

Administrative sanctions imposed on audit firms by The Polish Agency for Audit Oversight – selected legal issues

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The subject-matter of this study is complex. On the one hand, it constitutes an attempt to describe the functions of administrative sanctions imposed by The Polish Agency for Audit Oversight (hereinafter: the Agency) in the process of sanctioning administrative offences pursuant to the provisions of the Act of 11 May 2017 on Statutory Auditors, Audit Firms and Public Oversight¹. On the other hand, it analyses the key principles relevant to the imposition of administrative sanctions in the context of their objectives.

In view of the breadth of the issue referred to in the title, the considerations set out in this study are confined to sanctions imposed under Article 182 of the Act (u.b.r.) and focus primarily on the functions of administrative sanctions imposed on audit firms, together with an indication of the principles binding the authority in the course of that process.

The reason for addressing this topic is the wish to present the experience developed by the Agency over more than five years of operation, as well as by its predecessor – the Audit Oversight Commission². In certain areas, the legal perspective arising from that practice and adopted in the Agency’s decisions has been confirmed in the case law of the administrative courts (this issue is discussed in the article by Daniel Staszewski, “Charakter odpowiedzialności administracyjnej firmy audytorskiej i dyscyplinarnej biegłego rewidenta w wybranym orzecznictwie sądów powszechnych i administracyjnych” [“The nature of administrative liability of the audit firm and disciplinary liability of the statutory auditor in selected case law of the common and administrative courts”], published in this issue of *Rocznik Audytu i Rachunkowości* [The Yearbook of Auditing and Accounting] – ed.). This issue is

¹ Journal of Laws of 2025, item 189; hereinafter referred to as: the Act on Statutory Auditors or the u.b.r.

² The Polish Agency for Audit Oversight has operated within the Polish legal order since 1 January 2020. It was established pursuant to Article 12 of the Act of 19 July 2019 amending the Act on Statutory Auditors, Audit Firms and Public Oversight and certain other acts (Journal of Laws of 2019, item 1571); that provision simultaneously abolished the Audit Oversight Commission (KNA) – PANA’s predecessor. PANA was established as a new public oversight authority, as a consequence of transforming the existing public oversight body – the said KNA (a collegial body administered by the Ministry of Finance) – into a separate institution – a legal person forming part of the public finance sector. Pursuant to Article 27 of the aforementioned Act, in administrative proceedings and proceedings before the administrative courts which had been initiated and not concluded before 1 January 2020, and in which the KNA was, or could have been, a party, the Agency assumed the rights and obligations of that party.

of material importance, in particular in order to secure procedural guarantees for parties participating in proceedings conducted in connection with established infringements, and to ensure the transparency of the Agency's activities in performing this aspect of the public oversight function exercised over audit firms.

1. The Agency's public oversight tasks from the perspective of EU law

The provisions of the Act on Statutory Auditors, Audit Firms and Public Oversight governing the principles of public oversight of audit firms reflect the implementation of European Union law³ regulating the segment of the market related to the provision of statutory audit services. This legislative framework pursues, inter alia, the improvement and harmonisation of the quality of annual financial statements and consolidated financial statements within the EU, the facilitation of cooperation with a view to reinforcing confidence in such audits, and the elimination of improper corporate conduct. They also constitute an element of the guarantee of increased stability and trust in commercial dealings.

Directive 2014/56/EU lays down the core rules applicable to all audit firms and statutory auditors. It is aimed at strengthening investors' confidence in the accuracy and reliability of financial statements by improving the quality of statutory audits performed within the EU⁴. The domestic regulatory framework adopted in the u.b.r. were also intended to incorporate into the national legal order, inter alia, measures designed to reinforce public oversight by expanding its powers to impose sanctions and sanctions, including by tightening them⁵. Directive 2014/56/EU indicates that competent authorities should have the power to impose administrative pecuniary sanctions that are genuinely dissuasive⁶, while not excluding other types of sanctions having the same effect. The Directive further refers⁷ to the need to implement administrative sanctions in line with the Commission Communication of 8 December 2010, "Reinforcing sanctioning regimes in the financial services sector"⁸. That Communication addresses a system of broadly conceived

³ The Act implements, in particular, the provisions of Directive 2006/43/EC of the European Parliament and of the Council of 16 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9 June 2006, p. 87, as amended) (hereinafter: Directive 2006/43/EC). The adoption of the regulatory framework contained in the Act on Statutory Auditors, Audit Firms and Public Oversight (u.b.r.) was, however, primarily intended to transpose into the national legal order the provisions of the new EU audit framework, comprising Directive 2014/56/EU amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (OJ L 158, 27 May 2014, p. 196) (hereinafter: Directive 2014/56/EU), and Regulation (EU) No 537/2014 on specific requirements regarding statutory audit of public-interest entities (OJ L 158, 27 May 2014, p. 77, together with the Corrigendum in OJ L 170, 11 June 2014, p. 66) (hereinafter: Regulation (EU) No 537/2014) – for which the Act also provides the national legal framework necessary for its application.

⁴ Recital 31 of Directive.

⁵ See Uzasadnienie projektu ustawy o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym [Explanatory memorandum to the draft Act on Statutory Auditors, Audit Firms and Public Oversight] (Sejm paper No 1092, 8th term of the Sejm).

⁶ See Recital 15 of Directive 2014/56/EU: Competent authorities should be able to impose administrative pecuniary sanctions that have a real deterrent effect, for instance in an amount of up to one million euros or higher in the case of natural persons and up to a certain percentage of total annual turnover in the preceding financial year in the case of legal persons or other entities. That goal is better achieved by relating the pecuniary sanction to the financial situation of the person committing the breach.

⁷ See Recital 15 of Directive 2014/56/EU.

