LAW N. X – GENERAL NORMS ON ADMINISTRATIVE SANCTIONS

(11 July 2013)

THE PONTIFICAL COMMISSION FOR

THE VATICAN CITY STATE

- bearing in mind the *Fundamental Law of the Vatican City State* of 26 November 2000;

- bearing in mind the *Act on Sources of Law* of 1 October 2008, N. LXXI;

considering that

- article 7, paragraph 4 of the *Act on Sources of Law* of 1 October 2008, N. LXXI, foresees in general terms the category of administrative wrongdoings as follows: "*the administrative wrongdoings and the relative sanctions shall be governed by a specific Vatican law*";

- a general regulation on administrative liability and for the imposition of sanctions appears necessary in multiple areas of the Vatican legal system;

has promulgated the following

LAW

CHAPTER I

GENERAL PRINCIPLES

Article 1

(*Principle of legality*)

1. No one may be subject to an administrative sanction unless such sanction is established by a law in force before the wrongdoing is committed.

2. The laws that establish administrative sanctions shall be applied only to those cases and during the times envisioned in those same laws.

Article 2

(*Mental capacity*)

1. A person who, at the time of the commission of the offence, is under eighteen years of age or lacks mental capacity according to the criteria set forth

in the Criminal Code may not be subject to an administrative sanction unless his incapacity arises from his own fault or from a state that he himself had predetermined.

2. Except in the cases referred to in the last part of the previous paragraph, whoever is entrusted with the custody of the incapable person shall be held liable of that person's wrongdoings, unless he proves that he was unable to prevent the illicit acts.

Article 3

(*Subjective element*)

1. Regarding those wrongdoings punishable with an administrative sanction, each person is held liable for his own actions or omission, performed knowingly and intentionally, whether wrongfully or through negligence.

2. In case a violation is committed due to a factual error, the actor is not held liable if that error was not the result of his own negligence.

Article 4

(*Legal excuses*)

1. Whoever has committed an administrative wrongdoing in the fulfillment of a duty, in the exercise of a legitimate power, in a state of need or in self-defence is not held liable for that violation.

2. If the wrongdoing is committed pursuant to an order of a public authority, the official who has given the order is held liable for the violation.

Article 5

(*Participation*)

Whenever several persons participate jointly in the commission of an administrative wrongdoing, each one of them is held liable, unless otherwise provided by the law.

Article 6

(*Joint liability and liability of the legal persons*)

1. The owner of the goods that were used or that were intended to be used to perpetrate an administrative wrongdoing or, in his stead, their usufructuary or, if those goods were real estate, the holder of a personal right of enjoyment over

them, is held jointly liable with the author of the violation to the payment of the corresponding pecuniary sanction, unless he proves the said goods were used against his will.

2. If the violation is perpetrated by a person mentally capable but subject to the authority, control or custody of another person, whoever is entrusted with that authority, control or custody is held jointly liable with the author of the violation to the payment of the corresponding pecuniary sanction, unless he proves that he was unable to prevent the wrongdoing.

3. If the violation is perpetrated by the legal representative or an employee of a legal person or of an entity that conducts professionally a financial or economic activity in the exercise of his own functions or duties, the legal person, entity or professional is held jointly liable with the author of the violation to the payment of the corresponding pecuniary sanction.

4. A legal person is held directly liable for the administrative wrongdoings of its legal representatives and employees only when so established by the law. In those cases, the legal person is held liable for the wrongdoing even if the natural person responsible for the violation is not identified.

5. In the cases set forth in the preceding paragraphs, whoever pays the pecuniary sanction is entitled to recover the whole amount for the author of the violation.

Article 7

(*The non-transferability of the obligation*)

The duty to pay a pecuniary sanction for an administrative wrongdoing is not transferred to the heirs.

Article 8

(*Violation of more than one norm whose violation is punishable with an administrative sanction*)

Unless otherwise provided by the law, whoever, with a single act or omission, violates more than one norm whose violation is punishable with an administrative sanction or violates the same norm several times, is punished with the sanction fitting the gravest violations, multiplied up to three times.

Article 9

(*Principle of speciality*)

When the same acts are punishable under a criminal norm and under a norm providing for an administrative sanction, or by several norms providing for administrative sanctions, the provision best fitting the facts is applied.

