decides on the consequences of a breach of integrity, which could include for example, according to the internal regulation, the internal communication on this breach of integrity and its possible consequences or initiating disciplinary proceedings in accordance with the rules in the staff regulations.[98]

Specific conditions for staff

Each Member State has to ensure that their supervisory authority chooses and has its own staff. The staff should exclusively be subject to the direction of the member(s) of the authority.[99] In Belgium, the DPA's staff framework, recruitment procedures and employment conditions are determined by the House of Representatives.[100]

Appointment procedure for members and experts

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[89] So-called members of the DPA, concern the members of the executive committee.
[90] All other people working at the DPA, are the staff of the DPA.
[91] Art. 18/1 DPA-act.
[92] It is important to note that additional deontological rules also apply to the staff of the DPA, given that the latter are federal civil servants or employees (see art. 46, §1 DPA-act). Given the scope of this paper and the variety of relevant provisions, it is not feasible within this study to go into detail into all of the relevant provisions.
[93] Art. 8 internal regulation.
[94] Art. 8 internal regulation *juncto* art. 2 Act of 8 December 2022 on reporting channels and the protection of reporters of integrity breaches in federal government agencies and the integrated police force, *BS* 23 December 2022 (hereinafter: Act of 8 December 2022).
[95] Art. 8 internal regulation *juncto* art. 2 Act of 8 December 2022.
[96] Art. 9 Internal regulation.
[97] Art. 10, §2-3 Internal regulation.
[98] Art. 10, §3 Internal regulation.
[99] Art. 52.5 GDPR.
[100] Art. 46 LAS-act.

Members of the DPA must be appointed by means of a transparent procedure.[101] Specific appointment procedures and conditions apply for the members of the executive committee. They are appointed by the House of Representatives and take an oath in which they pledge their loyalty to the King, obedience to the Constitution and to the laws of the Belgian people.[102]

As already indicated, the DPA should primarily rely on its internal expertise. However, it may call upon experts for specific and well-defined consulting assignments.[103] In principle, the DPA must call on experts from the so-called "reserve", which is a list of up to twenty experts drawn up by the management committee and approved by the Chamber of Representatives. The list is published on the official website of the DPA and remains valid for (at least) two years. Only in the case where the experts on this list would not have sufficient expertise for a specific consulting assignment, the DPA may - provided that it is motivated sufficiently according to the House of Representatives - also call on other[104] experts.[105] The experts of the reserve are appointed by the executive committee.[106] However, experts are not part of the DPA, and thus external to it.[107]

Appointment conditions for members and experts

Members of the DPA must have the qualifications, experience and skills, particularly in the area of data protection, required to perform its duties and exercise its powers.[108] Member States should provide by law for the qualifications and eligibility conditions required for appointment of member(s) of the DPA.[109] The appointment conditions of the members of the executive committee are laid down in articles 36-38 of the DPA-act. It concerns for example conditions relating to the required level of education, titles, areas of expertise, moral authority, independence, term of appointment and certain specific incompatibilities (such as being a member of a government in Belgium).

Members of the DPA must refrain from any activity 'incompatible with their duties' and shall not, during their term of office, engage in any incompatible (un)paid occupation.[110] The DPA-act specifies that these are activities that (in-)directly could benefit from the decisions and positions the DPA may take.[111] It is, more specifically, also forbidden for them to have an interest in companies active in the market for the provision of data protection services, nor may they perform any function or provide any service for these companies.[112] Members of the executive committee cannot be present during deliberations or decisions on

[101] More specifically, they must be appointed by either the parliament, government, head of state or independent body entrusted with the appointment under Member State law. Member States should provide by law for such a procedure. See Art. 53.1 and 54.1.c GDPR.
[102] Art. 8, §2 and 39 DPA-act.
[103] Art. 18/1 DPA-act.
[104] Such experts, who can therefore only be appointed in exceptional circumstances, must also comply with the safeguards provided for in the DPA-Act, but not with the safeguards provided for in the internal regulations. This can be explained from the perspective that such cases involve only very specific tasks and circumstances and that safeguards against, for example, "structural conflicts of interest" are less relevant or even irrelevant. Since they are not included in the list of reserves, the DPA does not need safeguards against such structural problems, as they do not perform a structural function. Given the rather exceptional nature of this type of experts, this paper will not go into further detail on this.
[105] Art. 18/1 DPA-act.
[106] Art. 9, §1, 6° DPA-act.
[107] Art. 18/1, §1 DPA-act.
[108] Art. 53.2 GDPR.
[109] Art. 54.1.b GDPR.
[110] Art. 52.3 GDPR.
[111] Art. 44, §1 DPA-act.
[112] Art. 44, §1 DPA-act.

matters in which they have a personal or direct interest, or in which their relatives up to the third degree have a personal, direct or indirect interest.

Prior to taking office, they have to submit a written statement in which they declare that no such conflict of interests exists to the House of Representatives, as well as provide the committee with a copy of their declaration.[113] Whenever members of the executive committee doubt whether or not they find themselves in such a situation, they have to inform the executive committee of this immediately.[114]

Members of the Executive Committee are also not allowed, for a period of two years after the end of their term of office, hold any position that would (in-)directly entitle them to any of the benefits that resulted from their term of office.[115]

With regards to the experts then, the DPA-act contains several safeguards to ensure its objectivity, impartiality and independence as opposed to and/or of the experts. First of all, experts act in a personal capacity and cannot represent or bind the DPA in any way.[116] Given that experts may only be called upon for specific consulting tasks, they may not participate in any decision-making.[117] The DPA-act also contains a list with appointment conditions, including certain incompatibilities. Experts are for example not allowed to be members of a Belgian government (federal, community or regional level).[118] They are also not allowed to carry out tasks relating to files in which they have a direct or indirect personal interest.[119] The experts are required to submit a declaration of honour affirming that no such conflict of interests or incompatible function exists and that they will promptly notify the DPA, should this change.[120] For each specific advisory assignment for which an expert is requested, the expert who wishes to apply for the assignment must – again - declare on their honour that they meet the conditions set out in article 18/1, §5 of the DPA-Act.

