



Administrative Law and Procedures
On-line Classroom,
9 December 2020

*Basic principles of administrative procedure
according to EU law and their
influence on national administrative procedural laws*
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Outline

1. The EU legal order and the principles of European administrative law
2. Principles of EU administrative procedure applicable to EU institutions (and their possible codification)
3. The influence of EU law on the national administrative law and procedure

Principles of EU and national administrative law

Principles of EU law

Principles:

- EU (formerly EC) principles concerning EU administration
- National principles concerning national administrations
- EU principles concerning national administrations
- National principles recognized by EU law and applied by the EU administration

Principles of EU law

Sources:

- EU law (Treaties + sectorial secondary legislation)
- National principles considered as general principles of EU law
- EU case law

- CoE Handbook *“The administration and you. Principles of administrative law concerning the relations between administrative authorities and private persons”* (1996)
- EU Ombudsman Code of good administration

- ReNEUAL model rules on EU administrative procedure
- European Parliament resolution of 9 June 2016 *for an open, efficient and independent European Union administration* (2016/2610(RSP))

Basic principles of EU administrative law that will be examined:

- principles of EU administrative procedure
- principles to be codified in the proposed Regulation on the Administrative Procedure of the European Union's institutions, bodies offices and agencies
- influence of EU principles on national procedures



Principles of EU law

Principles of EU (administrative) law

The EC/EU legal order

Main general principles of the EU legal order

- principle of supremacy of EU law
- principles of direct applicability and direct effect
- prohibition of discrimination on grounds of nationality

The EC/EU legal order

The principles of the EU legal order

*“The conclusion to be drawn from this is that the Community constitutes a **new legal order of international law** for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals . Independently of the legislation of Member States, Community law therefore **not only imposes obligations on individuals** but is also intended **to confer upon them rights which become part of their legal heritage**. These rights arise not only where they are expressly granted by the Treaty, but **also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community**” (European Court of Justice - ECJ, judgment of 5 February 1963, **van Gend & Loos, case 26-62**)*

Principles of EU law

Principles of EU administrative law: some examples

The three “umbrella principles”:

- rule of law (art. 2 TEU)
- right to good administration (art. 41 Charter)
- principle of sincere cooperation (art. 4.3 TEU)

Other principles:

- subsidiarity
- non discrimination
- judicial reviewability
- proportionality
- duty to give reasons
- transparency and access to acts
- etc. etc.

The principle of non discrimination

Article 12 TEC (now art. 18 TFEU)

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination.

Art. 10 TEU

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The principle of non discrimination

Article 21 (“Non-discrimination”) of the Charter of fundamental rights of the European Union

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

The principle of good administration

Three meanings of the principle:

- efficient and effective use of EC economic resources
- duty to use the authoritative powers according to the procedural rules established by EC law
- prohibition of maladministration (cf. Ombudsman)

POLL

In your country is the principle of “good administration” legally binding?

1. Yes and it is defined by the Constitution
2. Yes and it is defined by legislation
3. Yes and it is defined by case law
4. No

The principle of good administration

Definition given by the Ombudsman in the 1995

Report:

«Clearly, there is maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and Court of First Instance».

Definition given by the Ombudsman in the 1997

Report:

«Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it»

The principle of good administration

Article 41 (“Right to good administration”) of the Charter of fundamental rights of the European Union

