

Tot Poenae Quot Delicta?

Cumulated Administrative Fines in the Case Law of the Court of Justice of the European Union

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Contents

I. Introduction	55
II. To Cumulate or Not to Cumulate?	58
III. The Proportionality of Penalties	60
IV. The Proportionality of Cumulated Administrative Fines	64
A. Preliminary Remarks	64
B. The Court of Justice of the European Union's Integrative Approach	65
C. The Severity of Multiple Offences	67
D. The Increasing Severity of Cumulated Administrative Fines	69
V. Conclusion	71
VI. Bibliography	72

I. Introduction

A legal system may adopt different regulatory approaches in response to a person being accused of committing multiple offences. One such regulatory approach is the “principle of cumulation”: It stipulates that the accused is to be punished for each

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This paper is based on a section of my dissertation on the cumulation of administrative fines and its limits under EU law; for the published version cf. Fädler, *Das verwaltungsstrafrechtliche Kumulationsprinzip* (Wien, 2024).

I would like to thank Moriz Kopetzki and Stefan Smutny for their thorough proofreading, as well as the two anonymous reviewers for their valuable comments. Any mistakes remain, of course, my own.

offence individually, resulting in the respective penalties being imposed cumulatively.¹

Several EU Member States have incorporated the principle of cumulation into their national legal systems in one form or another. In Austria, for instance, § 22 para. 2 of the Administrative Penal Act 1991 (VStG)² establishes the principle of cumulation as the general rule for administrative criminal law.³ In principle,⁴ multiple administrative offences are therefore to be punished individually. A slightly different approach may, for instance, be found in Germany: There, the Act on Regulatory Offences (OWiG)⁵ provides for the cumulative imposition of regulatory fines only if a person commits multiple violations through *different acts*.⁶ If, however, the *same act* constitutes multiple violations, “only one regulatory fine shall be assessed.”⁷ While the Member States are usually free in their decision to establish a system based on

¹ Cf. exemplarily Roxin, *Strafrecht Allgemeiner Teil II* (München, 2003) § 33 para. 122; Schulev-Steindl, *Verwaltungsverfahrenrecht*, 6th edn. (Wien, 2018) paras. 537 f.

² § 22 VStG as amended by Austrian Federal Law Gazette No. I 2013/33; an English translation of the VStG’s consolidated version can be accessed via <https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1991_52/ERV_1991_52.pdf> (last updated 22 August 2024).

³ According to the first sentence of § 22 para. 2 VStG, “[i]f a person has committed several administrative offences through several separate offences or if an offence is subject to more than one sanction not exclusive of each other, the sentences shall be imposed cumulatively”; on the contrary, under Austrian “judicial” criminal law, a system based on the “principle of absorption” applies, meaning that, in general, multiple criminal offences are to be penalised with “a single custodial sentence or fine [...] if the intersecting laws provide only for custodial sentences or only for fines” (§ 28 para. 1 of the Austrian Penal Act [StGB; translation by the author]).

⁴ The competent legislator for a specific subject matter may, however, establish a distinct system within the respective legal subject area, provided that the prerequisites set out in the Federal Constitutional Law (B-VG; an English translation of the B-VG’s consolidated version can be accessed via <https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf> [last updated 21 July 2025]) are met; most notably, in accordance with Art. 11 para. 2 B-VG as amended by Austrian Federal Law Gazette No. I 2012/51, divergent regulations to § 22 para. 2 VStG in “federal or provincial legislation governing individual administrative sectors may provide otherwise only where deviating rules are necessary to regulate a particular subject matter”, cf. Gamper, ‘Administrative Law’, in Grabenwarter and Schauer (eds.), *Introduction to the Law of Austria* (Alphen aan den Rijn, 2015) 19 (22).

⁵ An English translation of the OWiG’s consolidated version can be accessed via <https://www.gesetze-im-internet.de/englisch_owig/> (last updated 14 March 2023).

⁶ § 20 OWiG; cf. Sackreuther, ‘§ 20 OWiG’, in Graf (ed.), *Ordnungswidrigkeitengesetz* (München, 2022) paras. 1, 6.

⁷ § 19 OWiG; cf. Sackreuther, ‘§ 19 OWiG’, in Graf (ed.), *Ordnungswidrigkeitengesetz* (München, 2022) paras. 2, 38.

the principle of cumulation (or any other system to that matter),⁸ limits may nonetheless surface under EU law, as the Court of Justice of the EU's (CJEU) case law suggests.⁹

The interaction between EU law and Member States' national administrative law has been the subject of scientific research for some time already.¹⁰ However, with regard to the cumulation of administrative fines, it was the CJEU's more recent case law that prompted scientific research, especially in Austria: The Austrian academic community has demonstrated a particular interest in analysing the implications of the jurisprudence for the Austrian legal system.¹¹

This paper aims to complement the German-language state of research by providing a more EU law-centred perspective and making the research accessible to an English-speaking audience. In order to analyse the framework for cumulated administrative fines, the paper first lays out the margin of discretion available to the Member States when deciding whether to introduce a system of cumulation or not (II.). Subsequently, it focusses in detail on the limitations set by EU law, particularly considering the principle of proportionality: After outlining the proportionality of

⁸ See *infra* II.

⁹ Cf. notably CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845; Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233; Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723; see *infra* III. and IV.