When selecting the expert, the (member of the) executive committee has to take a number of factors into account, including the compliance with the conditions set out in Article 18, §5 of the DPA Act.[121] This is thus an additional verification of those conditions in the specific case. If there is no suitable expert-candidate for the specific consulting task, the (member of the) executive committee can also decide to not award the consulting assignment.

End of term for members and experts

The duty of the members of the DPA can only end when the term of office expires, they resign or have to retire (according to Member State law).[122] Members of the DPA can only be dismissed in case of serious

[113] Art. 44, §2 DPA-act and art. 30, §4, *in fine* internal regulation.
[114] Art. 30, §3-4 DPA-act.
[115] Art. 44, §2 DPA-act.
[116] Art. 18/1, §1 DPA-act.
[117] More specifically, experts may not participate in any deliberations, nor may they contribute to drafting opinions or recommendations or participate in their discussion. See art. 18/1, §5 DPA-act; Explanatory Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001,
[118] Art. 18/1, §4 and 38, 1°-6° DPA-act. These conditions also apply for the appointment for members of the executive committee.
[119] E.g. if there could be an impact on a company, a government department or any other entity in which the expert has a direct or indirect interest. See art. 18/1, §5 DPA-act; Explanatory Memorandum to the Bill amending the Act of 3 December 2017 establishing the Data Protection Authority, *House of Representatives*, 2021-2022, 29 June 2022, nr. 2793/001, 16.
[120] Art. 18/1, §5 DPA-act.
[121] Art. 3, §3 internal regulation.
[122] Art. 53.3 GDPR.

misconduct or if they no longer meet the conditions required for the performance of the duties.[123] It is not possible on the basis of opinions expressed while exercising their function. A specific procedure needs to be followed in case of dismissal.[124]

National law should also provide for the duration of the term of members of the DPA[125] (which is six years in Belgium)[126] and should determine whether and if so, how many terms members of the DPA can be reappointed.[127] The DPA-act specifies that in principle all members of the executive committee for reappointment, either to the same position or to a different role within the committee. However, no individual may serve as chairperson for two consecutive terms.[128]

Experts are part of a list, drawn up by the DPA, with a validity of two years, but which is prolongable.[129] However, the executive committee is able to recuse experts,[130] when it establishes – in a reasoned manner – that an expert is structurally confronted with a conflict of interest. The recusal will last until either the structural conflict or the 'term of appointment'[131] of the expert ends.[132]

3.2.4 Transparency requirements

Apart from the above, the DPA also has to meet several transparency obligations, which also help ensure objectivity and impartiality. The DPA[133] has to draw up annual activity reports. These are publicly available and should be transmitted to (at least) the national parliament and the government.[134]

Furthermore, the disputes chamber decides case by case whether or not to publish it on the official website of the DPA.[135] The disputes chamber has to establish a policy on this, which also has to be published on the official website of the DPA.[136] This increases transparency and therefore also reduces the risk of partiality and subjectivity. It ensures that the disputes chamber cannot arbitrarily decide to (not) publish certain decisions.

Additionally, when the disputes chamber imposes an administrative fine, its decision should be motivated.[137] This motivation requirement also helps ensure that the decision is based on objective facts and conclusions and can help avoid any (appearance of) impartiality, as the decision should be properly based on objective reasons and those reasons have to be set out clearly.

The inspection service and disputes chamber both work with a 'dismissal policy'.[138] The internal regulation leaves the choice with the aforementioned bodies of the DPA whether this policy will be adopted alone, or

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[123] Art. 53.4 GDPR.
[124] Art. 45 DPA-act.
[125] *In principle,* this term cannot be less than four years. See art. 54.1.d GDPR.
[126] Art. 37, §1 DPA-act.
[127] Art. 54.1.e GDPR.
[128] Art. 37, §2 DPA-act.
[129] Art. 18/1, §3 DPA-act.
[130] Art. 9, §1, 6° DPA-act.
[131] The experts are included in a list of the DPA, which remains valid for two years and can be renewed. See art. 18/1, §3 DPA-act.
[132] Art. 2, §5 Internal Regulation.
[133] The executive board and the chairperson of the DPA in particular, see art. 9 and 17 DPA-act.
[134] Art. 59 GDPR and art. 51 DPA-act.
[135] Art. 95, 8° and 100, 16° DPA-act.
[136] Art. 99 internal regulation. See: www.gegevensbeschermingsautoriteit.be/burger/de-autoriteit/organisatie.
[137] Art. 102 DPA-act. In the case where it takes another decision (no administrative fine), its decision should of course also be motivated, however, this is not explicitly codified in the DPA-act. See *supra* on the principle of motivation.
[138] Which, according to art. 8, §1, 8°-10° DPA-act has to be submitted to the executive committee.

together.[139] Either way, the dismissal policy/policies will be made publicly available on the official website of the DPA.[140] The public character of the dismissal policy/policies, leads to more transparency on why something e.g. was not inspected, or wasn't followed by a measure or sanction. In turn, this leads to less room for the DPA to behave partisan, subjectively or biased, as they had to draw up a policy beforehand, which they will then have to live up to.

Apart from this, the disputes chamber should also provide for a policy concerning administrative fines and 'penalty payments'[141], which should be submitted to the executive committee following articles 9, §1, 8°-10° of the DPA-act and subsequently published on the official website of the DPA.[142]

4 The Flemish Regulator for the Media (FMR)

4.1 The FMR in short

The Flemish legislator established the Flemish Media Regulator (hereinafter: FMR) by decree of 16 December 2005 as an external independent agency under public law with legal personality (in Belgium often referred to as public EVAs).[143] The qualification as public EVA has important legal implications, which will be pointed out below.

First of all, the Administrative Decree contains several provisions on public EVAs in general that can directly influence the objectivity and impartiality within public EVAs such as the FMR. The Flemish government[144] also foresaw in specific rules concerning the legal status of the staff of the Flemish government services; which might also impact objectivity and impartiality.[145]

4.2 Objectivity, impartiality and/or prevention of bias within the FMR

This part of the research analyses how the relevant legal framework ensures that the FMR takes administrative measures and/or sanctions based on facts, without being influenced by the person(s) (contributing to) making this decision.