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

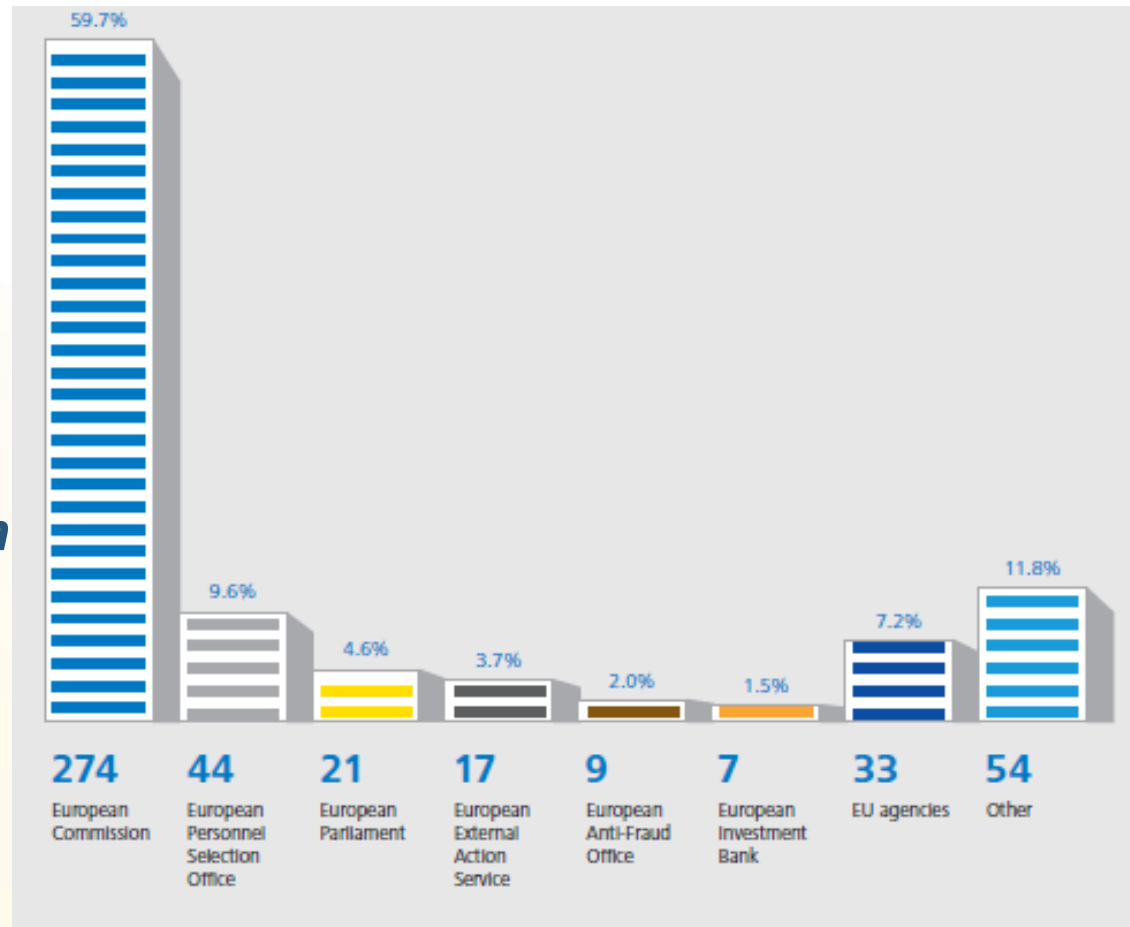
Principles of EU law

The European Code of Good Administrative Behaviour

- drafted by the Ombudsman and approved by the EP on 6 September 2001
- scope and function
- personal and material scope of application
- principles of good administration
- the right to complain to the European Ombudsman
- <http://www.ombudsman.europa.eu/en/resources/code.faces#/page/1>

The principle of good administration

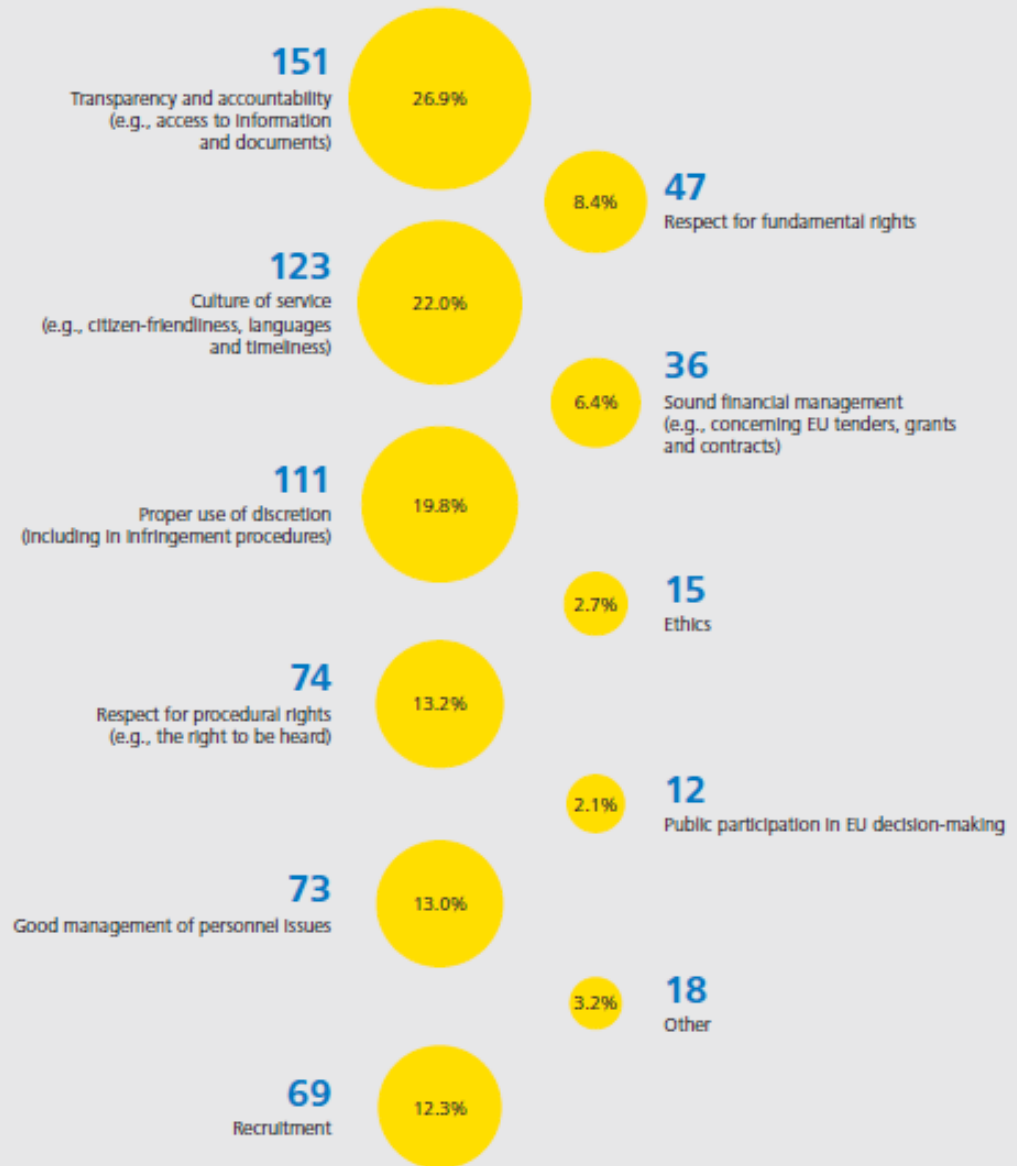
Data on maladministration (from *European Ombudsman Annual Report 2019* of 4 May 2020)