¹⁰ For recent publications with further references, cf. exemplarily Berger and Pelzl, 'Das Verwaltungsstrafrecht in der Rechtsprechung des EuGH' (2018) *ZöR* 559; Craig, *EU Administrative Law*, 3rd edn. (Oxford, 2018) 642 ff, 669 ff.

¹¹ Cf. exemplarily Burger, 'Dienstleistungsfreiheit und verwaltungsstrafrechtliches Kumulationsprinzip – dürfen Strafhöhen pro AN aufsummiert werden?' (2020) *JAS* 287; Fädler, 'Zur Verhältnismäßigkeit kumulierter Verwaltungsstrafen aus unionsrechtlicher Sicht' (2022) *ZfV* 99; Fädler, 'Wie nachhaltig ist das österreichische Verwaltungsstrafrecht im Lichte des Unionsrechts?', in Bartl, Falch, Kaschka, Klebelsberg, Klema, Lechner, Lisowska and Saxl (eds.), *Nachhaltig in die Zukunft: Das öffentliche Recht im Zeichen der Veränderung* (Wien, 2024) 41; Fädler, *Kumulationsprinzip* 65 ff, 149 ff; Grof, 'Verwaltungsstrafrecht: Kumulation - Verhältnismäßigkeit - Koordination' (2019) *SPWR* 257; Handstanger, 'Das Urteil *Maksimovic* und seine Folgen' in Baumgartner (ed.), *Jahrbuch Öffentliches Recht 2020* (Wien, 2020) 85; Kager, 'Der Preis von Lohn- und Sozialdumping – Analyse des neuen Sanktionsregimes des LSD-BG' (2022) *wbl* 69; Kert, Kirchmayr-Schliesselberger and Windisch-Graetz, *Sozialbetrug im Unternehmensbereich – eine interdisziplinäre Herausforderung für den Rechtsstaat* (Wien, 2022) 135 ff; Schindler, 'Der EuGH zu nationalen Regeln gegen Lohn- und Sozialdumping – Alte Fehler und neue Probleme' (2020) *DRdA* 195; Schneider, 'Kumulationsprinzip und mehr: Gebietet der EuGH eine Reform des Verwaltungsstrafrechts?' (2019) *ÖZW* 118.

penalties in general (III.), the paper analyses how the principle of proportionality affects the imposition of cumulated administrative fines (IV.).

II. To Cumulate or Not to Cumulate?

If EU law does not provide for a specific penalty to be imposed for a certain offence, the Member States are – in principle – granted a wide margin of discretion with regard to penalising violations of (obligations established under) EU law.¹² Nonetheless, both primary and secondary EU law impose limitations.

At the level of primary law, the CJEU draws from the principle of sincere cooperation – enshrined in particular in Art. 4 para. 3 Treaty on EU (TEU)¹³ – that the Member States are obliged to sanction violations of EU law.¹⁴ In doing so, the Member States have to establish “conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance”; these conditions must also, “in any event, make the penalty effective, proportionate and dissuasive.”¹⁵ Moreover, when implementing (secondary) EU legislation into national law or imposing limitations on fundamental freedoms, the Member States are not only obliged to adhere to the principle of proportionality as a general principle of EU law.¹⁶ In these instances, the Member States are also bound

¹² Cf. CJEU Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, paras. 38 f; Case C-501/14 *EL-EM-2001*, 19 October 2016, ECLI:EU:C:2016:777, paras. 36 f; Case C-210/10 *Urbán*, 9 February 2012, ECLI:EU:C:2012:64, paras. 22 f; Case C-213/99 *de Andrade*, 7 December 2000, ECLI:EU:C:2000:678, para. 19; Case C-36/94 *Siesse*, 26 October 1995, ECLI:EU:C:1995:351, para. 20; Case C-326/88 *Hansen*, 10 July 1990, ECLI:EU:C:1990:291, para. 17; Case 68/88 *Commission/Greece*, 21 September 1989, ECLI:EU:C:1989:339, paras. 23 f.

¹³ Art. 4 para. 3 subpara. 2 TEU provides that the “Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union”; the TEU’s 2016 consolidated version (Official Journal of the EU C 2016/202, 13) can be accessed via <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016M/TXT>> (last accessed 25 May 2025).

¹⁴ Cf. CJEU Case C-213/99 *de Andrade*, 7 December 2000, ECLI:EU:C:2000:678, para. 19; Case C-36/94 *Siesse*, 26 October 1995, ECLI:EU:C:1995:351, para. 20; Case C-326/88 *Hansen*, 10 July 1990, ECLI:EU:C:1990:291, para. 17; Case 68/88 *Commission/Greece*, 21 September 1989, ECLI:EU:C:1989:339, paras. 23 f; cf. also Klamert, ‘Article 4 TEU’, in Kellerbauer, Klamert and Tomkin (eds.), *The EU Treaties and Charter of Fundamental Rights*, 2nd edn., 2 vols. (Oxford, 2024) vol. I, para. 77.

¹⁵ CJEU Case C-213/99 *de Andrade*, 7 December 2000, ECLI:EU:C:2000:678, para. 19; Case C-36/94 *Siesse*, 26 October 1995, ECLI:EU:C:1995:351, para. 20; Case C-326/88 *Hansen*, 10 July 1990, ECLI:EU:C:1990:291, para. 17; Case 68/88 *Commission/Greece*, 21 September 1989, ECLI:EU:C:1989:339, para. 24.