Again, relevant provisions can stem from a multitude of regulatory levels. Of which the regional[146] turned out to be the most relevant,[147] as well as internal codes of the FMR. In what follows, emphasis is - again -

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[139] Here, the so called Chinese wall seems to be broken down to some extent. However, it is logical, given that it would otherwise be ineffective that the dismissal policy of the inspection service would differ (too much) from that of the disputes chamber. Currently, the disputes chamber has its own dismissal policy. See: www.gegevensbeschermingsautoriteit.be/publications/sepotbeleid-van-de-geschillenkamer.pdf.
[140] Art. 88 and 97 internal regulation.
[141] This is a sum of money one is legally required to pay if they fail to adhere to a previous decision.
[142] Art. 100 internal regulation.
[143] Art. 2 Decree of 16 December 2005 establishing the Flemish Media Regulator, an external independent agency organised under public law, and amending certain provisions of the decrees on radio broadcasting and television, coordinated on 4 March 2005, *BS* 30 December 2005. The aforementioned decree has since been replaced by the so-called Media decree. Art. 215 Decree of 27 March 2009 on radio broadcasting and television, *BS* 30 April 2009 (hereinafter: Media Decree).
[144] Following article III.23 Administrative Decree.
[145] Decision of the Flemish government concerning the establishment of the legal status of the staff of the Flemish government services, *BS* 27 March 2006 (hereinafter: DFG).
[146] Given that the FMR is an administration at the Flemish level, most national and local regulations will not be of relevance here.
[147] The European level might also have been of relevance, given that the FMR is also competent for (part of) the enforcement of the European Digital Services Act (hereinafter: DSA), see e.g.: art. 228/1 Media Decree. While the DSA does contain safeguards concerning the objectivity and impartiality, those only apply to the so-called national digital services coordinator. See: art. 49-50 DSA. In Belgium the enforcement powers of the DSA are divided between four

on the substantive obligations rather than the legal sources that impose them. The substantive conditions are grouped under a more general heading, such as 'independence'. This implies, again, that a different classification would also have been possible.

4.2.1 Independence

Independence of the authority

The FMR consists of two chambers: the general chamber and the chamber for impartiality and the protection of minors.[148] Of these chambers, this study will focus on the general chamber, as it able to impose administrative measures and sanctions.[149] Apart from the two chambers, the FMR also consists of the following relevant 'bodies': staff, a board of directors.[150]

The general chamber autonomously[151] imposes administrative measures and sanctions.[152] Thus, the board of directors does not play a (direct) role in the actual decision-making of the general chamber.[153] However, the general chamber does not conduct the entire investigation itself. It is assisted in this by the 'investigation unit', which is a grouping of the staff of the FMR.[154]

The investigation unit reviews incoming files (complaints or requests) for compliance with media regulations.[155] It does so independently.[156] At its own initiative, it submits the results of the investigation in a report to the General Chamber. The report provides an overview of the factual circumstances, assesses the elements of the file against the legal rules and formulates a decision-proposal.[157] A member of the investigation unit then may explain its report to the general chamber, but may not be present at the hearing, nor at the deliberations.[158]

The above implies that both the general chamber as well as the investigation unit are the relevant 'bodies' of the FMR for this study. The board of directors as such, does – at first sight at least - not seem of much relevance for the actual enforcement powers of the FMR (investigation or decision-making). However, to be complete, it should be noted that the members of the board of directors are politically bound and

authorities, three regional authorities and one federal authority (BIPT). Given the complex distribution of powers within Belgium, the federal authority was indicated as the digital services coordinator. The safeguards in the DSA therefore only apply to BIPT and not to the FMR. See: Art. 4, §1 of the cooperation agreement, approved by the Act of 20 December 2024 approving the cooperation agreement of 3 May 2024 between the Federal State, the Flemish Community, the French Community and the German-speaking Community on the partial coordinated implementation of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC, *BS* 30 December 2024.

[148] Art. 215, §2 Media Decree.

[149] Art. 218, §2 and 3 Media Decree.

[150] Art. III.8 Administration Decree.

[151] However, for a lot of its competencies, the general chamber does have to take into account several guidelines of Berec and, recommendations and decisions of the European Commission to enhance a harmonized application of Directive 2018/1972.

[152] Art. 218, §2 *in fine* Media Decree.

[153] See explicitly in art. 226 Media Decree, which states that the board of directors does not play any role in the decisions as meant within e.g. art. 118, §2 of the Media Decree.

[154] Art. 1, 5° Internal Regulation of 18 May 2006 of the General Chamber, Chamber for impartiality and protection of minors, the board of chairpersons and the general assembly of the FMR, *BS* 26 June 2006 (hereinafter: Internal Regulation FMR).

[155] Art. 16 Internal Regulation FMR.

[156] Art. 17 Internal Regulation FMR.

[157] Art. 17 Internal Regulation FMR.

[158] Art. 18 Internal Regulation FMR.

therefore cannot be considered 'independent'. However, the powers of the board of directors mainly concern the daily operations of the FMR.[159]

Additionally, each public EVA (such as the FMR) is subject to supervision by a government 'commissioner', appointed by the Flemish government.[160] However, the Media Decree excludes the general chamber[161] from the scope of application of this supervision.[162] This exclusion enhances the independence of the general chamber as opposed to the executive.

Lastly, the FMR is responsible for its organisational control, which is the set of measures and procedures designed to provide reasonable assurance that e.g. the objectives set are achieved and the risks involved are known and controlled or that legislation and procedures are complied with.[163] This organisational control is periodically evaluated by 'Audit Flanders'[164]. It assesses whether the organisational control is adequate and formulates recommendations for improvement. To this end, Audit Flanders carries out organisational and process audits.[165] In our opinion, these audits could play an important role in ensuring objectivity and impartiality of the decision-making process, including the investigative phase. Possible risks for an objective and impartial decision-making-process, could be pointed out and Audit Flanders could formulate recommendations to this end. However, those remain 'mere' recommendations and thus are not binding.[166]

Political influence, at least in the investigative phase, therefore cannot be ruled out. The actual decision-making process by the general chamber has to adhere to more safeguards that ensure its independence as opposed to the executive.