Principles of EU law

Data on maladministration (from *European Ombudsman Annual Report 2019*)

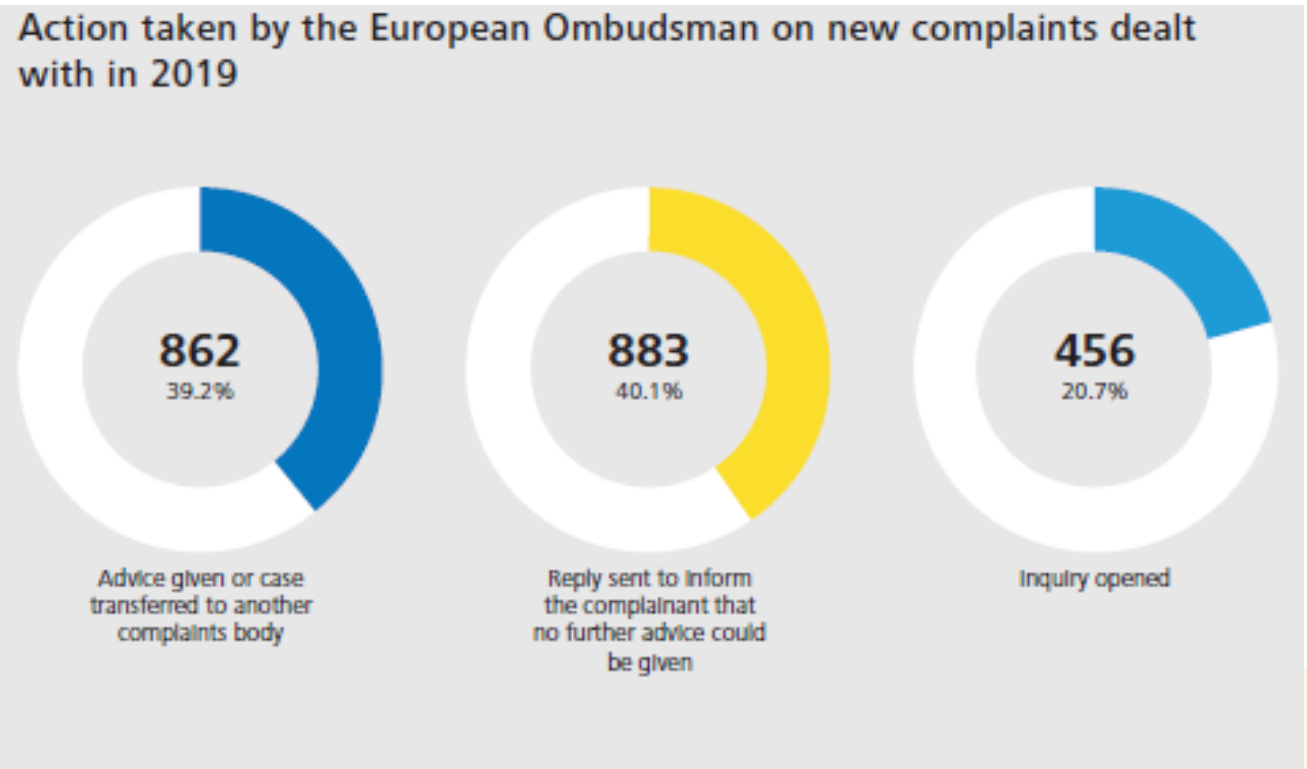
Subject matter of inquiries closed by the European Ombudsman in 2019



Note: In some cases, the Ombudsman closed inquiries with two or more subject matters. The above percentages therefore total more than 100%.