Article 10

(*Competent authority and delegation of powers*)

1. Unless otherwise provided by the law, the President of the Governorate is the competent authority to impose administrative sanctions.

2. The President of the Governorate may delegate his power to impose sanctions to the Secretary General of the Governorate.

3. The delegation of powers may be:

a) general, that is, for all kinds of administrative violations;

b) for a predetermined category of administrative violations;

c) for one or more predetermined violations.

Article 11

(*Kinds of administrative sanctions*)

1. The law shall determine which administrative sanctions are to be imposed in case an administrative wrongdoing is proved.

2. Without prejudice to further kinds of sanctions, the laws may punish administrative wrongdoings with the following sanctions:

a) pecuniary sanctions, consisting in the payment of a certain sum of money;

b) the temporary or permanent interdiction from the exercise of a certain activity;

c) the temporary or permanent interdiction from holding a managerial position in legal persons;

d) the removal from a managerial position in a legal person;

e) the limiting of the powers inherent to a managerial position in a legal person;

f) the suspension or withdrawal of an authorization, license or concession;

g) the interdiction from entering into public contracts;

h) the confiscation;

i) the publication of the decision imposing an administrative sanction.

3. In determining the amount or the duration of an administrative sanction set forth by the law within a certain range, due consideration is given to the seriousness of the offence and to the activities undertaken by the responsible natural or legal person to remove or to lessen the consequences of the wrongdoing and to prevent the commission of further offences, as well as to the financial and patrimonial condition of the natural or legal person in question.

4. If the law does not pre-establish the amount of the pecuniary sanction, it shall be fixed within a minimum of 100 euro and a maximum of 5,000 euro, having due consideration of the criteria set forth in the preceding paragraph.

5. Without prejudice to any different limits set forth by the law, the sanctions referred to in paragraph 1, letters b), c), d) and e), shall last no less than six months nor more than three years.

6. The publication of the decision imposing an administrative sanction is made by affixing the text of the decision at the entrance of the offices of the Governorate, at the *Cortile di San Damaso* and at the Post Offices of the State.

Article 12

(*Scope of the law*)

1. The provisions of this law shall be observed, as applicable and unless otherwise provided, in all cases where the law provides for the imposition of administrative sanctions.

2. The provisions of this law do not apply to disciplinary sanctions in the context of an employment relationship.

CHAPTER II

IMPOSITION OF THE SANCTION

Article 13

(*Investigation and verification*)

The organs entrusted with ensuring the observance of the norms for whose violation an administrative sanction is foreseen shall collect information, conduct inspections of goods and places, excluding private domiciles, and gather evidence through descriptions, photographs and any other technical means with a view to verifying the fact of the wrongdoing within their competence.

Article 14

(*Notice and notification*)

1. The wrongdoer as well as the natural or legal persons that may be held jointly liable with him to the payment of the pecuniary sanction due to the violation itself, shall be given notice, as far as possible, of the fact of the violation.

2. When it is not possible to give immediate notice of the violation to all or to some of the persons referred to in the preceding paragraph, the details of the violation shall be notified within 90 days from the date the violation is verified to those residing or with domicile in the territory of the State and, within 360 days, to those residing abroad.

3. When the documentation relative to the violation is received by the competent authority from the judicial authority, the time-limits set forth in the preceding paragraph shall be counted from the date of reception of the documentation.

4. The form of the notification follows the provisions of the laws in force. In all cases, the notification may be executed, in the manner set forth by the Civil Code, even by a functionary of the Governorate.

5. When the person to be notified resides or has his domicile abroad, the notification may be executed through the Postal Service with a registered letter with return receipt. The notification is also deemed valid if the notice is delivered to a member of the family of the destinatary that lives even temporarily with him, to a person that works in his house, to a person who works for the addressee, or to the concierge of the building.

6. Those whose residence or domicile is unknown are notified by affixing a notice at the entrance of the offices of the Governorate and at the Post Offices of the State.

7. The documents relative to the administrative proceedings are notified to legal persons through their legal representative in the form and within the time-limits set in the preceding paragraphs.

8. The duty to pay a pecuniary sanction ceases for those persons who are not notified within the prescribed time-limits.

Article 15

(*Duty to report*)

The official who has verified the commission of a violation shall transmit a report, together with the evidence of the notices or notifications made, to the authority competent to issue the sanctioning decree.