Independence of internal bodies

The above seems to suggest a separation between the decision-making of the general chamber on the one hand and the board of directors and the executive power on the other The function of member of the board of directors (or director) is even incompatible with the function of member of one of the chambers of the FMR.[167]

However, this apparent separation is not very strict. First of all, the managing director – responsible for daily management of the FMR – does attend the meetings of both chambers of the FMR as an observer.[168] Even though the managing director is present, (s)he does not have any direct power there, which again ensures the independence of the general chamber.

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[159] Art. 226 and following Media Decree.
[160] Art. III.13 Decree of 7 December 2018 Administration Decree, *BS* 19 December 2018 (hereinafter: Administration Decree).
[161] As well as the chamber for impartiality and the protection of minors.
[162] See art. 215, §2 Media Decree which excludes art. III.13 Administration Decree for the general chamber (and for the chamber for impartiality and the protection of minors).
[163] Art. III.114 Administration Decree.
[164] Audit Flanders consists of two audit committees, one being audit committee of the Flemish administration, relevant for the FMR. This audit committee consists of four independent experts and three representatives of the Flemish government. See art. III.115, §4, 1° Administration decree.
[165] Art. III.115 Administration Decree.
[166] Art. III. Administration Decree.
[167] Art. 225 Media Decree.
[168] Art. 227 and 233 Media Decree.

Additionally, the managing director also has the lead over the staff of the FMR.[169] This is important, as the investigation service is not a separate internal body of the FMR, but a mere grouping of staff of the FMR, subject to the direction of the managing director.[170] Apart from the internal regulation, drawn up by both chambers of the FMR, which states that the investigation unit leads its investigation independently, there are no explicit legal safeguards for the objectivity and impartiality of the investigation service as opposed to the influence of the managing director and, in very general terms, the executive power. From a legal point of view, it thus remains unclear what the influence of the managing director could actually entail as opposed to the staff of the FMR, over which (s)he has the lead.

With regard to the separation of functions between investigation and decision-making, there are sufficient safeguards in place to ensure that these two functions are in fact separated from one another. This avoids bias, partiality and, consequently, subjectivity.

It should also be noted that the relevant competence has been allocated directly to the general chamber[171], but not to the inspection service. Direct allocation implies that the hierarchical influence that usually applies to civil servants,[172] is not applicable and therefore amplifies the independence. Direct allocation thus enhanced independence and subsequently also enhances impartiality and objectivity.

4.2.2 Financial aspects of the services

None of the relevant decrees contain provisions on whether or not the services executed by the FMR are free. However, there are provisions that indirectly do so. The FMR may only receive well-defined revenues such as an operating grant or fees assigned to the FMR by decree and recoveries of undue expenditure. The revenues from administrative fines shall be collected by the FMR, but the FMR shall transfer them to the general budget of the Flemish government or, if the decision imposing the fine is annulled by the Council of State, refund them.[173] The above thus implies that the services by the FMR are free of charge.

4.2.3 Staff, members and experts

Integrity

As the obligations regarding integrity are different for members than for staff and experts, they will be addressed in the specific parts below.

Specific conditions for staff

The Administration Decree[174] contains rules on the remuneration of the staff of the FMR.[175] The Flemish government provided for a regulation concerning the legal status of the staff of the FMR, which has been

[169] Art. 233 Media Decree.
[170] Art. III.13 Administration Decree
[171] First to the general chamber as such and subsequently, by the appointment procedure, to the members of the general chamber.
[172] See: TODTS L., *Bestuurlijke en strafrechtelijke vrijheidsbeperkingen ter handhaving van de openbare orde,* die Keure, 2021, 438.
[173] Art. 232 Media Decree.
[174] Given that the FMR is a public EVA, several obligations from the Administration Decree apply to the staff of the FMR.
[175] For example, it provides for a principle maximal annual remuneration as well as other specific provisions concerning their payment, such as rules concerning leave bonusses, prohibition of paying in stocks, principle maximal annual retirement compensation, variable remuneration, … In principle, their remuneration etc. is publicly available in the annual report of the FMR. See art. III.25-31 Administration Decree.

done with the DFG (*supra*).[176] This DFG contains several deontological rights and obligations. More specifically, it states that even outside the scope of their duties, staff may not request, demand or accept gifts, rewards or any other benefits related to their position, either directly or through an intermediary.[177] Possible breaches of integrity (e.g. deontologically questionable behaviour) can, and sometimes even should, be reported.[178] The aforementioned rights and obligations are further explained in a code of ethics established by the Flemish Minister responsible for administrative affairs.[179]

This code of ethics, or deontological code, is based upon six principles, one of which being 'objectivity'. The code reiterates that the principle of equality is important for the Flemish administration. It explicitly states that staff must maintain their objectivity at all times and perform their duties in an impartial and neutral manner. This means that staff does not allow its personal preferences to influence their interactions with internal and external customers. Staff must also strive to avoid any *perception* of partiality. The code pays specific attention to a number of elements, including personal preferences and conflicts of interest. The code gives examples of situations where the private interests could influence the objectivity of the job and states that when such a situation occurs, this must be notified to a superior immediately and the case should be dealt with by a colleague. Employees are also, in principle, forbidden to give paid professional advice that concern cases in which they are involved as an employee or even fall within the scope of the competences of the administration. Cumulations of activities or jobs should always be requested and may not create any conflicts of interest. The code also pays specific attention to a discrimination, personal preferences and principally forbids the acceptance of gifts that are related to the performance of their job.[180]