¹⁶ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 35; Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March

by the Charter of Fundamental Rights (CFR) as they are acting within its scope of application.¹⁷ The CFR establishes a set of fundamental rights that delineate the margin of discretion available to the Member States when imposing penalties within their respective national law. Of particular importance in that regard is the principle of proportionality of criminal offences and penalties as stipulated in Art. 49 para. 3 CFR.¹⁸

At the level of secondary law, legislation is oftentimes limited to codifying the triad that has already been established in the CJEU's jurisprudence in relation to primary law;¹⁹ the Member States are thus obliged to provide penalties that are "effective, proportionate and dissuasive."²⁰ Nonetheless, secondary law might preclude the Member States from imposing penalties cumulatively. This is exemplified by the CJEU's decision in the case *Prefettura Ufficio territoriale del governo di Firenze*: In this case, the Court was tasked with interpreting a provision of a regulation that required drivers of particular vehicles to present certain specified documents for a defined number of days in the event of an inspection.²¹ The Italian Supreme Court

2017, ECLI:EU:C:2017:229, para. 39; Case C-501/14 *EL-EM-2001*, 19 October 2016, ECLI:EU:C:2016:777, para. 37; Case C-210/10 *Urbán*, 9 February 2012, ECLI:EU:C:2012:64, para. 23; cf. also Berger and Pelzl, (2018) *ZöR* 559 (561).

¹⁷ According to Art. 51 para. 1 CFR, cf. Craig and de Búrca, *EU Law*, 8th edn. (Oxford, 2024) 438 ff; Ward, 'Article 51', in Peers, Hervey, Kenner and Ward (eds.), *The EU Charter of Fundamental Rights*, 2nd edn. (Baden-Baden, 2022) paras. 51.67 ff (in particular paras. 51.87 and 51.132 ff); the CFR's 2016 consolidated version (Official Journal of the EU C 2016/202, 389) can be accessed via <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016P/TXT>> (last accessed 25 May 2025).

¹⁸ See *infra* III.

¹⁹ Especially the principle of sincere cooperation; for the CJEU's case law see *supra* fn. 14 and 15; cf. the secondary legislation referred to in CJEU Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, para. 37 f; Case C-255/14 *Chmielewski*, 16 July 2015, ECLI:EU:C:2015:475, paras. 20 f; Case C-210/10 *Urbán*, 9 February 2012, ECLI:EU:C:2012:64, para. 21 f; this does not include penalties provided for directly by secondary law, for instance by the General Data Protection Regulation (EU) 2016/679 (as amended by Official Journal of the EU L 2018/127, 2; the consolidated version can be accessed via <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R0679-20160504>> [last accessed 25 May 2025]).

²⁰ Art. 20 Directive 2014/67/EU (accessible via <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0067>> [last accessed 25 May 2025]); Art. 6 Regulation (EC) 1007/2009 (as amended by Official Journal of the EU C 2015/262, 1; the consolidated version can be accessed via <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02009R1007-20151018>> [last accessed 25 May 2025]); cf. Mitsilegas and Billis, 'Article 49', in Peers, Hervey, Kenner and Ward (eds.), *The EU Charter of Fundamental Rights*, 2nd edn. (Baden-Baden, 2022) para. 49.39.

²¹ Cf. CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, paras. 1, 8.

of Cassation raised the question of whether the provision imposed a *single* obligation – resulting in a *single* offence with a *single* penalty – or *several* obligations – resulting in *several* offences with *several* penalties imposed cumulatively.²² The CJEU concluded that the relevant provision imposed “a single obligation” on the driver.²³ Therefore, it could only lead to “a single and instantaneous infringement” resulting in “a single penalty.”²⁴ However, the CJEU also found that the severity of a violation of the respective obligation would increase with the number of days affected.²⁵ For the penalty to be both proportionate and dissuasive, it would have to be “sufficiently adjustable according to the seriousness of the infringement”²⁶ while at the same time being “sufficiently high, having regard to the seriousness of that infringement”²⁷. The CJEU hence declared the number of days affected to be relevant when determining the single penalty. Simultaneously, it rejected the division into several obligations.

Thus, EU law, in essence, affords the Member States a wide margin of discretion with respect to penalties provided for in their national laws. While this extends to the imposition of cumulative penalties as well, EU law is not indifferent to that matter. As the CJEU’s case law demonstrates, the interpretation of an obligation established by secondary law might lead to the Member States being precluded from imposing penalties cumulatively. Furthermore, limitations may arise particularly from the principle of proportionality. The following section is therefore dedicated to the proportionality of penalties in general (III.). Subsequently, the proportionality of cumulated administrative fines will be examined in more detail (IV.).

III. The Proportionality of Penalties

As previously stated, the necessity for penalties to be proportionate can be derived from a variety of sources of EU law, encompassing both primary and secondary

²² Cf. CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 29.

²³ CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 39.

²⁴ CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 40; cf. also para. 44.

²⁵ Cf. CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 46.

²⁶ CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 47.