Principles of EU law

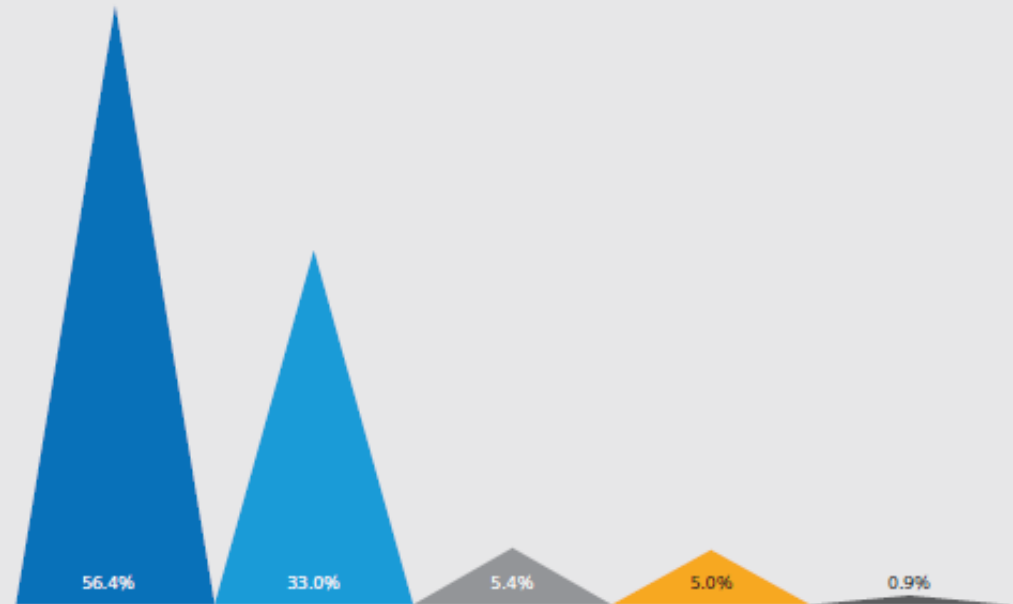
Data on maladministration (from *European Ombudsman Annual Report 2019*)



Principles of EU law

Data on maladministration (from *European Ombudsman Annual Report 2019*)

Results of inquiries closed by the European Ombudsman in 2019



316 No maladministration found

187 Settled by the Institution, solutions achieved, solutions partly achieved

30 No further inquiries justified

29 Maladministration found, recommendation agreed or partly agreed

5 other

Principles of EU law

ACCESS TO DOCUMENTS

Development of the principle of access to documents:

- Secondary legislation: Council Decision n. 93/731/EC of 20 December 1993; Commission Decision n. 94/90/ECSC/EC/Euratom; EP Decision n. 97/632/EC/ECSC/Euratom of 10 July 1997 → Regulation (EC) n. 1049/2001 of 30 May 2001
- Case law: e.g. ECJ, 30 April 1996, *NL v. Council*, C-58/94; CFI, 19 July 1999, *Rothmans*, T-188/97; ECJ, 30 April 1996, *NL v. Council*, C-58/94; CFI, 5 March 1997, *WWF UK*, T-105/95; CFI; 19 July 1999, *Hautala*, T-14/98; CFI, 7 December 1999, *Interporc*, T-92/98; ECJ, 11 January 2000, C-174/98P & C-189/98P, *van der Wal*
- Primary legislation: art. 191A TEC (then art. 255 TEC) as introduced by the Amsterdam Treaty of 1997 → art. 15 TFEU

Principles of EU law

ACCESS TO DOCUMENTS

Art. 255 (former art. 191 A) TEC

«1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents»

Principles of EU law

Art 42 EU Charter (Right of access to documents)

«Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium»

Reg. (EC) n. 1049/2001 of EP and Council, of 30 May 2001, related to the access of the public to the documents of the EP, the Council and the Commission

Main issues:

- to whom is it addressed?
- field of application
- exceptions
- ... in particular: acts of third parties and the author's rule
- ... the acts of the MS
- the procedure

Administrative cooperation

The principle of loyal cooperation

Art. 10 (former art. 5) TEC (before Lisbon)

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

The application of the principle of loyal (sincere) cooperation:

- by national authorities: cf. judgments of ECJ of 10 April 1984, *Von Colson & Kamann*, case 14/83 (§ 26); and 8 October 1987, *Kolpinghuis Nijmegen*, case 80/86 (§ 12)
→ principle of conforming / loyal interpretation
- by European institutions in favor of national institutions: cf. judgment of 10 February 1983, *Luxemburg vs. Parliament*, case 230/81 (§ 38); order of 13 July 1990, *Zwartveld*, case C-2/88 (§ 17); and judgment of 6 December 1990, *Zwartveld*, case C-2/88
- reciprocal obligation: judgment of 22 October 2002, *Roquette Frères SA vs. Directeur général de la concurrence*, case C-94/00 (§§ 30-32 & 92-93)

The principle of loyal (sincere) cooperation

Art. 4, § 3, TEU (as modified by Lisbon Treaty)

“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

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 Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”

**The codification of the
administrative procedural
principles**

POLL

In your country is there a general code of administrative procedure?