The DFG also contains incompatibilities and principle prohibitions on certain cumulations of professional activities. The DFG states more specifically that the capacity of staff is incompatible with any activity that staff carries out themselves or through an intermediary and which either prevents them from fulfilling their duties; compromises the dignity of the position and/or undermines public confidence in the service; compromises their own independence; causes a conflict of interest.[181] Staff is only allowed to engage in any additional activities *during working hours or a holiday* with permission, unless these are inherent to the position and subject to ethical review. Activities *outside working hours* may only be assessed in accordance with the ethical rules on incompatibilities, without prejudice to other regulatory provisions.[182]

The aforementioned duties apply to both civil servants and contractual employees. Whenever a civil servant does not fulfil its duties set out above, disciplinary action can be taken.[183] Shortcoming by contractual employees can also be sanctioned, even with dismissal.[184]

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[176] Art. III.23 Administration Decree.
[177] Art. 2.5 DFG.
[178] www.vlaanderen.be/intern/personeel/integriteit/integriteitsmeldingen-voor-medewerkers-vlaamse-overheid.
[179] Art. 2.7, §1 DFG.
[180] Deontological code for employees of the Flemish administration, 6 July 2011, see: https://assets.vlaanderen.be/image/upload/v1678902906/OMZ_BZ_2011_6_lwfnwn.pdf.
[181] Art. 2.10 DFG.
[182] Art. 2.13 DFG.
[183] Art. 8.1, 1° DFG.
[184] Art. 10 Regulation of the FMR on employment, www.vlaanderen.be/organisaties/administratieve-diensten-van-de-vlaamse-overheid/beleidsdomein-cultuur-jeugd-sport-en-media/vlaamse-regulator-voor-de-media

Appointment procedure and conditions of members and experts

The members of the general chamber of the FMR are appointed by decision of the Flemish Government.[185]

The general chamber may also call upon external services or experts. The managing director decides on their remuneration.[186] There are no explicit additional safeguards in place as opposed to the experts.

The general chamber consists of five members, two of which are magistrates (one of them being the chairperson) and three media experts.[187] Both the magistrates and the media experts must have at least five years of specific relevant professional experience.[188] Specific incompatibilities apply for members of the general chamber. Not only does the Media Decree declares the incompatibilities from the Administration Decree applicable to the members – which concern e.g. mandates in parliaments or governments, that following the Administration Decree in principle would only apply to the Board of Directors[189] – but also foresees in other, more specific incompatibilities. More specifically, members of the general chamber are not allowed to have professional ties with a media, advertising or promotional company or institution, or with a distributor of broadcasting signals, nor have any economic interests in those companies or institutions.[190]

Both chambers of the FMR should provide for an internal regulation, which *inter alia* has to contain a so-called profession-code, which the members of all chambers should adhere to.[191] This profession-code contains several relevant obligations. It states e.g. that each member must perform its duties in an impartial and neutral manner.[192] Each member must refrain from any activity that could compromise its independence and impartiality and must avoid any situation that could give rise to a conflict of interest or create the appearance of such a conflict.[193] It is in principle also forbidden for members to receive any gifts related to their mandate.[194] Members must always respect the independence of the FMR and the autonomy of the chambers. Whenever members notice that the aforementioned independence and/or autonomy is endangered, they must notify the other members of the FMR immediately.[195] Last but not least, article 51 introduces rules on the challenge and recusal of members, by reference to articles 828 and 829, second paragraph of the Judicial Code.[196] Members are required to voluntarily abstain from deliberations when a ground for recusal exists and to report such grounds before the relevant item is discussed. Challenges initiated by other member must likewise be raised prior to discussion.[197]

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[185] Art. 216, §4 Media Decree.
[186] Art. 15 Internal Regulation FMR.
[187] Art. 216, §1 Media Decree.
[188] For the specific requirements, see art. 216, §1 Media Decree. Magistrates for example must have been a magistrate for five years in courts (first instance or appeal), or at the Council of State.
[189] Art. 216, §1 *in fine* Media Decree *juncto* art. III.12, §1 Administration Decree.
[190] Art. 216, §1 *in fine* Media Decree.
[191] Art. 217, §1 Media Decree.
[192] Art. 46 Internal Regulation FMR.
[193] Art. 47 Internal Regulation FMR.
[194] Art. 48 Internal Regulation FMR.
[195] Art. 49 Internal Regulation FMR.
[196] E.g. when the member has a personal interest in the case or when there's a **high degree of hostility** between the member and (one of) the parties. See for all ground for recusal applicable to members of the FMR: art. 828 and 829, §2 Judicial Code.
[197] Art. 51 Internal Regulation FMR.

In case of violation of the internal regulation by a member of the general chamber, a disciplinary procedure will follow. The competent disciplinary chamber may impose several disciplinary sanctions and may in certain cases even propose in a motivated way to the Flemish Government to dismiss the member that violated the deontological rules.[198]

End of term for members

The members of the general chamber of the FMR are appointed for five years. However, this term is renewable.[199] The term can end prematurely in certain cases, e.g. when a member resigns or is required to resign due to incompatibility[200] or is removed from office pursuant to article 217, as a result of disciplinary procedures.

Whenever a member ends its term prematurely, the Flemish government shall replace the member. This replacement-decision shall be duly reasoned, notified in advance and available to the public.[201]

4.2.4 Transparency requirements

Each year, the Board of Directors has to draw up a business plan as well as a report on the execution of the previous business plan. Both will be published on the official website of the Flemish government.[202]

The decisions of the general chamber then, are publicly available on the official website of the FMR.[203] The meetings of the general chamber, are in principle private. The hearings however, are public, unless the general chamber decides otherwise.[204]

5 Local administrative sanctions (LAS)

5.1 LAS in short

A local[205] regulation[206] can state whether violations thereof can be sanctioned administratively or criminally[207]. Thus, the municipal council is able to decide by means of a local regulation whether or not violations will be sanctioned with a local administrative sanction.