⁸ Commission Communication of 8 December 2010, *Reinforcing sanctioning regimes in the financial services sector*, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52010DC0716>, accessed: 10.02.2026, hereinafter: European Commission Communication.

administrative sanctions and treats them as a material component of the public oversight framework. Such an approach constitutes, in effect, a response to the 2008 financial crisis and the audit weaknesses revealed at that time, the consequences of which justify the introduction of prudential rules in financial institutions, in order to ensure the safety, stability and integrity of financial markets⁹. Effective sanctions are an essential component of any regulatory system and a key element of the supervisory system, which should ensure the soundness and stability of financial markets and, consequently, the protection of consumers and investors. Accordingly, in order to ensure strict compliance with the law, sanctions must be effective, proportionate and dissuasive. In line with the Communication: “Sanctions can be considered effective when they are capable of ensuring compliance with EU law, proportionate when they adequately reflect the gravity of the violation and do not go beyond what is necessary for the objectives pursued, and dissuasive when they are sufficiently serious to deter the authors of violations from repeating the same offence, and other potential offenders from committing such violations”¹⁰. The legally protected interest here is the public interest in the credibility of financial information. The fundamental – indeed systemic – protected value is the truthfulness, reliability and clarity of financial information on which economic decisions are based, whether by individual and institutional investors, creditors, or other market participants. The solutions adopted in Directive 2006/43/EC also serve to build and maintain confidence in capital markets.

The statutory provisions referred to above, which confer on the Agency powers in the field of public oversight of audit firms, reflect the implementation of Article 32 of Directive 2006/43/EC. Those powers are linked to statutory obligations of a public-law (administrative-law) nature imposed on audit firms. In conjunction with the control and sanctioning mechanisms, this design is intended to enable a prompt and effective response to identified irregularities, with a view to maintaining compliance with the law. In this manner, the Agency, as a national public authority, has been vested, within the framework of institutional autonomy, with legal capacity to act in connection with the transposition of EU norms into the domestic legal order. At the same time, EU secondary legislation in the relevant field has been operationalised by designating the Agency as the competent authority, in particular, for the imposition of sanctions for infringements both of provisions transposing, inter alia, Directive 2006/43/EC and of provisions not subject to transposition – including, in particular, Regulation (EU) No 537/2014. The form of the Agency’s action in the exercise of the supervisory functions indicated above consists in individual administrative acts, through which the Agency applies, inter alia, domestic provisions enacted to implement EU law. In doing so, the Agency participates in the broadly conceived process of applying EU law.

⁹ See Uzasadnienie projektu ustawy o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym [Explanatory memorandum to the draft Act on Statutory Auditors, Audit Firms and Public Oversight] (Sejm paper No 1092, 8th term of the Sejm).

¹⁰ *European Commission Communication*, section 2.1.1, Sanctioning regimes in the financial sector.

A consequence of the foregoing is the obligation to ensure the full effectiveness of EU law¹¹ in the process of its application. In particular, this is served by the duty to interpret national law in conformity with EU law. This duty is expressed, inter alia, in the requirement that national law be interpreted “in the light of the wording and purpose” of EU rules and, moreover, that such conforming interpretation be pursued “as far as possible”¹². Equally importantly, even within the scope of the so-called procedural autonomy afforded to Member States, the requirement to ensure the effectiveness of EU norms must be taken into account¹³.

¹¹ M. Niedźwiedź, *Stosowanie prawa unijnego w krajowym porządku prawnym* [Application of EU law in the domestic legal order], in: R. Hauser, Z. Niewiadomski, A. Wróbel (eds), *Europeizacja prawa administracyjnego. System Prawa Administracyjnego. Tom 3* [Europeanisation of administrative law. System of Administrative Law. Volume 3], 2014, pp. 167–175.

¹² See A. Soltys, *Rozdział 4. Treść obowiązku wykładni zgodnej* Chapter 4. The content of the duty of consistent interpretation] [in:] *Obowiązek wykładni prawa krajowego zgodnie z prawem unijnym jako instrument zapewniania efektywności prawa Unii Europejskiej* [The duty to interpret national law in conformity with EU law as an instrument for ensuring the effectiveness of EU law], Warsaw 2015.

¹³ Nina Półtorak, *Efektywność prawa Unii Europejskiej a polska procedura administracyjna i sądowoadministracyjna* [The effectiveness of EU law and Polish administrative and administrative court procedure], *Zeszyty Naukowe Sądownictwa Administracyjnego* 3 (54)/2014, p. 39; N. Półtorak, *Ochrona uprawnień* [Protection of rights], pp. 437–438.

2. The Agency's tasks relating to ex post public oversight from the perspective of Polish law

The Polish Agency for Audit Oversight, a State legal entity, was established, pursuant to Article 88(1)(2) u.b.r., as the competent authority for the exercise of public oversight, inter alia, over audit firms¹⁴ – entities whose business activities consist in financial audit¹⁵ activities carried out by statutory auditors. The primary objective of financial audit is to ensure the accuracy of financial data so as to effectively reduce economic and investment risk¹⁶ and, thereby, to increase users' confidence in financial statements¹⁷. Accordingly, the fundamental functions of financial audit are the control, informational and attestation (authenticating) functions¹⁸.

The supervisory tasks entrusted to the Agency encompass, in particular, functions relating to ex post public oversight exercised over audit firms. Supervision is a legal concept that is not defined by statute. It is generally assumed that supervision exercised by public administration bodies (administrative supervision) consists in the performance, vis-à-vis supervised entities, of functions involving the possibility of exerting a binding influence upon those entities. In practice, this means placing them under observation by comparing their conduct against a specified benchmark and evaluating it – this is carried out in the course of inspection. The essence of supervision, manifested in the possibility of influencing supervised entities, is linked to the ability to draw consequences through the application of supervisory measures enabling authoritative and unilateral intervention vis-à-vis the supervised entity. Such intervention is undertaken in order to ensure that the activities of supervised entities comply with the law. The scope and instruments of supervisory intervention are, however, determined by law¹⁹.