- YES
- NO



Codification

DISCUSSION

WHY and WHY NOT a code of administrative procedure?



Most important documents:

- ReNEUAL model rules on EU administrative procedure (last update 2015)
→ <http://www.reneual.eu/>
- European Parliament resolution of 9 June 2016 *for an open, efficient and independent European Union administration (2016/2610(RSP))*
→ http://www.europarl.europa.eu/doceo/document/TA-8-2016-0279_EN.html

Codification

Main issues:

- Need of codification? The main problems:
 - ✓ currently only fragmented and sector-specific rules
 - ✓ case-to-case approach of the ECJ
 - ✓ Commission position: a binding EU Law on Administrative Procedure might be largely detrimental for the administration, as it would bring excessive rigidity and slow down decision-making
 - ✓ more than 2/3 of MS have adopted a general law on administrative procedure (e.g. Italy in 1990; France in 2015. Cf. *APA* (USA) of 1946)
 - ✓ must balance between effective administration and protection of individual rights

- References:
 - ✓ Art. 41 Charter and art. 298 TFEU

- How to codify procedural principles?
 - ✓ ReNEUAL proposal to codify principles in the “recitals” of the directive

Application of proposed codification:

ReNEUAL proposed rules are applicable to:

✓ European administration (art. I-1):

«(1) These model rules are applicable to all EU authorities when they are implementing Union law through administrative action.

(2) These model rules do not apply to Member State authorities unless sector-specific EU law renders them applicable.

(3) The model rules of Books V and VI are applicable to Member State authorities as defined in Articles V-1 and VI-1»

✓ Member States authorities only in case of composite procedures: art. III-24(4)(5)(6)

Application of proposed codification:

European Parliament resolution of 9 June 2016 (art. 2):

«1. This Regulation applies to the administrative activities of the Union's institutions, bodies, offices and agencies.

2. This Regulation shall not apply to the activities of the Union's administration in the course of:

- (a) legislative procedures;
- (b) judicial proceedings;
- (c) procedures leading to the adoption of non-legislative acts directly based on the Treaties, delegated acts or implementing acts.

3. This Regulation shall not apply to the administration of the Member States»

Art. 298 TFEU

“1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.

2. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.”

Codification

European Parliament resolution of 9 June 2016 *for an open, efficient and independent European Union administration* (2016/2610(RSP))

- ✓ principle of the rule of law (art. 2 TEU)
- ✓ principle of proportionality
- ✓ right to good administration (--> impartiality, fairness and timeliness)
- ✓ duty to notify any decision to initiate an administrative procedure
- ✓ duty to acknowledge receipt of the application in writing)
- ✓ duty to initiate an administrative procedure within a reasonable time
- ✓ duty of care
- ✓ duty of the parties to cooperate with the Union's administration, during the investigation
- ✓ right to be treated impartially by the Union's administration
- ✓ right to be heard
- ✓ right of a party to the administrative procedure to have access to its own file
- ✓ adoption of administrative acts within a reasonable time-limit
- ✓ duty on the Union's administration to state clearly the reasons on which its administrative acts are based
- ✓ right to an effective remedy: neither the Union nor Member States can render virtually impossible or excessively difficult the exercise of rights conferred by Union law
- ✓ the Union's administration should indicate in its administrative acts the remedies that are available
- ✓ party's right to a judicial remedy
- ✓ parties to an administrative procedure should be able to clearly understand their rights and duties that derive from an administrative act addressed to them
- ✓ the Union's administration should ensure that clerical, arithmetic or similar errors in its administrative acts are corrected by the competent authority
- ✓ principle of legality: duty on the Union's administration to rectify or withdraw unlawful administrative acts.
- ✓ citizens' right to write to the Union's institutions, bodies, offices and agencies in one of the languages of the Treaties and to have an answer in the same language
- ✓ principle of transparency and the right of access to documents
- ✓ right to protection of personal data
- ✓ principle of protection of legitimate expectations
- ✓ principle of legal certainty

