ADMINISTRATIVE SANCTIONS IN THE EUROPEAN UNION
ADMINISTRATIVE SANCTIONS
IN THE EUROPEAN UNION

Oswald Jansen (ed.)
This book is focused on administrative sanctions and offers a thorough overview of the sanctioning systems of 13 EU Member States. The initial idea for this elaborate and challenging project is based on the impression that although sanctioning powers are of great importance in practice both at EU level and nationally, little comparative study has been done on this subject. More importantly, when studying law enforcement one should study both administrative law and criminal law sanctioning systems. In legal scholarship there is clear division between the scholarship in administrative law and the scholarship in criminal law. In the discussion of deterrent administrative sanctions, such as administrative fines (as we will see, in some legal systems remedial measures are not considered sanctions, only punitive measures are) both areas of scholarship should meet, as according to case law of the ECHR and many national constitutional courts, certain criminal law guarantees apply to administrative sanctions that have a punitive aim. The authors that have contributed to this book are both criminal law specialists and administrative law specialists, and they have all managed to address the theme from the perspective of both disciplines. This approach makes this book special.

The project to arrive at this result started with an international meeting of experts on 16 July 2004. Almost all the authors came to Utrecht that day to discuss the subject-matter and design of the project with each other and with colleagues from the Dutch Ministry of Justice and other practitioners interested in administrative sanctions. In the process of finalising this book since then, authors have updated their contributions, many of them even two or more times. They deserve admiration for their patience with the occasionally headache-inducing process to arrive at this result.

The realisation of the research project would not have been possible without the financial support of the Dutch Scientific Council (NWO) and the Dutch Ministry of Justice.

We would like to thank all colleagues and assistants involved for their efforts in publishing their work in most cases in a non-native language. All translators involved, and especially Maris van der Laak, cannot underestimate the value of their work to this book. Special thanks should also be addressed to Lucia van Tellegen and Lionel van den Berg, both students at the law school of Utrecht.
Preface

University, for their valuable support in finalising this book. And last but not least, we would also like to thank Intersentia for their willingness to publish this book.

We have every confidence that the present book will find its way to everyone who is interested in both administrative law and criminal law, and more precisely in law enforcement and administrative sanctioning.