²⁷ CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 45.

legislation.²⁸ There is one pivotal provision, however, that merits particular attention in this regard: Art. 49 para. 3 CFR, which stipulates that “[t]he severity of penalties must not be disproportionate to the criminal offence” and thereby codifies the CJEU’s jurisprudence on the proportionality of penalties.²⁹ Although the provision’s wording limits the scope of application to criminal offences, Art. 49 para. 3 CFR is not only applied to criminal penalties *strictu sensu*³⁰. When assessing whether a penalty falls within the scope of Art. 49 para. 3 CFR, the CJEU resorts to the *Engel*-criteria developed by the European Court of Human Rights (ECtHR).³¹ The CJEU hence takes into account, first, “the legal classification of the offence under national law”; second, “the intrinsic nature of the offence”; and, finally, “the degree of severity of the penalty which the person concerned is liable to incur”.³² As a result, Art. 49 para. 3 CFR applies to “penalties of a criminal nature.”³³ In general, this concept encompasses administrative penalties such as those covered by Austrian administrative criminal law.³⁴

In accordance with the CJEU’s case law, a penalty is deemed proportionate if its severity is “commensurate with the seriousness of the breach which it is intended to suppress”.³⁵ In essence, this involves an assessment of whether the penalty itself, as

²⁸ See *supra* II.

²⁹ According to the Explanations on Art. 49 CFR (the Explanations relating to the CFR [Official Journal of the EU C 2007/303, 17] can be accessed via <[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32007X1214\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32007X1214(01))> [last accessed 25 May 2025]), “[p]aragraph 3 states the general principle of proportionality between penalties and criminal offences [...] enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities”; cf. Mitsilegas and Billis, ‘Article 49’ para. 49.35; Rebut, ‘Article 49’, in Picod, Rizcallah and Van Drooghenbroeck (eds.), *Charte des droits fondamentaux de l’Union européenne*, 3rd edn. (Bruxelles, 2023) para. 23.

³⁰ Cf. CJEU Case C-40/21 *ANI*, 4 May 2023, ECLI:EU:C:2023:367, para. 35; cf. also Öberg, ‘The definition of criminal sanctions in the EU’ (2013) *EuCLR* 273 (277 f), who argues for a wider understanding of ‘criminal penalty’ in the context of fundamental rights.

³¹ Cf. *Engel and others v the Netherlands* App nos 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (ECtHR, 8 June 1976), paras. 80 ff; *Sergey Zolotukhin v Russia* App no 14939/03 (ECtHR, 10 February 2009), paras. 52 f; for the CJEU’s case law see *infra* fn. 32.

³² CJEU Case C-40/21 *ANI*, 4 May 2023, ECLI:EU:C:2023:367, para. 34; cf. CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 91.

³³ CJEU Case C-40/21 *ANI*, 4 May 2023, ECLI:EU:C:2023:367, para. 33; Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 90; cf. Fädler, (2022) *ZfV* 99 (101).

³⁴ Cf. Berger and Pelzl, (2018) *ZöR* 559 (562); cf. also CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 45.

³⁵ CJEU Case C-40/21 *ANI*, 4 May 2023, ECLI:EU:C:2023:367, para. 51; cf. CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, paras. 97, 100; Case C-501/14

well as its severity, correspond to the misconduct and culpability.³⁶ However, it is not only the penalties imposed in an individual case that have to be proportionate but also those that are provided for by law: The legislator has to consider the potential severity of the offence in question when determining the penalty to be imposed.³⁷

The CJEU's jurisprudence allows for the identification of certain criteria that determine the severity of an offence. For example, the Court makes a broad distinction between breaches of formal and substantive obligations.³⁸ Whereas an "obligation to pay tax" would be of substantive nature, "reporting obligations" regarding certain information would constitute formal obligations.³⁹ However, this broad distinction does not preclude the possibility of breaches of formal obligations being considered serious.⁴⁰ Furthermore, the potential financial benefit that a perpetrator may gain or has already derived from an offence is a determining factor in its severity.⁴¹ The same holds true for, on the one hand, the objective wrongfulness

EL-EM-2001, 19 October 2016, ECLI:EU:C:2016:777, para. 40; Case C-255/14 *Chmielewski*, 16 July 2015, ECLI:EU:C:2015:475, para. 23.

³⁶ Cf. CJEU Case C-384/17 *Link Logistik N&N*, 4 October 2018, ECLI:EU:C:2018:810, paras. 42, 45; cf. also Jarass and Kment, *EU-Grundrechte*, 2nd edn. (München, 2019) § 42 para. 19; Lock, 'Article 49 CFR', in Kellerbauer, Klamert and Tomkin (eds.), *The EU Treaties and Charter of Fundamental Rights*, 2nd edn., 2 vols. (Oxford, 2024) vol. I, para. 14.

³⁷ Cf. CJEU Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, para. 47; cf. also Berger and Pelzl, (2018) *ZöR* 559 (582); Fädler, 'Verwaltungsstrafrecht' 41 (47); Klip, *European Criminal Law*, 4th edn. (Cambridge, 2021) 431.

³⁸ Cf. CJEU Case C-788/19 *Commission v Spain (Obligation to provide tax information)*, 27 January 2022, ECLI:EU:C:2022:55, paras. 50, 53 f, 63; Case C-35/20 *A (Crossing of borders in a pleasure boat)*, 6 October 2021, ECLI:EU:C:2021:813, paras. 88 f; Case C-255/14 *Chmielewski*, 16 July 2015, ECLI:EU:C:2015:475, paras. 30 f; cf. also Craig, *EU Administrative Law* 665, who differentiates between "primary and [...] secondary obligation[s]"; Kert, Kirchmayr-Schliesselberger and Windisch-Graetz, *Sozialbetrug* 139.