Initially a local regulation could only provide for an administrative or criminal sanction insofar a legislative norm does not already foresee in administrative or criminal sanctions for these violations.[208] This implied that the system of local administrative sanctions in fact functions as a safety-net or catch-all system for behaviour that is not sanctioned administratively or criminally. The aforementioned safety-net-principle, has been weakened in that sense that currently there are also "mixed violations", which can be sanctioned

[198] Art. 217 Media Decree.
[199] Art. 216, §4 Media Decree.
[200] See e.g.: art. 216, §4, 2° Media Decree and art. III.12, §2 Administration Decree.
[201] Art. 216, §4 Media Decree.
[202] Art. III.61-63 Administration Decree.
[203] on the first day after they have been sent to the parties concerned. See: art. 12 Internal Regulation FMR.
[204] Art. 10 Internal Regulation FMR.
[205] For the purposes of this paper, "local" refers to the level of the municipalities and cities.
[206] Hereinafter: LAS-regulation.
[207] In this sense criminally merely refers to the fact that the sanction is imposed by a (criminal) judge, as opposed to an administrative sanction which is imposed by an administration. In this context it does not refer to the height of the sanction.
[208] Art 2, first paragraph of the Act of 24 June 2013 concerning the local administrative sanctions, *BS* 1 July 2013 (hereinafter: LAS-act).

criminally *or* administratively. Important is that a local administrative sanction can only actually be imposed, when the public prosecution decides not to prosecute.[209]

The actual local administrative sanctions (hereinafter: LAS) can either be imposed by the so-called 'sanctioning civil servant', when it concerns an administrative fine, or the municipal executive, when it concerns suspension, cancellation or closure as administrative sanctions.[210] Only specific civil servants and employees can identify infringements.[211]

5.2 Objectivity, impartiality and/or prevention of bias within LAS

5.2.1 Independence

Independence of the authority

As the competence to impose administrative sanctions has been allocated by the legislator to the local level, and more precisely to the sanctioning civil servant on the one hand and the municipal executive on the other, there's no 'authority' which is supposed to be independent. As for the independence of the different relevant 'bodies' as opposed to the political influences (which could (in-)directly stem from both the executive and the legislative power), one of the 'bodies' competent to impose sanctions, the municipal executive, actually *is (*part of) the executive and therefore cannot be considered independent from it. However, with respect to the sanctioning civil servant, several safeguards are in place to ensure its independence.[212]

Independence of internal bodies

For LAS, the investigative powers entail the establishment of violations in official reports. These powers belong to persons designated for this by law (hereinafter: reporters).[213] The actual powers to impose administrative sanctions then, belong to the sanctioning civil servant, respectively the municipal executive. Competences of actual decision-making (sanctioning) and investigation are thus divided. Moreover, as for administrative fines specifically[214], the reporter and the sanctioning civil servant (competent to impose an administrative fine) may not be the same person.[215]

It should also be noted that the relevant competences have been allocated directly to the. This implies that the hierarchical influence that usually applies to civil servants,[216] is not applicable and therefore amplifies the independence. Direct allocation thus enhanced independence and subsequently also enhances impartiality and objectivity.

5.2.2 Financial aspects of the services

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[209] Art 3 LAS-act..
[210] Art. 45 *juncto* 4, §1, 2°-4° LAS-act.
[211] Art. 20 and following LAS-act.
[212] *Infra*: personal guarantees.
[213] Art. 20-21 LAS-act.
[214] Again, the LAS-act does not contain a similar provision for the administrative sanctions imposed by the municipal executive. A possible explanation for this could be found in the fact that the municipal executive does not consist of merely one person and therefore the risk of one of the members of the municipal executive and the reporter being the same, is reduced.
[215] Art. 6, §3 LAS-act.
[216] See: TODTS L., *Bestuurlijke en strafrechtelijke vrijheidsbeperkingen ter handhaving van de openbare orde,* die Keure, 2021, 438.

None of the relevant acts or royal decrees contain provisions on whether or not the services executed in execution of the LAS-act are free. However, the administrative fines that are imposed, will be collected for the benefit of the relevant local authority.[217]

5.2.3 Personal guarantees

Sanctioning civil servant

The sanctioning civil servant is appointed by the municipal council – after advice of the public prosecutor - and needs to meet the qualification and independence conditions, laid down in a Royal Decree of 2013.[218] This decree contains rules on the required education level, criminal record and lays down the specifics of the mandatory training of ten days reporters have to take.[219] Sanctioning civil servants should exercise their powers independently, should be able to decide autonomously and cannot receive any instructions on their decisions on administrative fines.[220]

The function of sanctioning civil servant is not only incompatible with the function of a reporter, but also with the function of financial manager of the community.[221] [222]

Municipal executive

The LAS-act does not contain any provisions that explicitly concern conditions to which the municipal executive should adhere, nor does it contain an appointment procedure or rules concerning their end of term. This can be explained by the fact that the municipal executive, contrary to the sanctioning civil servant e.g., is the executive power within the local authority and therefore also has (a lot of) other functions. This also implies that rules concerning their appointment (elections), end of term and conditions such as incompatibilities they have to adhere to are included in other, more general legislation.

The municipal executive consists of the mayor and 'aldermen', which are politically elected mandates, in principle for a period of six years.[223] The members of the municipal executive not only form the executive power but are also part of the legislative power within the local authority.[224] Each municipal council foresees in a local deontological code and has its own deontological committee, the municipal executive can have the same code or decide to adopt its own.[225] Given that these deontological codes can differ among different local authorities, no general conclusions can be drawn from this.

Reporter

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[217] Art. 33 LAS-act.
[218] Art. 6, §2-3 LAS-act; (art. 1, §6) Royal Decree of 21 December 2013 establishing the qualification and independence requirements of the civil servant charged with imposing administrative fines and collecting fines in implementation of the local administrative sanctions act, *BS* 27 December 2013 (hereinafter: RD sanctioning civil servant).
[219] Art. 1 and 3 RD sanctioning civil servants.
[220] Art. 4 RD sanctioning civil servants.
[221] Art. 5 RD sanctioning civil servants.
[222] It is important to note that additional deontological rules might, and probably will, also apply to the sanctioning civil servant. The latter could e.g. be a civil servant at the local community or of a province or even a staff member of an inter-municipal partnership (see: art. 1 RD sanctioning civil servants) Given the variety of legal statuses of the sanctioning civil servants, it is not feasible within this study to go into detail into all of the relevant deontological codes.
[223] Art. 45 DLA.
[224] Art. 4, §2 and 42 and following DLA.
[225] Art. 39 and 55 DLA.