Article 16

(*The decree*)

1. Within 30 days of receiving notice or notification of the violation, the interested parties may present defensive briefs and documents to the authority competent to receive the reports referred to in article 15 and they may request to be heard by the same authority.

2. If the competent authority, having heard the parties that have requested so and having examined the documents received as well as the defensive arguments contained in the briefs, deems proven the violation, it issues a motivated decree imposing the administrative sanction and ordering the author of the wrongdoing, as well as those jointly liable, to pay the pecuniary sanction and the procedural expenses. Otherwise, it issues a motivated decree ordering the conclusion of the proceedings and notifies it to the organ that has made the report.

3. The decree shall order the restitution, after the administration expenses are paid, of the seized goods whose confiscation is not ordered in the same decision. Unless their confiscation is not mandatory, the restitution of the seized goods is ordered also in the decree deciding the conclusion of the proceedings.

4. The payment of a pecuniary sanction and of the procedural expenses is made by a deposit with the Governorate within 30 days from the notification of the said decree, effected pursuant to the forms established in article 14.

5. If the interested party resides abroad, the payment is due within 60 days.

6. The sanctioning decree itself shall be enforceable. However, a decree ordering a confiscation shall become executive: at the end of the time-limit to appeal, or, if an appeal is made, when the judgment that affirms that decree becomes *res judicata*, or when the decision which declares inadmissible the appeal or which confirms the appealed decree becomes unchallengeable, or when the appeal against such a decision is declared inadmissible.

Article 17

(*Seizure*)

1. When goods have been seized, those having a legal interest may appeal, even immediately, to the authority referred to in article 16, paragraph 1. A motivated decision on the appeal shall be issued within 120 days from the proposition of the appeal. If the appeal is not rejected within that time period, the request is deemed granted.

2. With the exception of those goods whose confiscation is mandatory, the competent authority may order the restitution of the seized goods, even before the administrative proceedings are concluded, to whoever is entitled to their restitution and makes a request, and after the administration expenses are paid.

3. When the appeal against the seizure is rejected, that seizure ceases its effects if no sanction is imposed, or if the confiscation is not ordered, within 2 months from the date on which the report has been received and, in any case, within 6 months from the date of its execution.

Article 18

(*Confiscation*)

1. The authority competent to issue a sanctioning decree may order the administrative confiscation of the goods that were used or that were intended to be used to perpetrate the wrongdoing and it shall order the confiscation of its proceeds, profits, value and other benefits, insofar as those goods are owned by one of the sanctioned persons.

2. The confiscation of the goods whose manufacture, use, transport, possession or sale constitutes an administrative wrongdoing is ordered always, even if no sanction is imposed.

3. The provision set forth in the preceding paragraph does not apply if the goods in question are owned by a bona fides third party not related to the administrative wrongdoing and if their manufacture, use, transport, possession

or sale may be approved through an administrative authorization.

4. The confiscated goods are acquired by the Holy See.

CHAPTER III

APPEAL AGAINST THE SANCTION

Article 19

(*Appeal against the decision*)

1. Within 30 days from the notification of the decision, the persons interested may challenge before the single judge the decree that imposes a sanction as well as the decree that orders only the confiscation.

2. If the amount of a pecuniary sanction against a natural person is equal or superior to 100,000 euro or, in the case of a legal person, it is equal or superior to 250,000 euro, the challenge is presented before the tribunal.

3. If the interested person resides abroad, the time-limit for the challenge shall be of 60 days.

4. The legal challenge is proposed through a written appeal, to which a copy of the notified decree is attached.

5. The challenge suspends the execution of the sanctioning decree, unless some grave reasons or the manifest lack of grounds of the appeal induce the judge, even *ex officio*, to order otherwise with an unchallengeable decree.

Article 20

(*Appeal proceedings*)

1. The judge shall declare inadmissible any appeal proposed after the end of the time-limit set forth in article 19, paragraph 1. Such a decision may be challenged before the court of cassation.

2. If the appeal is duly proposed within the time-limit, the judge issues a decree, annexed to the text of the appeal itself, establishing the date of hearing and inviting the authority who has issued the challenged decision to deposit at the tribunal's office, at least ten days before the hearing, a copy of the report and of the verifying documents as well as copy of the notice or notification of the violation. The chancery shall notify the appeal and the decree to the appellant and to his legal representative, if so required, as well as to the authority that has issued the sanctioning decision. The appeal and the judge's

decree are deemed notified if there is written evidence that they are known to the parties.