³⁹ CJEU Case C-788/19 *Commission v Spain (Obligation to provide tax information)*, 27 January 2022, ECLI:EU:C:2022:55, para. 50.

⁴⁰ Cf. CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, paras. 45 f; Case C-210/10 *Urbán*, 9 February 2012, ECLI:EU:C:2012:64, paras. 32 ff; cf. also Fädler, 'Verwaltungsstrafrecht' 41 (53 f); Schindler, (2020) *DRdA* 195 (198).

⁴¹ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, paras. 47, 49; Case C-77/20 *K. M. (Sanctions imposed on the master of vessel)*, 11 February 2021, ECLI:EU:C:2021:112, paras. 48 ff; Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, paras. 61 ff.

of an offence,⁴² and, on the other hand, the specific degree of culpability.⁴³ Finally, other factors – such as a repeated commission⁴⁴ or difficulties regarding the detection of the commission⁴⁵ – may enhance the severity of an offence as well.

In principle, a penalty imposed by law must allow for an individual offence's severity to be taken into account when determining the corresponding penalty; hence, in order to be deemed proportionate, a statutory penalty must, in general, afford the authorities a certain degree of discretion when determining the individual penalty to be imposed.⁴⁶ Statutory penalties that are not contingent on factors related to the severity of an offence may thus be prone to being disproportionate, given that they do not permit the individual circumstances to be taken into account when determining the actual penalty.⁴⁷ Nonetheless, penalties that do not take into account (some of) these individual elements may still be considered proportionate for reasons such as administrative efficiency or general prevention⁴⁸ – particularly in cases where

⁴² Cf. CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 104; Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, para. 46; Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, paras. 47, 49.

⁴³ Cf. CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 106 (read in conjunction with para. 19); Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, paras. 30, 47, 60 ff.

⁴⁴ Cf. CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 105.

⁴⁵ Cf. CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 107.

⁴⁶ Cf. CJEU Case C-655/21 *G. ST. T. (Proportionality of the penalty for trade mark infringement)*, 19 October 2023, ECLI:EU:C:2023:791, paras. 67 f; Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, paras. 47, 49; Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, paras. 103 ff; Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, paras. 46 f; Case C-210/10 *Urbán*, 9 February 2012, ECLI:EU:C:2012:64, paras. 41, 55; cf. also Berger and Pelzl, (2018) *ZöR* 550 (582); CJEU Case C-40/21 *ANI*, 10 November 2022, ECLI:EU:C:2022:873, Opinion of AG Emiliou, paras. 40 f.

⁴⁷ Cf. CJEU Joined Cases C-497/15 and C-498/15 *Euro-Team*, 22 March 2017, ECLI:EU:C:2017:229, paras. 47 ff; Case C-262/99 *Louloudakis*, 12 July 2001, ECLI:EU:C:2001:407, para. 69.

⁴⁸ Cf. CJEU Case C-255/14 *Chmielewski*, 16 July 2015, ECLI:EU:C:2015:475, para. 29; Case C-210/00 *Käserer Champignon Hofmeister*, 11 July 2002, ECLI:EU:C:2002:440, paras. 60 ff; Case C-262/99 *Louloudakis*, 12 July 2001, ECLI:EU:C:2001:407, para. 69; cf. also CJEU Case C-40/21 *ANI*, 10 November 2022, ECLI:EU:C:2022:873, Opinion of AG Emiliou, paras. 42 ff; Case C-384/17 *Link Logistik N&N*, 26 June 2018, ECLI:EU:C:2018:494, Opinion of AG Bobek, para. 43.

they are imposed for a minor offence.⁴⁹ Moreover, both minimum penalties⁵⁰ as well as penalties whose amount may increase indefinitely⁵¹ are more likely to be deemed disproportionate. This is primarily due to the authorities' discretion being restricted when imposing a penalty that, in the end, should correspond to the severity of the offence in question.

In a nutshell, the principle of proportionality constrains both the statutory and the actual imposition of penalties. A statutory penalty, as well as a penalty imposed in an individual case, must take into account the severity of the offence punished. If this is not the case, a penalty could easily run the risk of being disproportionate. As illustrated above, the CJEU's case law provides guidance on the factors pertinent to the assessment of the severity of an offence. A penalty that is contingent upon those factors is more likely to be considered proportionate. Such a flexible design allows national authorities to consider the severity of an offence when determining the penalty in an individual case.

IV. The Proportionality of Cumulated Administrative Fines

A. Preliminary Remarks

While Member States enjoy a wide margin of discretion when it comes to the imposition of penalties and, consequently, the introduction of a system based on the principle of cumulation,⁵² their discretion is not indefinite: The preceding chapter identified limitations deriving from the principle of proportionality with regard to the imposition of penalties in general.⁵³

Following on from this analysis, this section focusses on the CJEU's jurisprudence on the proportionality of cumulated administrative fines – such as those foreseen under Austrian administrative criminal law⁵⁴. Initially, the CJEU's integrative

⁴⁹ Cf. CJEU Case C-384/17 *Link Logistik N&N*, 26 June 2018, ECLI:EU:C:2018:494, Opinion of AG Bobek, para. 43.

⁵⁰ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, paras. 46 f; Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 43, 50.