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Oswald Jansen
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<td>AACA</td>
<td>Athens’ Administrative Court of Appeals</td>
</tr>
<tr>
<td>AAI</td>
<td>Autorités administratives indépendantes – independent administrative agencies</td>
</tr>
<tr>
<td>AAFDL</td>
<td>Associação Acadêmica da Faculdade de Direito de Lisboa</td>
</tr>
<tr>
<td>AB</td>
<td>Administratiefrechtelijke beslissingen – Legal periodical</td>
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<tr>
<td>abbb</td>
<td>algemene beginselen van behoorlijk bestuur</td>
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<tr>
<td>ABRvS</td>
<td>Afdeling bestuursrechtspraak Raad van State – Administrative Jurisdiction Division, Council of State</td>
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<tr>
<td>ACPC</td>
<td>Administrative Court Procedure Code</td>
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<tr>
<td>ACS</td>
<td>Administrative Jurisdictional Section</td>
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<tr>
<td>AFM</td>
<td>Autoriteit Financiële Markten – Authority for the Financial Markets</td>
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<td>AG</td>
<td>Advocate-General of the European Court of Justice</td>
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<td>AJPA</td>
<td>Administrative Judicial Procedure Act</td>
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<td>All ER</td>
<td>All England Reports</td>
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<tr>
<td>AMF</td>
<td>Autorité des marchés financiers – Financial Markets Authority</td>
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<tr>
<td>AmvB</td>
<td>Algemene maatregel van Bestuur – Order in Council</td>
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<td>AnwBL</td>
<td>Anwaltsblatt</td>
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<tr>
<td>AO</td>
<td>Abgabenordnung – German Tax Code</td>
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<tr>
<td>AöR</td>
<td>Archiv des öffentlichen Rechts</td>
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<td>APC</td>
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<td>Arbowet</td>
<td>Arbeidsomstandighedenwet – Working Conditions Act</td>
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<tr>
<td>ASAE</td>
<td>Autoridade de Segurança Alimentar e Económica – Authority for the Safety of Food and Economy</td>
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<td>ASL</td>
<td>Aziende Sanitarie Locali – Local health agencies</td>
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<td>AVG</td>
<td>Allgemeines Verwaltungsverfahrensgesetz – Code of Administrative Procedure</td>
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<tr>
<td>a.v.v./avv</td>
<td>algemeen verbindend voorschrift – collective binding agreement</td>
</tr>
<tr>
<td>Awb</td>
<td>Algemene wet bestuursrecht – Dutch General Administrative Law Act (GALA)</td>
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<td>AWBi</td>
<td>Algemene wet op het binnentreden – General Act on Entry into Private homes</td>
</tr>
<tr>
<td>Awr</td>
<td>Algemene wet inzake rijkbelastingen – State Taxes Act</td>
</tr>
<tr>
<td>BAC</td>
<td>Blood Alcohol Concentration</td>
</tr>
<tr>
<td>BayGO</td>
<td>Bayerische Gemeindeordnung</td>
</tr>
<tr>
<td>BayPAG</td>
<td>Bayerisches Polizeiaufgabengesetz – Bavarian Police Act</td>
</tr>
<tr>
<td>BDG</td>
<td>Bundesdisziplinargesetz – Civil Service Disciplinary Act</td>
</tr>
<tr>
<td>BGB</td>
<td>Bürgerliches Gesetzbuch</td>
</tr>
<tr>
<td>BjagdG</td>
<td>Bundesjagdgesetz – Federal Hunting Act</td>
</tr>
<tr>
<td>BlgNR</td>
<td>Beilagen zu den stenographischen Protokollen des Nationalrats (Annexes to the stenographic records of the National Council)</td>
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<tr>
<td>BNB</td>
<td>Beslissingen in Belastingzaken, Nederlandse Belastingrechtspraak – Legal Periodical</td>
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<tr>
<td>BVerfG</td>
<td>Bundesverfassungsgericht</td>
</tr>
<tr>
<td>B-VG</td>
<td>Bundes-Verfassungsgesetz – Federal Constitution Act</td>
</tr>
<tr>
<td>BW</td>
<td>Burgerlijk Wetboek – Dutch Civil Code</td>
</tr>
<tr>