The Europeanisation of the basic notions and principles of administrative law

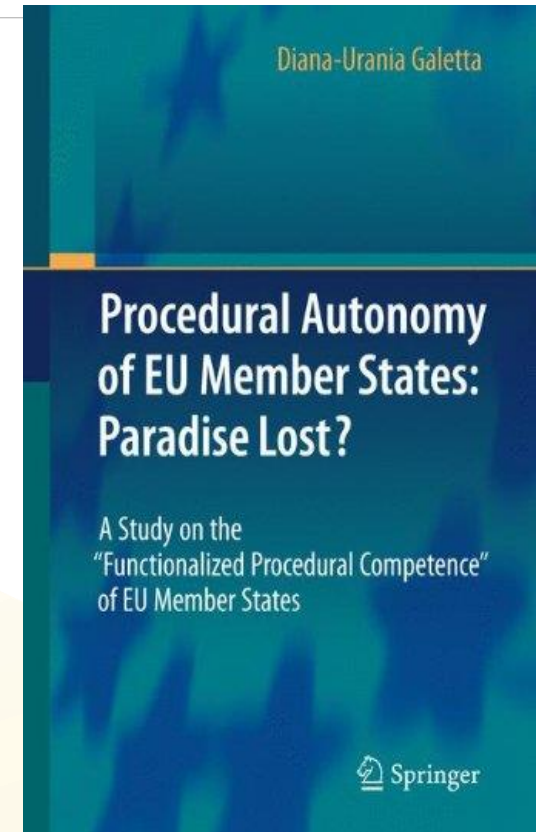
The reciprocal influence of principles of national and European administrative law

- EU principles concerning EU administration
- national principles concerning national administrations
- **EU principles concerning national administrations**
- **national principles recognized by EU law and applied by the EU administration**

The Europeanisation of the basic notions and principles of administrative law

From national procedural autonomy...

- *concerning both administrative procedure and judicial procedure*
- **“In the absence of Community rules on this subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of community law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature. the position would be different only if the conditions made it impossible in practice to exercise the rights which the national courts are obliged to protect” (Judgment of the Court of 16 December 1976, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*, Case 33-76).**



The Europeanisation of the basic notions and principles of administrative law

... to the influence of national procedural principles

➤ E.g.: **independence of the Central Banks:**

Art. 7 (Independence) of the Protocol (no 4) on the statute of the European System of Central Banks and of the European Central Bank

“In accordance with Article 130 of the Treaty on the Functioning of the European Union, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute, **neither the ECB, nor a national central bank, nor any member of their decision-making bodies** shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks”

The Europeanisation of the basic notions and principles of administrative law

... to the influence of national procedural principles

- E.g.: independence of the Central Banks: the problem of the dismissal of the Governor of the Bank of Italy in December 2005
- Afterwards: new legislation changed the term of appointment of the Governor from “office for life” to “6 years” term

The Europeanisation of the basic notions and principles of administrative law

... to the influence of national procedural principles

- E.g.: **European Structural and Investment Funds Regulations** → independence of certain national bodies
- Art. 123.4 of Reg. (EU) No 1303/2013 of 17 December 2013: “The Member State shall designate, for each operational programme, a national, regional or local public authority or body, **functionally independent from the managing authority and the certifying authority, as audit authority**. The same audit authority may be designated for more than one operational programme”.

The Europeanisation of the basic notions and principles of administrative law

POLL

Does EU law provide for a notion/definition of "public administration" to be applied at the national level?

YES

NO

The Europeanisation of the basic notions and principles of administrative law

The (partial) Europeanisation of the **notion of “public administration”**

- ❑ “functional” definition of “public administration”

- ❑ EU definitions to be applied at national level:
 - a) Economic/statistical definition for the application of the Maastricht parameters
 - b) For the application of the public procurement directives
 - c) For the derogation on the free movement of workers (in the public administrations)
 - d) For the direct “vertical” application of directives

The Europeanisation of the basic notions and principles of administrative law

Economic/statistical definition for the application of the Maastricht economic parameters

Article 126 TFEU (ex Article 104 TEC)

- “1. Member States shall avoid excessive government deficits.**
2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:
- (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:
- either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,
 - or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
- (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to the Treaties”.

The Europeanisation of the basic notions and principles of administrative law

Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union ["SEC 2010"]

General government (S.13)

2.111 Definition: the general government sector (S.13) consists of **institutional units** which are **non-market producers** whose **output is intended for individual and collective consumption**, and are **financed by compulsory payments** made by units belonging to other sectors, and institutional units **principally engaged in the redistribution** of national income and wealth.

The Europeanisation of the basic notions and principles of administrative law

3.17 Definition: **market output** consists of output that is disposed of on the market or intended to be disposed of on the market.

3.18 Market output includes:

- (a) **products sold at economically significant prices;**
- (b) products bartered;
- (c) products used for payments in kind (including compensation of employees in kind and mixed income in kind);
- (d) products supplied by one local KAU to another within the same institutional unit to be used as intermediate inputs or for final uses;
- (e) products added to the inventories of finished goods and work-in-progress intended for one or other of the above uses (including natural growth of animal and vegetable products and uncompleted structures for which the buyer is unknown).

The Europeanisation of the basic notions and principles of administrative law

3.19 Definition: **economically significant prices** are prices that have a substantial effect on the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire. Such prices arise when both of the following conditions apply:

- (a) the producer has an incentive to adjust supply either with the goal of making a profit in the long run or, at a minimum, covering capital and other costs; and
- (b) consumers have the freedom to purchase or not purchase and make the choice on the basis of the prices charged.