⁵¹ Cf. CJEU Case C-788/19 *Commission v Spain (Obligation to provide tax information)*, 27 January 2022, ECLI:EU:C:2022:55, para. 60; Case C-35/20 *A (Crossing of borders in a pleasure boat)*, 6 October 2021, ECLI:EU:C:2021:813, paras. 87, 91.

⁵² See *supra* II.

⁵³ See *supra* III.

⁵⁴ See *supra* I.

approach to the assessment of proportionality in the context of cumulated administrative fines will be delineated (B.). Subsequently, the criteria for determining the gravity of offences associated with such fines will be examined; also, distinctive characteristics pertaining to this assessment will be identified (C.). Finally, the relationship between the increasing severity of cumulated administrative fines and the principle of proportionality will be illustrated (D.).

B. The Court of Justice of the European Union's Integrative Approach

In evaluating the proportionality of cumulated administrative fines, the CJEU employs an integrative approach: The Court does not merely contrast the individual offence with the individual fine – an approach that has been adopted *inter alia* by the Austrian Constitutional Court (VfGH).⁵⁵ Rather, the CJEU considers the entirety of the offences committed in order to ascertain the proportionality of the totalled fines (to be) imposed.⁵⁶ Accordingly, it does not distinguish between a single fine that is disproportionately high and multiple fines that, when considered collectively, amount to a sum that is disproportionately high.⁵⁷

Whilst the CJEU has adopted this integrative approach in several decisions,⁵⁸ the case law indicates that such an assessment does not necessarily apply in all instances of cumulation.⁵⁹ In my opinion, there is one determining factor that distinguishes

⁵⁵ Cf. Austrian VfGH 4 October 2018, G 135/2018 (VfSlg. 20.283/2018); 27 September 2007, G 24/07 and others (VfSlg. 18.219/2007); cf. also Fädler, 'Verwaltungsstrafrecht' 41 (52).

⁵⁶ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 49; cf. also Burger, (2020) *JAS* 287 (305); Fädler, 'Verwaltungsstrafrecht' 41 (51); Grof, (2019) *SPWR* 257 (265).

⁵⁷ Cf. Burger, (2020) *JAS* 287 (302); Fädler, (2022) *ZfV* 99 (103); Schneider, (2019) *ÖZW* 118 (124); this is corroborated by the reference in CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 41, to CJEU Case C-255/14 *Chmielewski*, 16 July 2015, ECLI:EU:C:2015:475, para. 26.

⁵⁸ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, paras. 45 ff; Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 39 ff.

⁵⁹ Cf. CJEU Case C-521/20 *J.P.*, 7 April 2022, ECLI:EU:C:2022:293: Although the referring Austrian court expressed its concerns only under Art. 50 CFR, it also addressed the proportionality of the cumulated sum of the penalties imposed (cf. para. 14). The CJEU considered the request for a preliminary ruling to be manifestly inadmissible because "the interpretation of EU law sought b[ore] no relation to the actual facts of the main action or its purpose" (para. 25; translation by the author). In the case at hand, however, the CJEU does not seem to have had any reservations from the standpoint of proportionality aside from Art. 50 CFR with regard to the cumulative imposition of fines, especially as it refrained from reformulating the question referred (an example for such a reformulation is provided in CJEU Case C-40/21 *ANI*, 4 May 2023, ECLI:EU:C:2023:367, paras. 47 ff).

situations where the proportionality of cumulated administrative fines should be evaluated through an integrative approach: the proximity of the specific offences to be punished. If multiple offences are to be punished individually – i.e. administrative fines are imposed cumulatively – and there is a close temporal, geographical, and factual link between the individual infringements which is nevertheless still separable with regard to the ‘*non bis in idem*’ rule according to Art. 50 CFR,⁶⁰ the totalled fines have to be proportionate to the entirety of the offences committed. If such a close link cannot be established, the individual fines should be contrasted with the individual offences.

To illustrate, in the case *LPD Steiermark (Gaming machines)*, several administrative fines were imposed for a specific number of gaming machines placed in the same premises during the same time period.⁶¹ Likewise, in the case *Maksimovic*, the administrative fines were imposed, *inter alia*, for failure to provide the relevant authority “with complete records of the wages of each of the 217 workers”⁶² employed on the same construction site for the same period of time.⁶³ As a close temporal (same time period), geographical (same location), and factual (violations of the same normative obligation) link could be established in both of these cases, the CJEU applied its integrative approach: It assessed the proportionality of the totalled administrative fines – that, in the case of *Maksimovic*, went into the millions⁶⁴ – in light of the entirety of the offences committed, rather than merely comparing the single administrative fine to the individual offence.⁶⁵

The CJEU’s case law thus indicates that the sum of the administrative fines imposed cumulatively does not necessarily have to be proportionate to the totality of the offences committed. Rather, such an integrative assessment is to be made in

⁶⁰ Art. 50 CFR enshrines the “[r]ight not to be tried or punished twice in criminal proceedings for the same criminal offence”, commonly referred to as the “*non bis in idem*” rule” (Explanations on Art. 50 CFR).

⁶¹ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 11.

⁶² CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 14.

⁶³ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 13.

⁶⁴ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 16 f, 42.

⁶⁵ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, paras. 45 ff, 58; Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 39 ff, 50.

particular if there is a close – but separable – connection between the offences punished. As the CJEU considers the entirety of the offences committed in such cases, it is essential to clarify how the severity of these multiple offences can be determined.