¹⁴ In a limited scope, oversight is also exercised over the activities of audit firms approved in an EU Member State other than the Republic of Poland and entered on the list pursuant to Article 58 u.b.r., as well as over the activities of audit entities from a third country entered on the list pursuant to Article 205(1) u.b.r.

¹⁵ Financial audit activities, within the meaning of Article 2(7) u.b.r., constitute a concept relating to assurance services reserved to the statutory auditor. They include audits, assurance of sustainability reporting, reviews of financial statements, and other assurance services defined by law. The purpose of assurance services is to provide a high or moderate level of assurance in respect of matters covering, in particular, financial and non-financial information, systems and processes, as well as aspects of behaviour or attitudes of specified entities, on the basis of evidence obtained in the course of performing appropriate procedures. Such evidence forms the basis for an evaluation – made in accordance with the adopted criteria – of the matters that are the subject of those services, presented in the assurance report (Article 2(5) u.b.r.).

¹⁶ M. Kutera, *Rola audytu finansowego w zapewnieniu wiarygodności sprawozdań finansowych* [The role of financial audit in ensuring the credibility of financial statements], in: *Kryzysy gospodarcze a wiarygodność sprawozdań finansowych* [Economic crises and the credibility of financial statements], ed. M. Kutera, S. T. Surdykowska, Warsaw 2009, p. 190.

¹⁷ See §3 Krajowy Standard Badania 200 w brzmieniu Międzynarodowego Standardu Badania 200 Ogólne Cele Niezależnego Biegłego Rewidenta oraz przeprowadzanie badania zgodnie z Międzynarodowymi Standardami Badania [National Auditing Standard 200 as worded in International Standard on Auditing 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing], Appendix No 1.1 to Resolution No 3430/52a/2019 of the National Council of Statutory Auditors of 21 March 2019.

¹⁸ Z. Fedak, *Metody i techniki rewizji sprawozdań finansowych* [Methods and techniques for the audit of financial statements], Warsaw 1998, p. 41.

¹⁹ J. Jagielski, *Kontrola administracji publicznej* [Control (inspection) of public administration], Warsaw 2018, p. 45.

The Agency's public oversight tasks should be situated within the boundaries of administrative supervision. They include, in particular, the conduct of administrative proceedings in respect of the administrative offences listed in Article 182(1) u.b.r., which constitute breaches of obligations imposed on audit firms²⁰ or other conduct inconsistent with the Act. The actions undertaken by the Agency in the public interest are intended to ensure the highest quality and reliability of financial information, thereby ensuring the protection of stakeholders and the security of commercial dealings. It should be emphasised that audit firms occupy a distinctive position among entities active in commercial dealings, since only they are authorised to provide financial audit services²¹ on a professional basis – services reserved for statutory auditors²². Entities performing tasks in this area play a particular role, as they exert a direct influence on the level of public trust in the fundamental mechanisms of the market economy²³; for that reason, their activity is of considerable significance for the public interest. As has been emphasised in the case law of the administrative courts: “financial statements of economic entities are the primary source of economic information in the contemporary world. Accordingly, an audit of financial statements carried out in accordance with the applicable legal provisions and regulations positively affects the security of commercial dealings, which specialist literature regards as a legally protected interest. An audit is intended to guarantee that the accounting “product” delivered in the form of financial statements is sound. On the basis of verified and confirmed information presented in the financial statements, investors may take decisions involving lower risk, and thus more certain and more efficient.”²⁴

Following the EU legislature, the domestic legislature imposes on audit firms a range of obligations aimed at ensuring appropriate protection of the public interest in connection with the services they provide. These include obligations concerning the manner in which the internal organisation of an audit firm is structured so as to guarantee the appropriate quality and reliability of audits – comprising, *inter alia*, a quality management system (Article 50(1) u.b.r.) and statutory rules governing the conduct of audits and the provision of other services to the audited entity (Chapter VI u.b.r.) – as well as other public-law obligations, including reporting and publication obligations, set out both in the u.b.r. and in Regulation (EU) No 537/2014, for non-compliance with which audit firms incur liability. The catalogue set out in Article 182(1) u.b.r. specifies the types of administrative offences for which an audit firm bears administrative-law liability. In such cases, the supervisory authority is obliged to take procedural steps aimed at triggering liability for infringements of the Act or of Regulation (EU) No 537/2014.

²⁰ (Article 90(1)(7) u.b.r.).

²¹ (Article 47(1) u.b.r.).

²² (Article 2(7) u.b.r.).

²³ M. Kutera, *op. cit.*, p. 190.

²⁴ Judgment of the Voivodeship Administrative Court in Warsaw of 2 June 2023, file No VI SA/Wa 2886/23 (final).

A consequence of identifying infringements is their sanctioning through the imposition of the sanctions listed in Article 182(3) u.b.r. The Agency therefore adjudicates on the manner in which audit firms bear legal liability for the administrative offences committed, by virtue of the powers conferred upon it to apply instruments of authoritative public-law action, namely administrative sanctions²⁵. In essence, these instruments are geared towards ensuring the proper functioning of supervised entities, restoring a state of compliance with the law and eliminating the adverse consequences of a breach of law, where this is possible. It should be underlined that, for norms of administrative law protecting legally relevant interests (grounded in and given specific expression by the public interest) to be effective, they must provide for the imposition of sanctions enabling the authority to bring about “the state required by the legal provision”²⁶. This constitutes a material and necessary element of the effective exercise of public oversight.

²⁵ For the purposes of this study, the terms “administrative sanction” and “administrative sanction” are used interchangeably – see M. Zimmermann, *Prawo administracyjne* [Administrative law], Warsaw 2020, p. 90.