<td>BZRG</td>
<td>Bundeszentralregistergesetz – Federal Repository Act</td>
</tr>
<tr>
<td>CA</td>
<td>Suomen perustuslaki – Constitution of Finland</td>
</tr>
<tr>
<td>CAP</td>
<td>Common Agricultural Policy</td>
</tr>
<tr>
<td>Cass.</td>
<td>Cour de cassation – Court of Cassation</td>
</tr>
<tr>
<td>CBB</td>
<td>College van Beroep voor het bedrijfsleven – Trade and Industry Appeals Tribunal</td>
</tr>
<tr>
<td>CC</td>
<td>Belgian Criminal Court</td>
</tr>
<tr>
<td>c.c.p.</td>
<td>Code of Criminal Procedure</td>
</tr>
<tr>
<td>CCDRs</td>
<td>Comissões de Coordenação e Desenvolvimento Regional – Commissions of Coordination and Regional Development</td>
</tr>
<tr>
<td>CE</td>
<td>Conseil d’État</td>
</tr>
<tr>
<td>Charter</td>
<td>Charter of Fundamental Rights of the European Union</td>
</tr>
<tr>
<td>CML Rev</td>
<td>Common Market Law Review</td>
</tr>
<tr>
<td>CNIL</td>
<td>Commission nationale informatique et libertés – National Commission for Computerised Data and Freedom</td>
</tr>
<tr>
<td>COE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>Const.</td>
<td>Italian Constitution</td>
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<tr>
<td>c.civ.p.</td>
<td>Code of Civil Procedure</td>
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<tr>
<td>cf.</td>
<td>confer – compare</td>
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<tr>
<td>c.p.</td>
<td>Código Penal (Criminal Code)</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>CPC</td>
<td>Criminal Proceedings Code</td>
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<tr>
<td>CPP</td>
<td>Código de Processo Penal – Criminal Procedure Act</td>
</tr>
<tr>
<td>Cr. App.R.</td>
<td>Criminal Appeal Reports</td>
</tr>
<tr>
<td>CRP</td>
<td>Constituição da República Portuguesa – Portuguese Constitution</td>
</tr>
<tr>
<td>CRvB</td>
<td>Centrale Raad van Beroep – Central Appeals Tribunal</td>
</tr>
<tr>
<td>CS</td>
<td>Council of State</td>
</tr>
<tr>
<td>DC</td>
<td>Déclaration de conformité -</td>
</tr>
<tr>
<td>DCC</td>
<td>Dutch Criminal Code – Wetboek van Strafrecht</td>
</tr>
<tr>
<td>DCP</td>
<td>Dutch Code of Criminal Procedure – Wetboek van Strafvordering (Sv)</td>
</tr>
<tr>
<td>DD</td>
<td>Delikt en Delinkwent – Legal periodical</td>
</tr>
<tr>
<td>DMOS</td>
<td>Direito de Mera Ordenação Social – Administrative Offences Law</td>
</tr>
<tr>
<td>DNB</td>
<td>De Nederlandsche Bank N.V. – Dutch National Bank</td>
</tr>
<tr>
<td>DL</td>
<td>Decreto-Lei – Decree-Law</td>
</tr>
<tr>
<td>DPC</td>
<td>Dutch Criminal Code – Wetboek van Strafrecht (Sr)</td>
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<tr>
<td>Ds.</td>
<td>Departementsserien</td>
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<tr>
<td>DVBI</td>
<td>Deutsches Verwaltungsblatt</td>
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<tr>
<td>EEA</td>
<td>Agreement on the European Economic Area</td>
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<tr>
<td>EEEvrD</td>
<td>Elliniki Epitheorissi Evropaikoou Dikaiou – Revue hellenique de droit Européen</td>
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<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>E(E)C</td>
<td>European (Economic) Community</td>
</tr>
<tr>
<td>ECSC</td>
<td>European Coal and Steel Community</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>EFET</td>
<td>National Institution for Food Inspection</td>
</tr>
<tr>
<td>e.g.</td>
<td>exempli gratia – for example</td>
</tr>
<tr>
<td>EGC</td>
<td>The General Court – European Union (formerly known as The Court of First Instance)</td>
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<tr>
<td>EGStGB</td>
<td>Einführungsgesetz zum Strafgesetzbuch – Introductory Law of the Penal Code</td>
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<td>EGVG</td>
<td>Einführungsgesetz zu den Verwaltungsverfahrensgesetzen – Introductory Act for the Acts on Administrative Proceedings</td>
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<tr>
<td>ENDS</td>
<td>Environmental Data Services</td>
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<td>etc.</td>
<td>et cetera</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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Persoonlijke kopie van
List of Abbreviations