C. The Severity of Multiple Offences

When assessing the severity of multiple offences, the same criteria as for a single offence⁶⁶ apply: For instance, the CJEU considers the financial benefit a perpetrator may gain or has gained.⁶⁷ As the cumulated sum of the administrative fines must be proportionate, the overall financial benefit has to be included in the assessment.⁶⁸

Furthermore, the CJEU resorts to the broad distinction between formal and substantive obligations in its assessment of the gravity of multiple violations. Again, the cases *Maksimovic* and *LPD Steiermark (Gaming machines)* may serve as examples. In both cases, the CJEU has evaluated the proportionality of comparable sanction clauses with disparate outcomes, contingent on whether it found that formal or substantive obligations had been breached.⁶⁹

In *Maksimovic*, the Court found itself opposed to regulations that – in its own words – did “not directly determine the working and employment conditions applicable”; instead, they were “intended to ensure that the [...] authorities [could] carry out effective monitoring in order to ensure compliance with those conditions.”⁷⁰ In the end, the CJEU considered the corresponding sanctions to be disproportionate.⁷¹ Conversely, in *LPD Steiermark (Gaming machines)*, the Court considered the offences to be serious, “since the illegal supply of gaming machines” – and thus breaches of substantive obligations – could have “particularly serious

⁶⁶ See *supra* III.

⁶⁷ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 47.

⁶⁸ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 49.

⁶⁹ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 46; Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 40, 46, 48; cf. also Fädler, (2022) *ZfV* 99 (103); Kert, Kirchmayr-Schliesselberger and Windisch-Graetz, *Sozialbetrug* 139.

⁷⁰ CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 25; cf. Kert, Kirchmayr-Schliesselberger and Windisch-Graetz, *Sozialbetrug* 137, 139; Schneider, (2019) *ÖZW* 118 (124).

⁷¹ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 50.

harmful effects on society”.⁷² This time, the CJEU found the sanctions to be proportionate.⁷³

Admittedly, the CJEU’s decision in *Maksimovic* is not without criticism. Firstly, the Court conflates the substance of different offences of varying severity,⁷⁴ namely the violation of the obligations to make certain wage records of workers available⁷⁵ on the one hand, and the violation of the obligations to procure the permission “to employ a foreign national worker”⁷⁶ on the other hand. As a result, the CJEU assessed their proportionality collectively,⁷⁷ although, in my opinion, a differentiated assessment would have been appropriate.⁷⁸ Secondly, the Court reduced the obligations in question to their formal nature,⁷⁹ notwithstanding the circumstance that – as outlined above⁸⁰ – breaches of formal obligations may also be considered serious, e.g., if they serve to fulfill substantive obligations.⁸¹ A synopsis of the cases *Maksimovic* and *LPD Steiermark (Gaming machines)* nevertheless demonstrates the following: The distinction between formal and substantive obligations may provide a broad guideline for assessing the proportionality of cumulated administrative fines.

⁷² CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 46.

⁷³ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 58.

⁷⁴ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 24; cf. also Fädler, ‘Verwaltungsstrafrecht’ 41 (52); Kert, Kirchmayr-Schliesselberger and Windisch-Graetz, *Sozialbetrug* 145 f.

⁷⁵ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 5 f, 14, 16 f.

⁷⁶ CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 7, cf. para. 17.

⁷⁷ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 40, 46, 50.

⁷⁸ Cf. Fädler, ‘Verwaltungsstrafrecht’ 41 (52 f); Kert, Kirchmayr-Schliesselberger and Windisch-Graetz, *Sozialbetrug* 145 f.

⁷⁹ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 25, 46; cf. also Fädler, ‘Verwaltungsstrafrecht’ 41 (53); Handstanger, ‘*Maksimovic*’ 85 (93 f); Schneider, (2019) *ÖZW* 118 (124).

⁸⁰ See *supra* III.

⁸¹ Cf. CJEU Joined Cases C-870/19 and C-871/19 *Prefettura Ufficio territoriale del governo di Firenze*, 24 March 2021, ECLI:EU:C:2021:233, paras. 45 f; cf. also Kager, (2022) *wbl* 69 (77); Schindler, (2020) *DRdA* 195 (198).

The CJEU's case law thus indicates that the factors determining the severity of a single offence and of multiple offences are essentially the same. The case law furthermore suggests that the severity of multiple offences does not necessarily increase directly in proportion to their number: In *Maksimovic*, the Court did not oppose the cumulative imposition of administrative fines in principle;⁸² it nonetheless observed a potential issue with “the unlimited cumulation of those fines where the offence concerns a number of workers”, as this could result in a significant and maybe even disproportionately high sum of fines.⁸³ This assessment is consistent with the CJEU's integrative approach: It considers not only the individual offence but also takes into account the entire severity of the offences committed.⁸⁴ Moreover, it indicates that a cumulation may affect the severity of administrative fines, as will be discussed below.