²⁶ M. Zimmermann, in: M. Jaroszyński, M. Zimmermann, W. Brzeziński, *Polskie prawo administracyjne* [Polish administrative law], p. 400. A similar position is presented by the Constitutional Tribunal, which, in the reasoning of its judgment of 18 April 2000, file No K 23/99 (OTK ZU No 3/2000, item 89), states that “where provisions impose obligations on natural or legal persons, there should also be a provision specifying the consequence of non-fulfilment of that obligation. The absence of an appropriate sanction causes the provision to become a dead letter, and non-compliance with the obligation to become widespread”.

3. Functions of administrative sanctions imposed by the Agency

As has already been indicated, the consequence of establishing that an audit firm has infringed obligations arising under the Act on Statutory Auditors, Audit Firms and Public Oversight or Regulation (EU) No 537/2014 is that such infringements are sanctioned in the process of imposing a sanction included in the catalogue set out in Article 182(3) u.b.r. The concept of ‘sanctions’ used by the legislature in the provision cited above should be equated with the concept of an administrative sanction²⁷ to which administrative-law scholarship refers.

It should be emphasised that neither the concept of a sanction, nor – as a rule – that of an administrative sanction has a statutory definition (save for the administrative pecuniary sanction²⁸). Without discounting the numerous positions advanced in the doctrine of administrative law²⁹, this study refers to the approach proposed by M. Wincenciak³⁰, under which an administrative sanction is understood as adverse (detrimental) consequences, imposed – by way of an act of application of the law – by public administration authorities, arising from an administrative-law relationship, upon subjects of law who do not comply with obligations arising from legal norms or acts applying the law³¹. Those consequences take the form of adverse pecuniary or personal effects specified in a particular legal norm³². An administrative sanction imposed for the breach of norms of administrative law stems directly from the provisions of administrative law and serves to give effect to those norms by shaping obligations, orders, prohibitions and other hardships³³, the purpose of which is to protect interests afforded legal protection. The concept of an administrative sanction is used with respect to various instruments which may, in particular, take the form of an administrative pecuniary sanction or a sanction consisting in the restriction or withdrawal of a public-law authorisation. As already signalled, an administrative pecuniary sanction, within the meaning of Article 189b of the Code of Administrative Procedure, is a pecuniary sanction specified by statute, imposed by a public administration authority by way of a decision, following a breach of law

²⁷ The terms are treated interchangeably, inter alia, by M. Zimmermann, *Prawo administracyjne* [Administrative law], Warsaw 2020, p. 90.

²⁸ As set out in Article 189b of the Act of 14 June 1960 – Code of Administrative Procedure (consolidated text: Journal of Laws 2025, item 1691).

²⁹ See more broadly H. Nowicki, *Rodzaje sankcji administracyjnych* [Types of administrative sanctions], in: R. Hauser, Z. Niewiadomski, A. Wróbel (eds), *Prawo administracyjne materialne. System Prawa Administracyjnego. Tom 7* [Substantive administrative law. System of Administrative Law. Vol. 7], 2nd edn, 2017, p. 668.

³⁰ M. Wincenciak, *Sankcje w prawie administracyjnym* [Sanctions in administrative law].

³¹ M. Wincenciak, *Sankcje w prawie administracyjnym* [Sanctions in administrative law], p. 73; see also H. Nowicki, *Rodzaje sankcji administracyjnych* [Types of administrative sanctions], in: R. Hauser, Z. Niewiadomski, A. Wróbel (eds), *Prawo administracyjne materialne. System Prawa Administracyjnego. Tom 7* [Substantive administrative law. System of Administrative Law. Vol. 7], 2nd edn, 2017, p. 668.

³² J. Filipek, *Sankcja prawna* [Legal sanction], *Państwo i Prawo* 1963, No 12, p. 873.

³³ H. Nowicki, *Rodzaje sankcji administracyjnych* [Types of administrative sanctions], in: R. Hauser, Z. Niewiadomski, A. Wróbel (eds), *Prawo administracyjne materialne. System Prawa Administracyjnego. Tom 7* [Substantive administrative law. System of Administrative Law. Vol. 7], 2nd edn, 2017, p. 671.

consisting in a failure to fulfil an obligation or a breach of a prohibition incumbent on a natural person, a legal person, or an organisational unit lacking legal personality.

Given that the purpose of an administrative sanction is, as a rule, to ensure the effectiveness of the norm whose breach is sanctioned, the issue of the function of an administrative sanction must be regarded as complex. Administrative-law scholarship indicates that, from that perspective, it is a complex instrument capable of performing a range of functions, including in particular a repressive, disciplining, preventive, coercive, compensatory, restorative or stabilising function³⁴. Another view, however, states unequivocally that administrative sanctions are primarily assigned preventive and restorative aims, although the possibility of their performing a repressive function is not denied³⁵. In view of the complex nature of these legal instruments, and of the fields in which they are applied, it appears crucial for the assessment of the function of an administrative sanction to observe that the considerations set out above are purely theoretical, since no legal regulation specifies the possibility of attributing specific functions to particular administrative sanctions³⁶. Accordingly, in order to specify the aims and functions that an administrative sanction imposed for particular administrative offences is to fulfil, it is necessary to refer to the objective of introducing the relevant regulatory framework employing the construct of an administrative sanction, so as to ascertain not only the aims which that legal construct is intended to help achieve, but also to articulate them within a coherent conception that takes into account both the needs of the public interest and the systemic possibilities, having regard to the principle of a democratic state governed by the rule of law and to the obligation to balance the public and private interests³⁷.

