



UiO • Scandinavian Institute of Maritime Law
University of Oslo

Articulation between Article 25 Sanctions and Article 23 Penalties

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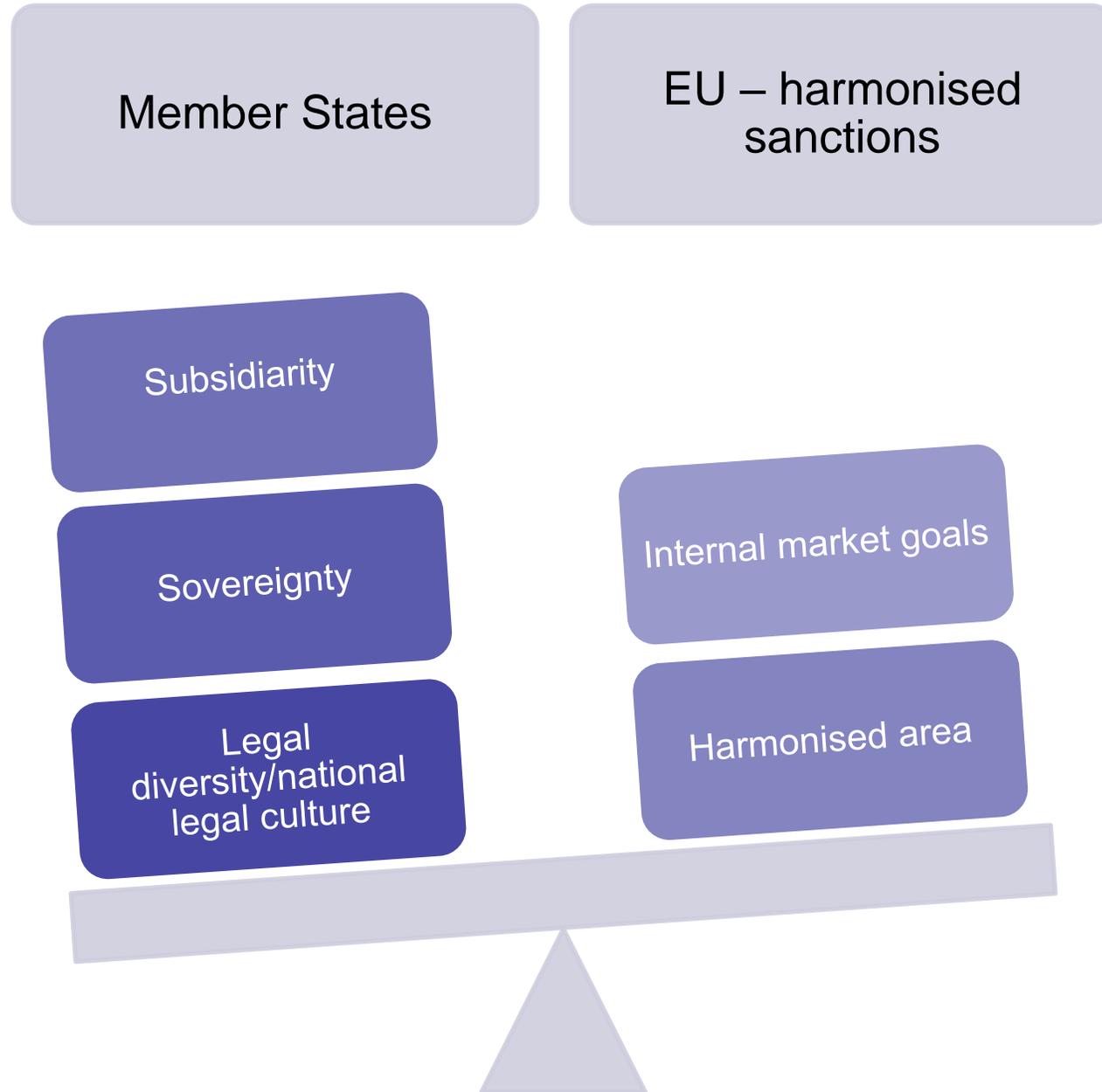
Article 23 FuelEU penalties