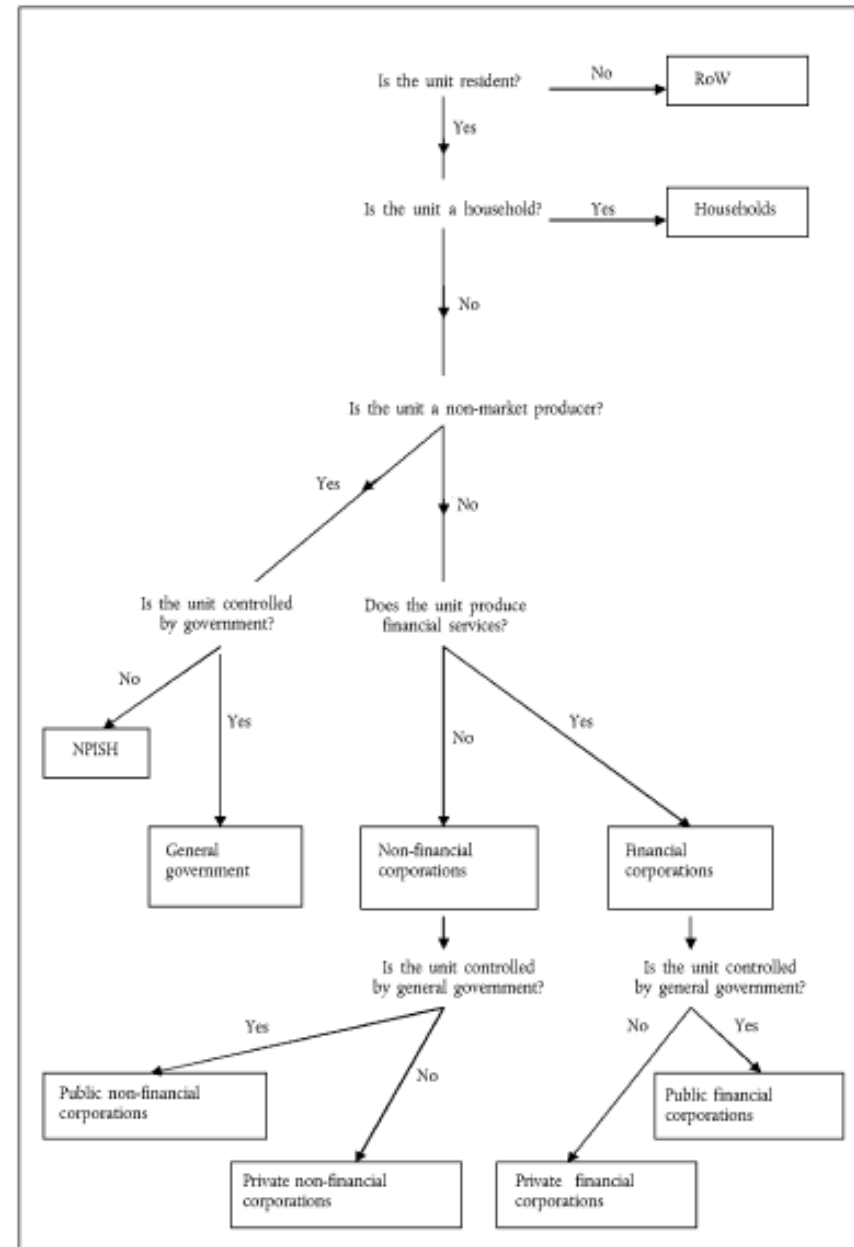
Not economically significant prices are likely to be charged in order to raise some revenue or achieve some reduction in the excess demand that may occur when services are provided completely free.

The economically significant price of a product is defined in relation to the institutional unit and local KAU that has produced the output. For example, all the output of unincorporated enterprises owned by households sold to other institutional units is sold at economically significant prices; it is thus to be regarded as market output. For the output of other institutional units, the ability to undertake a market activity at economically significant prices will be checked notably through a quantitative criterion (the **50 % criterion**), using the ratio of sales to production costs. To be a market producer, the unit shall cover at least 50 % of its costs by its sales over a sustained multi-year period.

The Europeanisation of the principles of administrative

Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union [“SEC 2010”]

Diagram 2.1 — Allocation of units to sectors



The Europeanisation of the basic notions and principles of administrative law

The dis-application of national law contrasting EU law

Judicial disapplication: Judgment of the Court of 9 March 1978, *Amministrazione delle Finanze dello Stato v Simmenthal SpA.*, Case 106/77

14. **Direct applicability** in such circumstances means that rules of community law must be fully and uniformly applied in all the member states from the date of their entry into force and for so long as they continue in force.

15. These provisions are therefore a **direct source of rights and duties** for all those affected thereby, whether Member States or individuals, who are parties to legal relationships under community law.