The sources of law constituting the entire system of public oversight within which sanctions imposed by the Agency are situated derive from various legislative sources – both domestic and EU. Consequently, the decoding of the aims to be achieved through the use of the construct of an administrative sanction must be subordinated to the obligation to ensure the full effectiveness of EU law in the process of applying the law. This is served, as already noted above, by interpreting domestic law consistently with EU law.

An analysis of the adopted regulations governing the sanctioning of infringements of the Act and the Regulation yields a model of the system of public oversight over

³⁴ M. Zimmermann, *Alfabet prawa administracyjnego* [The alphabet of administrative law], Warsaw 2022, p. 224. . Similarly, M. Wincenciak, *Sankcje w prawie...* [Sanctions in administrative law...], identifies – without ranking – the repressive, restorative-preventive and redistributive functions, p. 258.

³⁵ I. Niżnik-Dobosz, *Aksjologia sankcji...* [Axiology of sanctions...], p. 136; see also A. Jaworowicz-Rudolf, *Funkcje sankcji administracyjnej i odpowiedzialności administracyjnej w ochronie środowiska* [Functions of the administrative sanction and administrative liability in environmental protection], Warsaw 2012, p. 223; M. Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzenia* [Sanctions in administrative law and the procedure for their imposition], Warsaw 2008, p. 100.

³⁶ R. Suwaj, *Zasady nakładania administracyjnych kar pieniężnych* [Principles for imposing administrative pecuniary sanctions], Warsaw 2021, p. 51.

³⁷ *Ibid.*

audit firms in which sanctions primarily perform repressive³⁸ and preventive functions. Those functions should be pursued on the assumption that the sanctions are effective, proportionate and dissuasive. It should be clarified that the repressive function of administrative sanctions manifests itself in punishing breaches of law, and repression itself constitutes a detriment for a specific offence irrespective of the consequences produced by that offence (regardless of whether the offence is a result offence or a formal offence (one of mere conduct)), even where the effects of the infringement have been fully remedied³⁹. A sanction conceived in this manner, resting on the principle of objective (strict) liability, has the character of retribution for disobedience to the law⁴⁰. The repressive function is restrictive in nature and is also aimed at a deliberate dissuasive effect, which enables its preventive function to be realised. This is evidenced in particular by the functions of sanctions indicated in the Commission Communication referred to above, which emphasises, in particular, the dissuasive effect achieved, inter alia, by requiring that a pecuniary sanction be significantly higher than the benefits which an entity engaging in unlawful conduct may expect as a consequence of the infringement⁴¹. The document also notes that, if sanctions are not sufficiently severe, there is a risk that they will not achieve an adequate dissuasive effect, since the expected benefits of unlawful behaviour may more than offset the actual risk.

³⁸ This brings those sanctions closer to criminal sanctions; however, their systemic position requires that they be treated autonomously as an institution proper to administrative law – see H. Nowicki, *Rodzaje sankcji administracyjnych* [Types of administrative sanctions], in: R. Hauser, Z. Niewiadomski, A. Wróbel (eds), *Prawo administracyjne materialne. System Prawa Administracyjnego. Tom 7* [Substantive administrative law. System of Administrative Law. Vol. 7], 2nd edn, 2017, p. 671. It should be noted that the Constitutional Tribunal has repeatedly assessed the nature of particular administrative sanctions. Thus, in the reasoning of its judgment of 29 April 1998 (file No K 17/97, OTK ZU No 3/1998, item 30), it held that administrative sanctions are a specific form of legal liability consisting in the application of pecuniary sanctions that do not constitute a criminal fine. Administrative pecuniary sanctions – as the Constitutional Tribunal stated in the reasoning of its decision of 1 March 1994 in case file No U 7/93, OTK 1994, Part I, item 5 – are, in essence, measures intended to mobilise entities to perform their obligations towards the State in a timely and proper manner.

³⁹ Wincenciak, p. 259.

⁴⁰ Ibid.

⁴¹ *Commission Communication*, section 3.1.1, Divergences and weaknesses in national sanctioning regimes.

4. Basic principles governing the imposition of administrative sanctions by the Agency

The administrative liability borne by audit firms, manifested in the sanctioning of the administrative offences listed in Article 182(1) u.b.r., is not premised on fault; rather, it takes the form of objective⁴² and act-based liability, in which the administrative sanction imposed is a consequence of the existence of an unlawful state of affairs itself. Proceedings for the imposition of an administrative sanction shall not be instituted if eight years have elapsed since the date of the infringement of the provisions of u.b.r. or of Regulation (EU) No 537/2014⁴³. An administrative sanction may not be imposed if ten years have elapsed since the date of the infringement of the provisions of that Act and of that Regulation⁴⁴.

The catalogue of sanctions available to the Agency comprises an admonition, a pecuniary sanction, temporary prohibitions (adjudicated for a period of one to three years) relating to: the performance of statutory audits or the assurance of sustainability reporting; the carrying out of financial audit activities or the provision of services covered by professional standards of practice; and removal from the list of audit firms. A pecuniary sanction imposed on an audit firm may not exceed 10 per cent of the net revenues from the sale of services rendered as part of the activity referred to in Article 47(1) and (2), achieved by the audit firm in the preceding financial year, that is, the year preceding the issuance of the decision. Where, however, the audit firm did not achieve revenues from the listed sources in the preceding financial year, the amount of the sanction is determined by reference to the last financial year in which the firm achieved revenues from those sources.

In this manner, the domestic legislature gives effect to the recommendation set out in the Commission Communication referred to above, according to which each Member State should establish a core set of administrative sanctions. Those sanctions should be of such a nature as to enable the competent authorities to impose sanctions that are optimal in terms of effectiveness, proportionality and dissuasiveness. Sanctions undoubtedly constitute a hardship for the entities concerned, of varying severity as regards the extent of interference with legally protected interests, above all with the audit firm's freedom of economic activity. The u.b.r. does not link particular types of sanctions to specific categories of administrative offences. Nor have those sanctions been ranked by reference to their severity.