D. The Increasing Severity of Cumulated Administrative Fines

Considering the CJEU's integrative approach, whereby the proportionality of the totalled administrative fines is to be assessed,⁸⁵ a cumulative imposition may, in and of itself, serve to increase the severity of the fines concerned.⁸⁶ Moreover, given the CJEU's demonstrated reluctance to assume a linear increase in severity for multiple offences,⁸⁷ the imposition of cumulated administrative fines may already render them disproportionate – especially if the number of fines could increase indefinitely.⁸⁸ Cumulated administrative fines for minor infringements are thus more likely to be disproportionate than cumulated administrative fines for serious offences.⁸⁹

⁸² Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 41 (“legislation providing for penalties of which the amount varies depending on the number of workers [...] does not, in itself, appear to be disproportionate”); cf. also – although not concerning cumulative penalties – CJEU Case C-544/19 *ECOTEX BULGARIA*, 6 October 2021, ECLI:EU:C:2021:803, para. 104; Case C-255/14 *Chniewski*, 16 July 2015, ECLI:EU:C:2015:475, para. 26.

⁸³ CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 42, cf. para. 50.

⁸⁴ See *supra* IV.B.

⁸⁵ See *supra* IV.B.

⁸⁶ Cf. Fädler, (2022) *ZfV* 99 (103).

⁸⁷ See *supra* IV.C.

⁸⁸ On this issue regarding penalties in general see *supra* III.

⁸⁹ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, where the Court found the “unlimited cumulative amount of fines” (para. 48) not, “in itself, [...] infr[ing] the principle of proportionality” (para. 49), as it allowed “to counter the economic benefit which the infringements thus penalised might provide, and accordingly render the

This is even more pertinent when the cumulative imposition is coupled with other factors that aggravate the severity of administrative fines. For instance, if not only a cumulative imposition but also minimum fines are prescribed by law, the offences subjected to these administrative fines must merit a corresponding degree of severity; otherwise, the regime runs the risk of being considered disproportionate. Again, the cases *Maksimovic* and *LPD Steiermark (Gaming machines)* may serve as examples.

In *Maksimovic*, on the one hand, the CJEU had arguably already identified the minimum fine as such as a potential issue in terms of proportionality.⁹⁰ Nevertheless, the discrepancy between the severity of the offences as opposed to the severity of the administrative fines was further exacerbated by the fact that the minimum fines could be imposed cumulatively.⁹¹ In light of the Court's assessment that the offences constituted only minor (and formal) infringements,⁹² it concluded that the administrative fines in question were disproportionate.⁹³

In *LPD Steiermark (Gaming machines)*, on the other hand, the CJEU did not challenge the cumulative imposition of minimum administrative fines in principle. The Court acknowledged that "the imposition of a minimum fine, combined with an unlimited cumulative amount of fines" could result in "sizeable financial penalties being imposed."⁹⁴ Nevertheless, in consideration of the severity of the offences in question, particularly in light of the potential financial benefit that perpetrators may derive from them, the CJEU deemed the administrative fines to be proportionate.⁹⁵

The case law serves to demonstrate that the cumulative imposition amplifies the severity of administrative fines. This effect is further compounded in instances where

illegal supply decreasingly attractive" (para. 49). In contrast, in the CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, the Court criticised, *inter alia*, the application of fines "cumulatively in respect of each worker concerned and without an upper limit" (para. 50).

⁹⁰ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 43; on this issue regarding penalties in general see *supra* III.

⁹¹ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, para. 50.

⁹² Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 25, 46; see *supra* IV.C.

⁹³ Cf. CJEU Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 *Maksimovic*, 12 September 2019, ECLI:EU:C:2019:723, paras. 46, 50.

⁹⁴ CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 48.

⁹⁵ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, para. 49.

the cumulation is coupled with other factors, such as minimum fines. It is thus essential to ensure that the increasing severity of cumulated administrative fines – whether imposed alone or in conjunction with, for example, a minimum fine – does not result in a sum that is disproportionately high; to this end, national authorities must be able to impose cumulated administrative fines that correspond to the specific offences being punished.⁹⁶ EU law thus requires a sufficiently flexible framework, allowing national authorities to take into account not only the severity of a single offence but also the severity of multiple offences when imposing the respective administrative fines cumulatively.⁹⁷

V. Conclusion

In principle, EU law neither prohibits nor requires the cumulative imposition of penalties for violations of EU law. Accordingly, Member States enjoy a wide margin of discretion when incorporating the principle of cumulation into their national legal systems.

However, the principle of proportionality curtails the Member States' margin when providing for the cumulative imposition of penalties. A particularity in the CJEU's assessment of the proportionality of cumulated administrative fines is its integrative approach, whereby the totalled fines are contrasted with the entirety of the offences committed. Hence, the cumulative imposition of administrative fines already aggravates their severity, which increases further when it is unlimited and/or coupled with other factors like minimum fines. Consequently, such fines run the risk of being disproportionate more easily.

Ultimately, the CJEU's case law points to one factor that is of particular importance in order for cumulated administrative fines to be considered proportionate: It is essential that national authorities be given a sufficiently flexible framework, allowing them to impose cumulated administrative fines whose totalled sum reflects the severity of the entirety of offences committed. In the end, EU law requires, above all, that penalties are proportionate to the specific offences concerned, irrespective of whether they were imposed cumulatively or not.

⁹⁶ Cf. CJEU Case C-231/20 *LPD Steiermark (Gaming machines)*, 14 October 2021, ECLI:EU:C:2021:845, paras. 47, 49.

⁹⁷ Cf. Burger, (2020) *JAS* 287 (305); Grof, (2019) *SPWR* 257 (265); cf. also Fädler, (2022) *ZfV* 99 (101 ff.).

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