- 1. Before 1 May of the verification period, on the basis of the calculations undertaken pursuant to Article 16(4) and after possible application of Articles 20 and 21, the verifier shall record in the FuelEU database the verified compliance balances of the ship for GHG intensity as referred to in Article 4(2) and, if applicable, for the subtarget for RFNBO as referred to in Article 5(3). **If a ship has a compliance deficit for the subtarget for RFNBO as referred to in Article 5(3), the FuelEU penalty shall be calculated in accordance with the formula specified in Part B of Annex IV**
- [...]
- Recital 60: [non-compliant]ships should be subject to penalty that **has dissuasive effect, proportionate to the extent of non-compliance** and removes economic advantage of non-compliance
- **Article 24** Obligation to hold a valid FuelEU document of compliance

Article 25 Enforcement

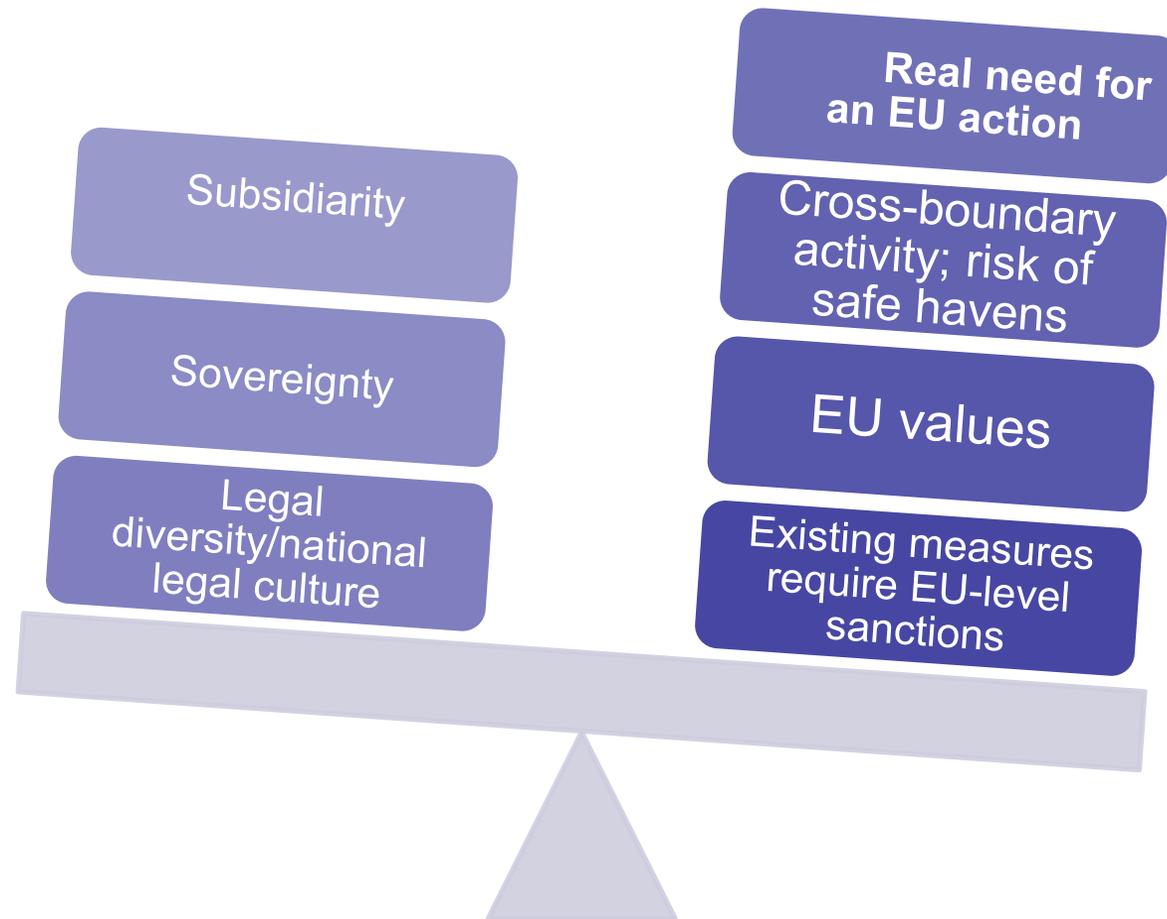
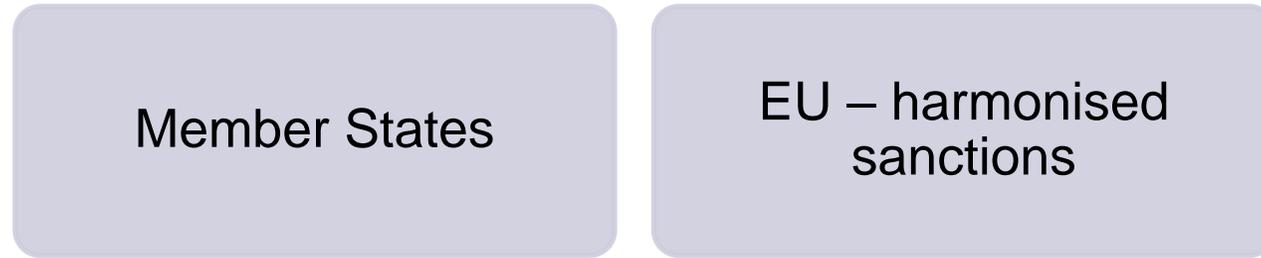
- 1. Member States **shall lay down the rules on sanctions applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive.** Member States shall notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.
- 3. Where a ship fails to comply with the obligation set out in Article 24 for two or more consecutive reporting periods, **and where other enforcement measures have failed to ensure compliance with this Regulation**, the competent authority of the Member State of the port of call may, in respect of a ship not flying the flag of that Member State and after giving the opportunity to the company concerned to submit its observations, issue an **expulsion order**. [...]