The supervisory authority has been vested with competence to apply, vis-à-vis supervised entities, administrative sanctions of a varied nature, both non-pecuniary and pecuniary, as measures serving the exercise of ex post oversight. They are used

⁴² Judgment of the Voivodeship Administrative Court in Warsaw of 14 October 2020, file No VI SA/Wa 1170/20; judgment of the Voivodeship Administrative Court in Warsaw of 7 March 2024, file No VI SA/Wa 2691/23; judgment of the Voivodeship Administrative Court in Warsaw of 12 April 2024, file No VI SA/Wa 6029/23.

⁴³ Article 183(7) u.b.r.

⁴⁴ Article 183(8) u.b.r.

to remove discrepancies between the actual and the desired state and, as should be emphasised in particular in relation to a pecuniary sanction and its amount, to exert a preventive effect, both individually and generally, on the conduct of supervised entities. A sanction of this kind is intended to motivate law-compliant conduct and to counteract undesirable behaviour; at the same time, it is linked to a repressive function, in that such sanctions are also to constitute an adequate hardship for an act consisting in an unlawful action or in an unlawful omission to perform a required act, which results in a breach of norms of administrative law and is subject to an administrative sanction⁴⁵.

There is no doubt that an admonition is the most lenient sanction⁴⁶, whereas the most onerous is removal from the list of audit firms, which definitively prevents the undertaking from exercising freedom of economic activity in this area⁴⁷. Pecuniary sanctions are also of particular importance due to their proximity to a criminal-law fine. As a means of securing compliance with norms of public law, they have been the subject of a series of judgments of the Constitutional Tribunal⁴⁸, which has treated this category of sanctions in an approving manner.

The legislature leaves the Agency, as the supervisory authority in matters concerning the imposition of sanctions, a considerable degree of administrative leeway. This is consistent with the approach presented by the European Commission and enables the supervisory authority, on the basis of administrative discretion, to choose both the type and the amount of the sanction⁴⁹. That approach presupposes the need to impose sanctions that are optimal in terms of effectiveness, proportionality and dissuasiveness. For the oversight system, of which supervisory measures constitute an essential component, to be effective, and the significance of that axiomatic assumption should be particularly emphasised, it must assume the possibility of an effective response by the supervisory authority to a breach of the law in a manner adapted to the circumstances, so as to achieve, in an effective manner, the proportionate and dissuasive character of the sanctions imposed.

The model adopted here, as a qualified form of administrative discretion⁵⁰, is the so-called selective discretion, whereby the legislature allows the authority to choose

⁴⁵ The same view, regarding sanctions imposed by the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego, KNF), was expressed by the Supreme Administrative Court. see judgment of the Supreme Administrative Court of 20 September 2019, file No II GSK 2392/17, LEX No 2727189.

⁴⁶ M. J. Zieliński, in: *Act on Statutory Auditors, Audit Firms and Public Oversight. Commentary*, ed. K. Ślebzak, M. Ślebzak, Warsaw 2018, Article 183; see also judgment of the Voivodeship Administrative Court in Warsaw of 16 July 2024, file No VI SA/Wa 1091/24.

⁴⁷ M. J. Zieliński, in: *Act on Statutory Auditors, Audit Firms and Public Oversight. Commentary*, ed. K. Ślebzak, M. Ślebzak, Warsaw 2018, Article 183.

⁴⁸ Judgments of the Constitutional Tribunal: of 15 January 2007, case P 19/06, OTK-A 2007/1, item 2; of 5 May 2009, case P 64/07, OTK-A 2009/5, item 64.

⁴⁹ M. J. Zieliński, in: *Act on Statutory Auditors, Audit Firms and Public Oversight. Commentary*, ed. K. Ślebzak, M. Ślebzak, Warsaw 2018, Article 183.

⁵⁰ M. Zimmermann, *Uznanie administracyjne* [Administrative discretion], *Alfabet* [Alphabet], p. 272; and M. Jędrzejczak, *Dyskrecjonalność podczas stosowania norm prawnych przez organy administracji publicznej*

between several specific solutions, requiring a defined and concrete choice to be stated in the content of the individual act⁵¹. In making that choice, the authority in principle seeks to optimise the achievement of the intended objectives within the scope of the oversight entrusted to it over the market of audit firms. In this way, the legislature renders the authority's action more flexible and efficient. The possibility of imposing effective sanctions relates to the practical dimension of the proper functioning of the audit-firm⁵² market and makes it possible to achieve the intended objectives, namely compliance with the law by its addressees.

When imposing administrative sanctions, the Agency, acting within the normative leeway resulting from administrative discretion, must be guided by the fundamental principles normatively grounded in this area. Of particular importance are the principle of proportionality and the principle of determining the type and amount of the sanction imposed on an audit firm in accordance with the guidelines set out in Article 183(6) u.b.r.

As a general principle of EU law, the principle of proportionality performs a protective function, safeguarding individuals against measures adopted by Member States⁵³, and it also delineates the limits of the discretionary power of EU bodies and institutions when they issue authoritative decisions vis-à-vis individuals⁵⁴. It is of material importance because, as a universal tool for resolving conflicts between opposing values and rights, it constitutes a guarantee of their observance⁵⁵. It also permeates the domestic legal order by virtue of Article 31(3) of the Constitution of the Republic of Poland⁵⁶. The construction of the principle of proportionality has been confirmed in the case law of the Constitutional Tribunal⁵⁷, although it is not applied uniformly in all instances⁵⁸. In essence, it is based on three criteria: suitability, necessity and proportionality stricto sensu. Suitability is understood as the ability to achieve the intended objective by means of the measure applied. Necessity requires that the measure applied be limited to what is indispensable for achieving the objective of the given legal regulation. Proportionality stricto sensu, in turn, means the requirement that the objective of the action not be disproportionate in

[Discretion in the application of legal norms by public administration authorities], in: *Władza dyskrecyjna organów administracji publicznej* [Discretionary power of public administration authorities], 2021.