16 This consequence **also concerns any national court** whose task it is as an organ of a Member State to protect, in a case within its jurisdiction, the rights conferred upon individuals by community law.

17. Furthermore, in accordance with the principle of the **precedence of Community law**, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force **render automatically inapplicable any conflicting provision of current national law** but - in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States - **also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions.**

18. Indeed any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of community law had any legal effect **would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States** pursuant to the treaty and would thus imperil the very foundations of the community.

The Europeanisation of the basic notions and principles of administrative law

The dis-application of national law contrasting EU law

Judicial disapplication: Judgment of the Court of 9 March 1978, *Amministrazione delle Finanze dello Stato v Simmenthal SpA.*, Case 106/77

20. The **effectiveness** of that provision would be impaired if the national court were prevented from forthwith applying community law in accordance with the decision or the case-law of the Court.

21. It follows from the foregoing that **every national court must, in a case within its jurisdiction, apply community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the community rule.**

The Europeanisation of the basic notions and principles of administrative law

The dis-application of national law contrasting EU law

Disapplication from the public administration: Judgment of the Court of 22 June 1989, *Fratelli Costanzo SpA v Comune di Milano*, Case 103/88

29 In its judgments of 19 January 1982 in Case 8/81 *Becker v Finanzamt Muenster-Innenstadt* ((1982)) ECR 53, at p . 71 and 26 February 1986 in Case 152/84 *Marshall v Southampton and South-West Hampshire Area Health Authority* ((1986)) ECR 723, at p. 748) the Court held that **wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by an individual against the State** where that State has failed to implement the directive in national law by the end of the period prescribed or where it has failed to implement the Directive correctly .

30 It is important to note that the reason for which an individual may, in the circumstances described above, rely on the provisions of a directive in proceedings before the national courts is that the **obligations arising under those provisions are binding upon all the authorities of the Member States.**

The Europeanisation of the basic notions and principles of administrative law

The dis-application of national law contrasting EU law

Disapplication from the public administration: Judgment of the Court of 22 June 1989, *Fratelli Costanzo SpA v Comune di Milano*, Case 103/88

31. It would, moreover, be **contradictory** to rule that an individual may rely upon the provisions of a directive which fulfil the conditions defined above in proceedings **before the national courts** seeking an order against the **administrative authorities**, and yet to hold that those authorities are under no obligation to apply the provisions of the directive and refrain from applying provisions of national law which conflict with them. **It follows that when the conditions under which the Court has held that individuals may rely on the provisions of a directive before the national courts are met, all organs of the administration, including decentralized authorities such as municipalities, are obliged to apply those provisions.**

The Europeanisation of the basic notions and principles of administrative law

The reviewability of internal procedural acts

Judgment of the Court (Fifth Chamber) of 3 December 1992, *Oleificio Borelli SpA v Commission of the European Communities*, Case C-97/91

→ Action for the annulment of the Commission's decision refusing to grant aid from the EAGGF under Council Regulation (EEC) N° 355/77 - Withdrawal of approval by the Member State concerned - Claim for damages

The Europeanisation of the basic notions and principles of administrative law

The reviewability of internal procedural acts

Procedure under Reg. 355/77 (later repealed)



Procedure: mixed or composite (natl. → EU)

Problems:

- Act to be challenged
- Jurisdiction (MS or EU?)

The Europeanisation of the basic notions and principles of administrative law

The reviewability of internal procedural acts

Judgment of the Court (Fifth Chamber) of 3 December 1992, *Oleificio Borelli SpA v Commission of the European Communities*, Case C-97/91

9. It should be pointed out that in an action brought under Article 173 of the Treaty the **Court has no jurisdiction to rule on the lawfulness of a measure adopted by a national authority.**

10. That position **cannot be altered by the fact that the measure in question forms part of a Community decision-making procedure,** since it clearly follows from the division of powers in the field in question between the national authorities and the Community institutions that the measure adopted by the national authority is binding on the Community decision-taking authority and therefore determines the terms of the Community decision to be adopted.

13. Accordingly, it is **for the national courts,** where appropriate **after obtaining a preliminary ruling** from the Court, **to rule on the lawfulness of the national measure** at issue on the same terms on which they review any definitive measure adopted by the same national authority which is capable of adversely affecting third parties and, **consequently, to regard an action brought for that purpose as admissible even if the domestic rules of procedure do not provide for this in such a case.**

The Europeanisation of the basic notions and principles of administrative law

Action for damages
In the field of public contracts: in Italy, → damages also for breach of “legitimate interests”

Art. 2 of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

1. The **Member States shall ensure** that the measures taken concerning the review procedures specified in Article 1 include provision for the powers to:

(a) take, at the earliest opportunity and by way of interlocutory procedures, **interim measures**

(b) either **set aside** or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;

(c) **award damages** to persons harmed by an infringement.