- Goals and approaches of EU law regarding public law sanctions
- The rationales and scopes of Arts 23 and 25: a comparison
- «Effective, proportionate and dissuasive sanctions» for infringements of FuelEU
- A brief appraisal of FuelEU sanctions in the context of EU maritime transport policy



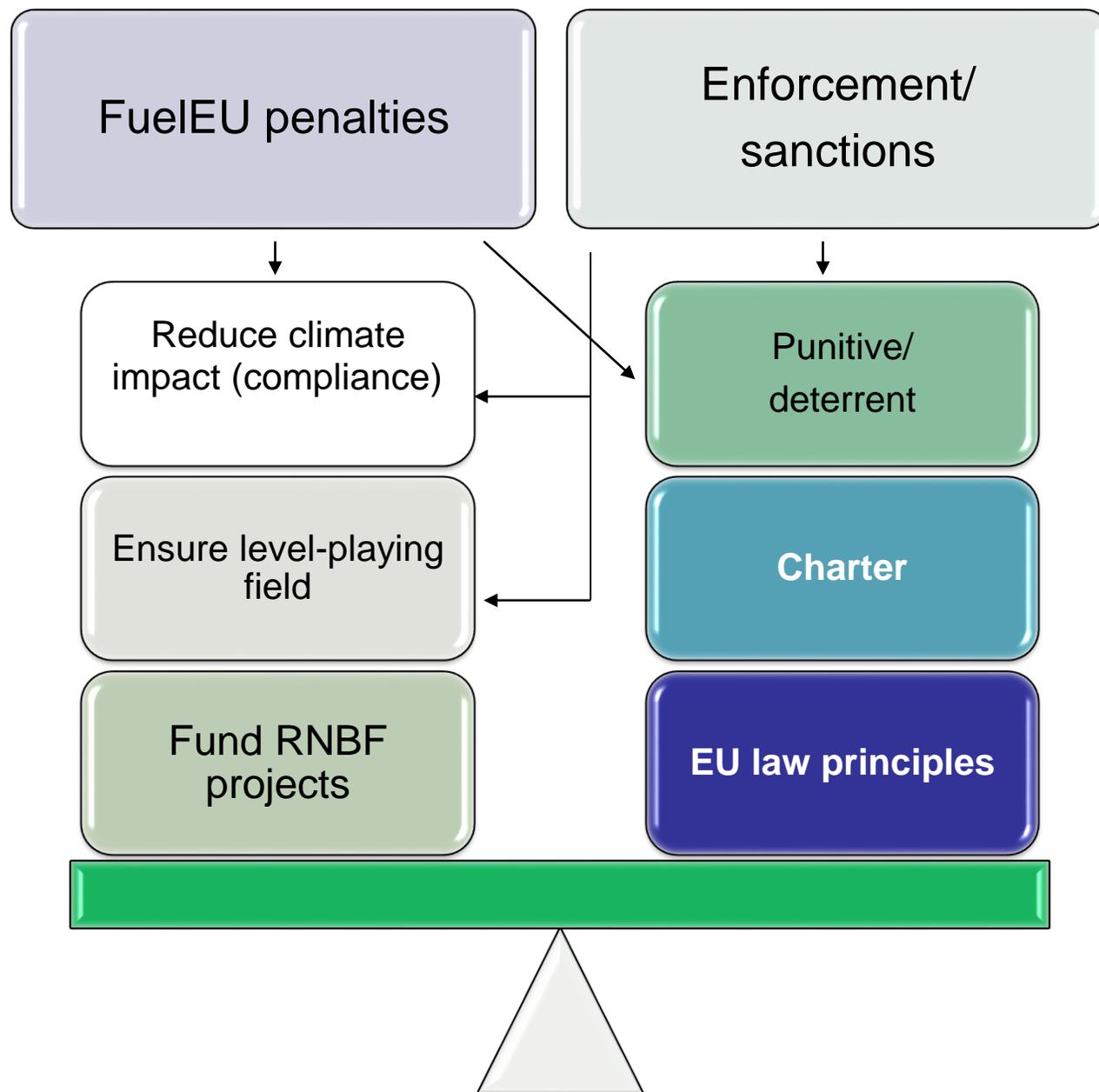
EU law approaches to criminal sanctions

- ‘Criminal’ sanctions
- Harmonize or not?(legal diversity or a common approach?)
- Relevance of EU law policies, provisions and principles



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The rationales and scopes of Arts 23 and 25: a comparison

- Reduce climate impact from shipping and ensure level-playing field
 - Encourage transition to RFNBOs
 - Compliance
-
- Financial incentive or deterrent & punitive goals (?)
 - The duty-holders under Arts 23 and 25
 - Who are the subjects of measures
 - What kind of measures/sanctions

- (66) Given the importance of consequences that the measures taken by the verifiers under this Regulation may have for the companies concerned, in particular regarding the determination of non-compliant port calls, calculation of the amounts of FuelEU penalties and refusal to issue a FuelEU document of compliance, those companies should be entitled to apply for a review of such measures to the competent authority of the Member State where the verifier was accredited. In light of the right to an effective remedy, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, decisions taken by the competent authorities under this Regulation should be subject to review by a court of the Member State of that competent authority, carried out in accordance with its national law.

Article 50 of EU Charter on the Right not to be tried or punished twice in the criminal proceedings for the same criminal offence