EU-JZG Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union (Federal Act on the judicial cooperation in criminal matters with the Member States of the European Union)

EU-VStVG Bundesgesetz über die Vollstreckung von Geldstrafen und Geldbußen von Verwaltungsbehörden im Rahmen der Europäischen Union (Federal Act on the execution of financial penalties imposed by administrative authorities of other EU Member States)

EWCW England and Wales Court of Appeal

FGD Fundo de Garantia dos Depósitos – Fund for the Guarantee of Deposits

FGG Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit – German Ex Parte Jurisdiction Act

FIOD-ECD Fiscale inlichtingen- en opsporingsdienst en Economische controledienst – Fiscal Intelligence and Investigation Service/Economic Investigation Service

FPA Freedom of Press Act

FSA Financial Service Authority (of the United Kingdom)

GALA Algemene wet bestuursrecht – General Administrative Law Act

GastG Gaststättengesetz – German Licensing Act

Gem.wet Gemeentewet – Municipalities Act

GewO Gewerbeordnung – Industrial Code

GG Grundgesetz – German Constitution

GPCL General principles of criminal law

GPPA General principles of proper administration

Gst. De Gemeentestem – Legal periodical

GVG Gerichtsverfassungsgesetz – German Judicature Act

Gwwd Gezondheids- en welzijnswet voor dieren – Health and Welfare of Animals Act

HaO Administrative Court of Hämeenlinna

HAO Regional Administrative Court of Kuopio

HE Hallituksen esitykset – Government proposal to parliament for new legislation

HC Hellenic Constitution

Report HC Report of the House of Commons of the United Kingdom

HR Hoge Raad – Supreme Court in the fields of civil, criminal and tax law

Hw Huisvestingswet – Housing Allocation Act

ib./ibid. ibidem – in the same passage or page quoted above
List of Abbreviations

ICCP Ri
International Convention on Civil and Political Rights
i.e.  
* id est – it is/that is more precisely
IGA
Inspecção Geral do Ambiente – General Inspectorate for the Environment
IMOPPI
Instituto dos Mercados das Obras Públicas e Particulares do Imobiliário – Institute for the Market of Public and Private Real Estate Works
IRS
Instituto de Reinserção Social – Institute for the Rehabilitation of Offenders
JAP
Juristische Ausbildung und Praxisvorbereitung
JBI
Juristische Blätter – Legal periodical
JBPlus
Jurisprudentie Bestuursrecht Plus – Legal periodical
JCL
Journal of Criminal Law – Legal periodical
JGG
Jugendgerichtsgesetz – Juvenile Court Act
JM
Jurisprudentie Milieurecht – Legal periodical
JO
Justitieombudsmannen – Parliamentary Ombudsmen
JOR
* Jurisprudentie Onderneming & Recht – Legal periodical
JöR
* Jahrbuch des öffentlichen Rechts der Gegenwart – Legal periodical
JUSTICE
United Kingdom section of the International Commission of Jurists
JV
* Jurisprudentie Vreemdelingenrecht – Legal periodical
KB
King's Bench
KHO
Korkein Hallinto-Oikeus – Supreme Administrative Court of Finland
KM
Komiteanmietintö – Committee Reports
L.
Law
LDJG
Librairie générale de droit et de jurisprudence
LPA
LSI
* Law & Social Inquiry – periodical
M&M
* Markt & Mededinging – Legal periodical
Michigan LR
Michigan Law Review – Legal periodical
MLR
Modern Law Review – Legal periodical
Msw
Meststoffenwet – Fertilizers Act
Mw
Mededingingswet – Competitive Trading Act
NAO
National Audit Office of the United Kingdom
NbSr
Nieuwsbrief Strafrecht – Legal periodical
NJ
* Nederlandse Jurisprudentie – Legal periodical