⁵¹ M. Zimmermann, *Uznanie administracyjne* [Administrative discretion], op. cit.

⁵² *Commission Communication*, section 4.2. Key Issues for the approximation.

⁵³ A. Wróbel (ed.), *Stosowanie prawa Unii...* [The application of EU law...], p. 203.

⁵⁴ A. Fraćkowiak-Adamska, *Zasada proporcjonalności jako gwarancja swobód rynku wewnętrznego Wspólnoty Europejskiej* [The principle of proportionality as a guarantee of the freedoms of the European Community internal market], Warsaw 2009, pp. 71–80.

⁵⁵ *Ibid.*, p. 65.

⁵⁶ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No 78, item 483, as amended).

⁵⁷ A. Fraćkowiak-Adamska, *Zasada proporcjonalności...* [The principle of proportionality...], p. 61; judgment of the Constitutional Tribunal of 26 March 2002, case SK 2/01, OTK-A 2002, No 2, item 15.

⁵⁸ A. Fraćkowiak-Adamska, *Zasada proporcjonalności...* [The principle of proportionality...], p.60.

relation to the burden caused by the measure used to achieve it⁵⁹. This understanding of proportionality has served to develop a proportionality test, which the Agency, as the authority applying the law, employs in the process of imposing administrative sanctions. The principle also translates into the statutory framework for conducting proceedings concerning the imposition of administrative sanctions in light of the general principles of administrative proceedings⁶⁰, having regard both to the direction stemming from Article 7 of the Code of Administrative Procedure (k.p.a.) and to Article 8 k.p.a.⁶¹.

The case law of the ordinary courts has already indicated that taking account of the principle of proportionality (Article 31(1) of the Constitution of the Republic of Poland) in the imposition of administrative sanctions requires that the sanction be proportionate to the nature and harmfulness of the specific practice, as well as to the effects it has produced⁶². The principle of proportionality is also relevant in another respect: it justifies only those sanctions whose degree of onerousness is necessary to attain the intended objective. The sanction should moreover be individualised so as to properly fulfil its repressive and preventive functions⁶³. In determining the sanction, further relevant considerations include the harmfulness of the alleged conduct, the adequacy of the sanction in relation to the degree of threat to the public-law interest, the financial capacity of the addressee of the decision, the economic potential of the responsible person, and the financial benefits obtained by that person as a result of the practice⁶⁴. Also material are the character of the breach, the nature of the protected interest infringed, and the significance of the practice for the functioning of the market mechanism; and, within the repressive and preventive functions, the need for the sanction to be economically perceptible relative to the scope (scale) of the undertaking's activity and the profitability of that activity⁶⁵.

The factors determining the effectiveness, proportionality and dissuasive character of the sanctions imposed by the Agency, as the body exercising oversight over audit firms, are also addressed in Article 30b of Directive 2006/43/EC, which constitutes, in a sense, a transposition of the provisions of the European Commission Communication⁶⁶

⁵⁹ L. Staniszevska, *Materiałne i proceduralne zasady stosowane przy wymierzaniu administracyjnych kar pieniężnych* [Substantive and procedural principles applicable to the imposition of administrative pecuniary sanctions], in: M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawnym* [Administrative pecuniary sanctions in a democratic state governed by the rule of law], Warsaw 2015, p. 35.

⁶⁰ M. Wincenciak, *Sankcje...* [Sanctions...], p. 97.

⁶¹ See R. Suwaj, p. 89 ff.

⁶² Judgment of the Supreme Court of 19 September 2009, file No III SK 5/09.

⁶³ Judgment of the Supreme Court of 27 June 2000, file No I CKN 793/98.

⁶⁴ Judgment of the Supreme Court of 6 December 2007, file No III SK 16/07.

⁶⁵ See, e.g., judgment of the Supreme Court of 4 March 2014, file No III SK 34/13.

⁶⁶ See *European Commission Communication* section 4.2 "Key Issues for the approximation"; In the Commission's view, in addition to the seriousness of the violation which is already foreseen in almost all national legislations, the factors to be taken into account should include at least:

- the financial benefits for the author of the infringement derived from the violation (if calculable), in order to better reflect the impact of the violation and discourage further violations;
- the financial strength of the author of the violation, as indicated by elements such as the annual turnover of a financial institution or the annual income of a person responsible for the violation, which would help in ensuring that sanctions are sufficiently dissuasive even for large financial institutions.

and requires that, in determining the type and level of administrative sanctions, the competent authorities take into account all relevant circumstances bearing on the optimisation of the proportionality and dissuasive character of the sanction⁶⁷. This is intended, in particular, to enable oversight authorities to tailor the type and amount of the sanction imposed to the nature and effects of the breach, as well as to the personal situation of the offender.

The attainment of these objectives is supported by the statutory criteria set out, in the Act on Statutory Auditors, for determining the type and level of the sanction imposed on an audit firm⁶⁸, which the Agency is required to consider *ex officio*. These criteria, listed in an open catalogue⁶⁹, include the following circumstances: the gravity of the breach and its duration; the degree of responsibility of the person concerned; the financial situation, expressed in particular by the level of annual revenues or income; the amounts of profits gained or losses avoided, insofar as they can be determined; the level of cooperation with the Agency; and any previous breaches.