As a principle, only police officers, police agents or special rangers[226] are allowed to report on infringements on the LAS-regulations. Each within the limits of their own powers.[227]

However, when it concerns infringements that can solely be sanctioned administratively (and thus do not concern the so-called mixed violations), the pool of possible reporters is bigger. In that case it also includes for example, next to the abovementioned reporters, local civil servants designated by the municipal council or even provincial or regional civil servants or employees of intercommunal partnerships or autonomous municipal companies.[228] Both 'groups' of additional possible reporters have to meet the necessary conditions, laid down in a Royal Decree,[229] which contains rules on the minimal age, criminal record, education level and lays down the specifics of the mandatory training of ten days reporters have to take.[230] [231]

5.2.4 Transparency requirements

In case of so-called 'mixed violations', which could be sanctioned by either a criminal sanction or an administrative sanction, the choice whether or not an administrative sanction will be imposed does not automatically lie with the sanctioning civil servants nor the municipal executive. The municipal executive can/must[232] conclude a protocol with the public prosecutor concerning the procedure that is to be followed in case of such mixed violations. This protocol should subsequently also be ratified by the municipal council.

This protocol-agreement should be added to the LAS-regulations and published, by the municipal council or executive, on the official website of the local authority if the local authority has one, and/or published on a poster indicating where the protocol text can be consulted by the public.

The subsidiary rules as well as the (publishing of the) protocol-agreement can help enhance objectivity of the LAS-system, in that sense that it is very clear for citizens when they can expect criminal prosecutions and when they can expect administrative consequences. This makes it impossible for the administration to randomly defer to the criminal system. This supports consistent application across the local authority and leads to more systemic fairness.

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[226] These are free translations of the following Dutch legal terms: 'politieambtenaar,een agent van politie of een bijzondere veldwachter'.
[227] Art. 20 LAS-act.
[228] However, except for the local civil servants, the abovementioned persons can only be designated as a reporter insofar it concerns one of the provisions of the LAS-regulation exhaustively enumerated by the municipal council and there's a direct link between the aforementioned provisions and the competences of the persons. See: art. 21 §1 LAS-act. As for their designation, first, the municipal council designates the competent authority, who then may designate (within its staff) the reporter. See art. 21, §1, 2° LAS-act.
[229] Art. 21, §1 LAS-act.
[230] Art. 1-2 Royal Decree of 21 December 2013 establishing the minimum conditions for the selection, recruitment, training and competence of civil servants and staff members authorised to report infringements which may give rise to the imposition of a local administrative sanction, *BS* 27 December 2013.
[231] Here it is again important to note that additional deontological rules might, and probably will, also apply to the reporter. Given this variety of legal statuses of the reporters, it is not feasible within this study to go into detail into all of the relevant deontological codes.
[232] A protocol-agreement is optional in most of the cases, however, it is required when it concerns mixed violations as meant in article 3, 3° of the LAS-act, which concern e.g. infringements on parking rules (see: Art. 23, §1 LAS-act). If, for the other mixed violations, no such protocol has been adopted, the rules of the LAS-act apply. In principal, the decision to prosecute criminally or administratively, lies with the public prosecutor.

6 Comparison and discussion

	DPA	FMR	LAS
Independence of authority	- House of Representatives - Own legal personality - No external influence - No instructions - Tasks exclusively in public interest	- Board of directors is politically bound - Supervision by Flemish government (except for chambers) - Audit Flanders	/
Independence of internal bodies	- Act mostly independent from one another - Chinese wall between inspection and decision-making - Direct allocation of competence to disputes chamber	- Separation between general chamber and investigation services - General chamber separated from board of directors - Investigation service is, as staff of the FMR, led by the managing director - Direct allocation of competence to general chamber	sanctioning civil servant, municipal executive and reporter operate independently from one another
Financial aspects	- Annual budget proposals subject to parliamentary scrutiny - Performs tasks free of charge (in principle) - Transfer of money (e.g. administrative fine) → Treasury/general administration of collection or recovery - Remuneration of experts	- FMR may only receive well-defined revenues	- Revenue is for the relevant local authority
Breach of integrity	- Staff/members/experts -> decision by executive committee	- Disciplinary sanctions or sanctions of	*Different deontological codes apply*

		regular labour law	
Staff	- Framework, recruitment procedures and employment conditions determined by house of representatives	- Deontological rights and obligations based on principle of objectivity (incl. no *appearance* of impartiality) - Incompatibilities and prohibition of certain cumulations of professional activities	**Personal guarantees** **Sanctioning civil servant:** - Appointed by municipal council, after advice prosecutor - Independent Municipal executive - Elected body - Term of six years - Local deontological code **Reporter** - In principle only certain persons who are already qualified to report (e.g. police) - If violation can only be sanctioned administratively, more possibilities, with additional conditions
Appointment of members/ staff/ experts	- Appointed by the House of Representatives - Several conditions and incompatibilities - Safeguards for experts - End of term in specific cases	- Appointed by Flemish government - Several conditions and incompatibilities - Profession-code (deontological) & subject to recusal - End of term in specific cases	
Transparency	- Annual activity reports, published - Cases of disputes chamber published in principle, policy around this is publicly available - Motivation of administrative fine - Policy on dismissals (website)	- Annual activity reports published - Cases of general chamber published	Publish **protocol-agreement** concluded with public prosecution

	- Policy on administrative fines and penalty payments (website)	- Hearings public (in principle)	
Substantive	GPGA		
	Formal motivation		

One aspect that immediately drew our attention was the fact that the relevant legal frameworks all contained similar provisions as to objectivity, impartiality and prevention of bias. Because of this, it was possible to structure this research more or less in the same manner for the DPA, FMR and LAS. However, when we take a closer look at the actual topics that are addressed in most of these legal frameworks, it immediately becomes clear that there are differences.