Intersentia

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List of Abbreviations

NJA Nytt Juridiskt Arkiv, Avdelning I – Publication of cases from the Swedish Supreme Court
NJV Nederlandse Juristen Vereniging – Dutch Law Association
NJW Neue Juristische Wochenschrift – Legal periodical
NMa Nederlandse Mededingingsautoriteit – Dutch Competition Authority
NSiZ Neue Zeitschrift für Strafrecht – Legal periodical
NTB Nederlands Tijdschrift voor Bestuursrecht – Legal periodical
NVWA Nederlandse Voedsel- en Warenautoriteit – Dutch Food and Consumer Product Safety Authority
NZ Österreichische Notariatszeitung
OGH Oberster Gerichtshof – Supreme Court in civil and criminal matters
ÖJZ Österreichische Juristen-Zeitung
OLG Oberlandesgericht – Regional Appelate Court
OM Openbaar Ministerie – Public Prosecution Service
OPTA Onafhankelijke Post en Telecom Autoriteit – Independent Post and Telecommunications Authority
öStGB Österreichisches Strafgesetzbuch 1974 – Austrian Criminal Code
öStPO Österreichische Strafprozessordnung – Austrian Code of Criminal Procedure
ÖStZ Österreichische Steuer-Zeitung
OWiG Ordnungswidrigkeitengesetz – Administrative Offenses Act
Paris Cour d’appel de Paris
PA Public Administration
PeVL Perustuslakivaliokunnan Lausunto
PeVM Perustuslakicaliokunnan Mietintö
PG Parlementaire Geschiedenis – (Dutch) Parliamentary History
PPS Public Prosecution Service
PRCC Public Revenue Collection Code
R. Rex or Regina
RÅ Regeringsrättens årsbok – Yearbook of cases from the Swedish Supreme Administrative Court
Rb. Rechtbank – Regional Court
RF Regeringsformen – Instrument of Government (Swedish Constitution)
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<tr>
<td>RFDA</td>
<td>Revue française de droit administratif</td>
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<tr>
<td>RGCO</td>
<td>Regime Geral de Contra-Ordenações</td>
</tr>
<tr>
<td>RGICSF</td>
<td>Regime Geral das Instituições de Crédito e das Sociedades Financeiras – General Legal Framework of Credit Institutions and Financial Corporations</td>
</tr>
<tr>
<td>RIW/AWD</td>
<td>Recht der Internationalen Wirtschaft / Außenwirtschaftsdienst des betriebsberaters</td>
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<tr>
<td>RSV</td>
<td>Rechtspraak Sociale Verzekeringen – Legal periodical</td>
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<td>RZ</td>
<td>Österreichische Richterzeitung</td>
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<td>SACA</td>
<td>Constitution and Special Act 6 January 1989 concerning the Court of Arbitration</td>
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<td>SAC</td>
<td>Korkein Oikeus – Supreme Administrative Court</td>
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<td>SARI</td>
<td>Special Act of 8 August 1980 concerning the Reform of the Institutions</td>
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<tr>
<td>SEW</td>
<td>Tijdschrift voor Europees en economisch recht – Legal periodical</td>
</tr>
<tr>
<td>SFO</td>
<td>Serious Fraud Office</td>
</tr>
<tr>
<td>SII</td>
<td>Sistema de Indemnização aos Investidores – System for the Compensation of Investors</td>
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<td>SOU</td>
<td>Statens Offentliga Utredningar – Swedish Government Official Reports</td>
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<tr>
<td>SSC</td>
<td>Supreme Special Court</td>
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<td>StG</td>
<td>Strafgesetz – Criminal Code</td>
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<td>StGB</td>
<td>Strafgesetzbuch – German Criminal Code</td>
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<td>StPO</td>
<td>Strafprozeßordnung – German Code of Criminal Procedure – Austrian Code of Criminal Procedure</td>
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<td>Strafrecht AT</td>
<td>Strafrecht Allgemeiner Teil</td>
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<td>Straßenverkehrsrecht – Traffic Law Code</td>
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<td>StVollzG</td>
<td>Strafvollzugsrecht – German Penal Administration Act</td>
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<tr>
<td>SWK</td>
<td>Österreichische Steuer- und Wirtschaftskartei</td>
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<tr>
<td>T&amp;C</td>
<td>Tekst &amp; Commentaar – Text and Comments on Dutch Law</td>
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<td>TEC</td>
<td>Treaty establishing the European Community</td>
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<tr>
<td>TEU</td>
<td>Treaty on European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>ToS</td>
<td>To Syntagma (The Constitution) – Legal periodical</td>
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<td>TOS</td>
<td>Tijdschrift voor Onderneming en Strafrecht – Legal periodical</td>
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<tr>
<td>Tw</td>
<td>Telecommunicatiewet – (Dutch) Telecommunications Act</td>
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<tr>
<td>UKUT</td>
<td>United Kingdom Upper Tribunal</td>
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<tr>
<td>UU</td>
<td>Universiteit Utrecht – University of Utrecht</td>
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<tr>
<td>UvA</td>
<td>Universiteit van Amsterdam – University of Amsterdam</td>
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**List of Abbreviations**