They are also referred to as guidelines governing the choice and determination of administrative sanctions⁷⁰, guidelines which are understood in general legal theory⁷¹ as instruments for narrowing the authority's decision-making leeway, since they lay down mandatory factors to be taken into account both when selecting an administrative sanction and when calibrating its extent. They reflect a systemic application of the principle of proportionality. All the factors listed may influence, either positively or negatively, the level of the administrative sanction or its type. It should be noted here that, although a pecuniary sanction constitutes one of the sanctions available to the authority in order to respond appropriately to identified breaches of the law, as regards the guidelines governing the assessment of a pecuniary sanction the authority,

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- the cooperative behaviour of the author of the violation, which can contribute to encourage infringers to cooperate and in so doing increase the investigatory capacity of the authorities and therefore effectiveness of sanctions;
 - the duration of the violation.

⁶⁷ Pursuant to Article 30b, when laying down rules pursuant to Article 30, Member States shall require that, when determining the type and level of administrative sanctions and measures, the competent authorities are to take into account all relevant circumstances, including where appropriate:

- a) the gravity and the duration of the breach;
- b) the degree of responsibility of the responsible person;
- c) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person;
- d) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined;
- e) the level of cooperation of the responsible person with the competent authority;
- f) previous breaches by the responsible legal or natural person.

Additional factors may be taken into account by competent authorities, where such factors are specified in national law.

⁶⁸ Article 183(3) u.b.r.

⁶⁹ This is evidenced by the phrase "in particular" used in the provision cited, which, applying a functional and systemic interpretation of the provision, indicates the possibility of seeking, on a supplementary basis, additional criteria for determining the level of an administrative sanction (see judgment of the Supreme Administrative Court of 3 December 2020, file No II GSK 775/20, LEX No 3109491).

⁷⁰ M. J. Zieliński, in: *Act on Statutory Auditors, Audit Firms and Public Oversight*. Commentary, ed. K. Ślęzak, M. Ślęzak, Warsaw 2018, Article 183.

⁷¹ J. Wróblewski, *Sądowe stosowanie prawa* [Judicial application of law], Warsaw 1972, p. 222.

in principle, confines itself to the guidance provided in Article 183(6) u.b.r. This follows primarily from Article 189a § 2(1) of the Code of Administrative Procedure, pursuant to which, where separate provisions regulate the criteria for determining an administrative pecuniary sanction, the provisions of that section do not apply in that respect, as well as from the requirement to preserve coherence across the public oversight system as a whole.

In designing the aforementioned legal instrument laying down the guidelines for determining the sanction, the legislature, following the EU legislator, sought to secure the proportionality of the sanction applied, as well as to ensure the effectiveness of its dissuasive character. Accordingly, these guidelines enable the authority to set the sanction at a level commensurate with the objectives it is intended to achieve, and they constitute criteria for selecting the legal consequences of the established facts within the framework of the authority's decision-making leeway⁷². This instrument also serves to mitigate the adverse consequences of a restrictive and automated application of provisions governing the competence basis for the imposition of administrative sanctions, by individualising the act-based liability in question.

These circumstances therefore constitute legally relevant factual determinants which should be established in accordance with the standards set by the principle of objective truth, as reflected in the statement of reasons for the administrative decision. The guidelines for determining the sanction apply to all types of administrative sanctions listed in Article 182(3) u.b.r. Consequently, all such guidelines, in relation to the established breaches, should be considered (assessed) by the Authority and should find expression in the content of the decision imposing the sanction pursuant to Article 183(6) u.b.r. In practice, this entails an obligation on the Agency to specify in detail the influence (positive or negative) of each criterion on the choice of the type and amount of the pecuniary sanction imposed⁷³. There is, moreover, no legal norm providing the Authority with a basis for waiving the examination of all formal criteria in relation to sanctions other than pecuniary sanctions.⁷⁴ As has rightly been emphasised in the case law, an administrative sanction imposed under the provisions of the Act on Statutory Auditors, Audit Firms and Public Oversight constitutes, in a given case, the outcome both of the established breaches and of the assessment of the significance of the criteria set out in Article 183(6) u.b.r. Only once all applicable legal requirements have been fulfilled is it possible to determine the type and level (amount) of the sanction⁷⁵.

⁷² See, on the function of the guidelines for determining an administrative pecuniary sanction, J. Wegner, in: Z. Kmieciak, M. Wojtuń, J. Wegner, *Kodeks postępowania administracyjnego. Komentarz* [Code of Administrative Procedure. Commentary], Warsaw 2023, commentary on Article 189d.

⁷³ Cf. judgment of the Voivodeship Administrative Court in Warsaw of 10 September 2025, file No VI SA/Wa 593/25.

⁷⁴ Cf. judgment of the Voivodeship Administrative Court in Warsaw of 23 July 2025, file No VI SA/Wa 637/25.

⁷⁵ Ibid.

Conclusion

The approach presented in this article highlights the conditions and factors determining the imposition of administrative sanctions on audit firms, viewed through the lens of the Agency's function of public oversight over those entities. The sanction-imposition process is complex. Although, as a rule, sanctions serve to ensure compliance with substantive-law norms (and thus the effectiveness of the adopted legal solutions), the process preceding the selection of the type of sanction and its magnitude is multi-faceted.

On the one hand, these sanctions are the outcome of legal instruments applied objectively in order to protect values grounded in the public interest, and they are linked to the identified risks associated with the provision of services by audit firms. On the other hand, bearing in mind the fundamental requirements to carry out the proportionality test and to apply the guidelines governing the choice and determination of the type and level of the sanction, the rules binding the authority in this respect serve to protect the individual interests of supervised entities against an excessively intensive and unjustified interference by the Agency in their activities within the legally protected sphere.

As a public oversight authority, the Agency must always be guided by the paramount objective of ensuring that audit firms' activities meet the legally prescribed standards in their systemic context. Chief among these is the attainment of the primary objective of financial audit, being the subject-matter of those entities' activity, namely, increasing users' confidence in financial statements by ensuring the accuracy of financial data so as to effectively reduce economic and investment risk.