Without going into too much dept it can be noted that the independence for the DPA has been carried out in a different way than for the other authorities. The DPA has been transferred from the executive to the legislative power and is now considered a 'collateral body' of the House of representatives. However, the disputes chamber is still considered to be the DPAs administrative disputes body, has administrative enforcement powers and therefore (still) resides under the executive power. The FMR on the other hand, is a Flemish administration and therefore resides under the executive power entirely. Our research has indicated the ways in which this could influence the independence and subsequently possibly also the objectivity of the administration. However, our research does not go so far as to state that these are inherent shortcomings to enforcement by administrations. Small changes, such as independent internal bodies, could go a long way in ensuring objectivity. However, the LAS-system is not really comparable to the other authorities in this respect as one of the two bodies competent to impose LAS, is the executive power (at a local level). However, as for the other competent body, the sanctioning civil servant, sufficient safeguards seem to be in place to ensure its independence of the executive, which subsequently also ensure its objectivity and impartiality.

As for the independence of the internal bodies of the DPA then, it can be concluded that the so-called Chinese wall between investigational and actual decision-making powers, does hold guarantees that the decision-maker is not influenced by e.g. what happened earlier on in the investigative phase. It also ensures some sort of an additional 'check', which also enhances objectivity and impartiality of the authority, given that otherwise both internal bodies which operate mostly independent from one another, would have to have the same personal beliefs which lead them to subjective, partisan or biased decision-making. As for the FMR, a seemingly similar 'Chinese wall' is in place between investigational and actual decision-making powers, as these are divided between, respectively, the investigation service and the general chamber of the FMR. However, it needs to be taken into account that the investigative service is not an actual body of the FMR, but just a grouping of staff, which doesn't fall under the same exceptions that apply for the general chamber in order to ensure its independence. The staff is also lead by the managing director, who is a politically bound figure and therefore cannot be considered independent. The amount to which the managing director could actually influence how the investigation cell operates, is unclear, but therefore does pose a certain risk.

Other elements that can be found across all three legal frameworks, are the following: financial aspects of the services, deontological rights and duties such as incompatibilities and conflicts of interest, specific appointment procedures and conditions, rules on the end of term.

As already indicated, the conclusions on the GPGA as well as the requirement of explicit motivation, apply for all three administrations.

Conclusion

This study researched the relevant legal frameworks of three administrations in Belgium able to enforce administratively through administrative measures and/or sanctions: the Data Protection Authority (DPA), the Flemish Media Regulator (FMR) and the competence for local authorities to impose administrative sanctions (LAS). This study wanted to formulate an answer to the question: 'How do the relevant legal frameworks directly ensure that administrative measures and/or sanctions are based on facts and/or are not influenced by the person(s) (contributing to) making this decision in the selected administrations'.

As became apparent throughout this paper, a short and unequivocal answer to this question is not possible. This paper firs of all examined the possible impact of (some of) the general principles of good administration (or GPGA) had on our research theme. This analysis was carried out for all administrations together, given that the GPGA apply to all of them. The following principles appeared us to be of importance to ensure objective decision-making withing administrative enforcement: the principle of impartiality, of substantive motivation, of reasonableness and proportionality as well as the mother of all principles, the principle of due care.

The first principle ensures forbids partisan decision-making, as well as the *impression* of partiality. The principle of substantive motivation requires the administrations to base their decisions on pertinent, sufficient and correct reasons, which are based on actual, concrete, relevant facts, that have been established by the administration with the required care. Those reasons should additionally be able to carry the decision. The actual existence of those reasons must be duly proven, either in the decision itself, or in the administrative file. The obligation of explicit motivation on the other hand, does require their decisions to contain the reasons why it was taken, and those reasons should subsequently be sufficient. Both principles/requirements thus help ensure safeguards for objectivity and impartiality.

The principle of reasonableness and proportionality then, presupposes that the facts themselves are correct and relevant, but there's an apparent disproportion between those facts and the decision. This also can serve as a guarantee against partisan or subjective decision-making.

Lastly, the principle due care obliges administrations to prepare their decisions carefully. It thus guarantees a careful investigation of the facts, including a correct finding of facts and the gathering sufficient information in order to be able to make an informed decision. Their decision must be based on this correct findings of facts. However, as positive as the principles might seem for the enhancement of objectivity and impartiality of administrative decision-making, they all come with their own limitations.

As for the principle of impartiality, its application must be compatible with the specific nature, in particular the structure, of the administrative body concerned. This holds significant limitations as to the possible role it could play in ensuring objectivity and reassures the importance of a legal design of the administration that ensures impartiality.

As for the other principles concerned, the extent to which they can actually serve as a safeguard, depends highly on the intensity of judicial overview and whether or not the judge will actually also review the facts as such.

As these principles are derived from all sorts of jurisprudence on administrations and not necessarily specifically narrowed down to administrative enforcement, the question arises whether, and if so to what extent, these principles may be shaped differently when it specifically would only concern administrative enforcement. Given the scope of this paper, it was not feasible to conduct a research of all relevant jurisprudence of three selected administrations. However, this does not take away from the relevance of this question and should therefore be part of future research. This analysis will therefore be undertaken by one of the authors as part of her subsequent PhD trajectory.

Subsequently, our research analysed the specific legal frameworks of the selected administrations. Here, it became apparent that a considerate amount of the relevant provisions concerned the independence of the authority or its internal bodies, financial aspects of the services, deontological rights and duties such as incompatibilities and conflicts of interest. For the administrations, mostly specific appointment procedures and conditions were in place as well as rules on the end of term. These were all able to directly impact objectivity of the administrations. Lastly, certain transparency requirements are also in place for the administrations.

Among the aforementioned safeguards, one element should, in our opinion, not be underestimated: the independence of internal bodies within the authority. On the one hand, upholding a so-called Chinese wall between investigational and actual decision-making powers, and on the other hand, foreseeing in mostly independent internal bodies who each are competent for one of the two aforementioned aspects of enforcement (investigation and decision-making). The first element enhances objective decision-making because there's no possible bias by the investigative phase, nor does one person or entity hold all powers to enforce. The second element can reduce the possible influence the executive power has on administrative enforcement.

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