(64) Enforcement of the obligations relating to this Regulation should be based on existing instruments, including those established under Directives 2009/16/EC ⁽¹⁵⁾ and 2009/21/EC ⁽¹⁶⁾ of the European Parliament and of the Council. Additionally, Member States should lay down the rules on sanctions applicable to infringements of this Regulation. The sanctions provided for should be effective, proportionate and dissuasive. To avoid undue or double punishment for the same infringements, such sanctions should not duplicate the FuelEU penalties applied in a case where a ship has a compliance deficit or made non-compliant port calls. The document confirming compliance of the ship with the requirements of this Regulation should be added to the list of certificates and documents referred to in Annex IV to Directive 2009/16/EC.

⁽¹⁵⁾ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

⁽¹⁶⁾ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

«Effective, proportionate and dissuasive sanctions» for infringements of FuelEU Regulation

- Member States shall lay down the rules on sanctions applicable to infringements of this Regulation
- and shall take all measures necessary to ensure that they are implemented.
- The sanctions provided for shall be **effective, proportionate and dissuasive**
 - **NB.** Similar criteria for FuelEU penalty; recital 60

- In Case C-506/23,
 - ...in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by the rules imposed by the customs legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, **exercise that power in accordance with EU law and its general principles**, and consequently in accordance **with the principle of proportionality**.
 - the administrative measures or the measures imposing penalties permitted under the national legislation **must not go beyond what is necessary** in order to attain the objectives legitimately pursued by that legislation, and furthermore, they **must not be disproportionate to those objectives**

- Guidance from Commission

In case a ship does not hold a valid FuelEU Doc, **Member States can opt for sanctions such as:**

- A warning, both verbal and in writing
- A fine
- Flag detention
- Restricted access to ports
- Expulsion from ports

- A brief appraisal of FuelEU Arts 25 (and 23) on sanctions
- How to implement and apply sanctions under Article 25 in a way that achieves the desired outcomes and is consistent with EU law

- Thank you!