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<tr>
<th>Abbreviation</th>
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<tr>
<td>UVSs</td>
<td>Unabhängige Verwaltungssenate der Länder – Austrian Independent Administrative Panels of Provinces</td>
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<tr>
<td>UWG</td>
<td>Gesetz gegen den unlauteren Wettbewerb – Act on Unfair Competition</td>
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<td>UZwG</td>
<td>Gesetz über den unmittelbaren Zwang – Immediate Coercion Act</td>
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<tr>
<td>VA</td>
<td>Verwaltungssakt – Administrative Act</td>
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<td>VAR</td>
<td>Vereniging voor Bestuursrecht – Administrative Law Association</td>
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<td>VAR-reeks</td>
<td><em>Publicaties Vereniging voor Bestuursrecht</em> – Legal Periodical</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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<tr>
<td>vid. (infra)</td>
<td><em>vide (infra)</em> – see (below)</td>
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<td>VR</td>
<td>VerkeersRecht – Legal Periodical</td>
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<td>Vrije Universiteit – VU University of Amsterdam</td>
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<td>Verwaltungsgerichtshof – Administrative Court</td>
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<tr>
<td>VwGO</td>
<td>Verwaltungsgerichtsordnung – Rules of the Administrative Courts</td>
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<tr>
<td>VwVfg</td>
<td>Verwaltungsverfahrensgesetz – Administrative Procedural Law</td>
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<tr>
<td>VwVG</td>
<td>Verwaltungsverfullstreckungsgesetz – Administration Enforcement Law</td>
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<td>VfGH</td>
<td>Verfassungsgerichtshof – Constitutional Court</td>
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<tr>
<td>VSTG</td>
<td>Verwaltungsstrafgesetz – Austrian Act on Administrative Criminal Law (in Germany, Vermögenssteuergesetz)</td>
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<tr>
<td>VwSlg</td>
<td>Sammlung der Erkenntnisse und Beschlüsse des Verwaltungsgerichtshofes – Collection of the decisions and most important orders of the Austrian Constitutional Court</td>
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<td>Wabm</td>
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<td>Wabo</td>
<td>Wet algemene bepalingen omgevingsrecht – Environmental Permitting (General Provisions) Act</td>
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<td>Wav</td>
<td>Wet arbeid vreemdelingen – Foreign Nationals (Employment) Act</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>Wet administratiefrechtelijke handhaving verkeersvoorschriften (also: Wet Mulder) – Traffic Regulations (Administrative Enforcement) Act</td>
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<td>Wbp</td>
<td>Wet bescherming persoonsgegevens – Personal Data Protection Act</td>
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<td>WDO</td>
<td>Wehrdisziplinarordnung – German Military Disciplinary Code</td>
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<td>Wet op de economische delicten – Economic Offences Act</td>
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<td>Wet idbb</td>
<td>Wet introductie dwangsom en bestuurlijke boete – Act on the Introduction of Penalty Payments and Administrative Fines (Financial Legislation) Act</td>
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<td>Wet informatie-uitwisseling ondergrondse netten – Underground Grids (Information Exchange) Act</td>
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<td>Wft</td>
<td>Wet financieel toezicht – Financial Supervision Act</td>
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<td>WGB</td>
<td>Wet gewasbeschermingsmiddelen en biociden – Plant Protection Products and Biocides Act</td>
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<td>Wgp</td>
<td>Wet marktordening gezondheidszorg – Health Care (Market Regulation) Act</td>
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<td>Wet handhaving consumentenbescherming – Consumer Protection (Enforcement) Act</td>
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<td>Wm</td>
<td>Wet milieubeheer – Environmental Management Act</td>
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<td>Wr</td>
<td>Wet ruimtevaartactiviteiten – Space Activities Act</td>
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<td>Wro</td>
<td>Wet ruimtelijke ordening – Spatial Planning Act</td>
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<td>WRV</td>
<td>Weimarer Reichsverfassung – Weimar Reich Constitution</td>
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<tr>
<td>WStG</td>
<td>Wehrstrafgesetz – Military Criminal Code</td>
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<td>Wtt</td>
<td>Wet toezicht trustkantoren – Trust Offices (Supervision) Act</td>
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<td>ZfV</td>
<td>Zeitschrift für Verwaltung – Legal periodical</td>
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<tr>
<td>ZPO</td>
<td>Zivilprozessordnung – Code of Civil Procedure</td>
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