3. The date of the notification and the date of the hearing shall respect the time-frame established by the Code of Civil Procedure.

4. The appellant and the authority that has issued the sanctioning decree may appear in person before the court. The authority may also be represented by officials specifically deputized to do so.

5. If, in the absence of a legitimate obstacle, neither the appellant nor his representative appears before the court, the judge shall confirm, with a challengeable decree, the appealed decision and shall condemn the appellant to pay the procedural expenses, including those arising after the appeal.

6. In the course of the proceedings, the judge may require, even *ex officio*, the production of any evidence that he deems necessary and he may summon witnesses even without previous indication of the facts regarding which those witnesses are to be examined.

7. As soon as the investigatory phase is concluded, the judge shall invite the parties to present their concluding arguments and, in the same hearing, he shall proceed to decide the case by reading his ruling. Nonetheless, if necessary, the judge may grant the parties no more than 10 days after the concluding arguments for them to present written defences. In such an event, the judge shall defer deciding on the case and delivering his decision to a hearing to be held immediately at the end of that time-limit.

8. The judge may also deliver and read out the grounds for his decision together with his ruling, which are to be deposited immediately at the tribunal's office. Otherwise, the grounds for the decision are to be deposited there within 90 days from the date of the ruling.

9. The judge shall order *ex officio* all required notifications and communications.

10. In his judgment, the judge may reject the appeal, ordering the appellant to pay the procedural expenses, or he may grant the appeal, voiding, in part or in whole, the sanctioning decree or modifying its terms, including by reducing the amount of the pecuniary sanction.

CHAPTER VI

FINAL PROVISIONS

Article 21

(*Payment of the pecuniary sanction in instalments*)

1. Upon request of any interested party in a compromised economic situation, the judicial or administrative authority that has imposed a pecuniary sanction may order that the payment be made in between three to thirty monthly instalments. No instalment should be of less than 30 euro. At any time, the debt may be cancelled with a single payment in full.

2. If even one instalment is not paid within the date established by the judicial or administrative authority, the debtor is bound to pay the remaining amount in only one instalment.

Article 22

(*Enforcing the execution*)

1. If the payment is not made in due time, the authority that has issued the sanctioning decree shall proceed to the recovery of the amount due pursuant to the norms for the enforcement of judgments, on the basis of the title for enforcement provided by the decree itself.

2. If the subject resides or has his legal domicile abroad, the authority may request the confirmation of the sanctioning decree to the tribunal.

3. Such procedure shall observe the norms governing the closed sessions' proceedings, without convening the interested party but with the mandatory participation of the Promoter of Justice.

4. The tribunal, having verified the formal validity of the sanctioning decree shall deliver a decree ordering the execution of the pecuniary sanction.

Article 23

(*Prescription*)

1. The right to collect the amounts due by the way of an administrative sanction referred to in this law prescribes five years from the day when the violation occurred.

2. Such prescription may be interrupted in accordance with the provisions of the Civil Code.

Article 24

(*Acquisition of the proceeds*)

The proceeds from the payment of the sanctions are acquired by the Holy See.

Article 25

(*Amendments and abrogation*)

1. In article 3, paragraph 3, of Law N. CCCLXXXII, of 14 June 2002, which bans smoking, the words "*At the end of such time, the written report of the wrongdoing is sent to the single judge*" are replaced by the following: *At the end of such time, the written report of the wrongdoing is sent to the authority competent to issue the sanctioning decree*".

2. Article 4 of Law N. CCCLXXXII, of 14 June 2002, which bans smoking, is abrogated.

Article 26

(*Entry into force*)

This Law shall enter into force on **1 September 2013**.

The text of this Law has been submitted to the consideration of the Roman Pontiff on 1 July 2013.

The original of this Law, provided with the State seal, shall be deposited in the Archives of the Laws of Vatican City State and the relevant text shall be published in the Supplement of the Acta Apostolicae Sedis*, as well as by affixing it at the* Cortile di San Damaso*, the entrance of the offices of the Governorate and the Post Offices of the State, with the order that all those who are concerned observe it and ensure its observance.*

Vatican City State, 11 July 2013

GIUSEPPE Card. BERTELLO

President

Seen

Secretary General