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PART I

INTRODUCTION

This introductory Part provides certain conceptual and background material serving to answer the central questions as to the nature of European Union administration law, its relationship to the activities of the EU as a whole, and more specifically its relationship to the overall legal framework of those activities. In offering these preliminary general reflections on European administrative law, Part I thus provides an outline of the broader setting in which the administrative law of the EU needs to be considered.

Chapter 1 begins this scene-setting by presenting an idea of the EU administration itself, based on a consideration of different models which allows us to view EU administrative law from three different, but related perspectives, namely functional, organizational, and procedural. In Chapter 3 we view the subject of EU administrative law from perspectives outside of the law itself, by taking into account certain interdisciplinary foundations of both European public administration and the legal framework in which it operates. Because administrative law must been seen primarily as an instrument for enabling—and constraining—the administrative conduct, Chapter 4 concludes this Part by offering a typology of the administrative tasks undertaken in the EU. This typology acts in a number of ways as a key to the specific form and content which this body of law has assumed, or indeed may need to assume.

Part I, in providing the overall setting of EU administrative law, also addresses (in Chapter 2) the approach taken to the subject itself in this book, both in terms of the purposes of this treatment and the way in which we proceed throughout.

1

The Idea of European Union Administration—Its Nature and Development

The European Union is a union under the rule of law[1] and accordingly all exercise of public authority needs to conform with the principle of legality. The legal framework of the EU is, however, as much as that of any state or international organization, subject to change over time. That part of this legal framework specifically governing EU administration has been particularly dynamic.[2] The central reason for this dynamism is to be found in the evolving nature of European integration, and in the changing requirements and conditions for implementing EU policies. The legal framework of administration has been both the subject of, and a response to, change in the ambient political and institutional environment. The EU, having started as an organization of six Member States focused on economic integration, has evolved into a Union of 27 Member States now touching almost all elements of the exercise of public power in a modern society. The evolutionary development of the constitutional basis of EU law, with its many phases of Treaty reforms and change induced by case law, finds its parallel in EU administrative law. European administrative law has in this process grown, changed, and indeed matured over time, and has emerged as an important, yet sometimes not well understood, factor which materially shapes policy in the EU and its achievement in reality.

The rise of the importance of EU administrative law is itself attributable both to the specificities of European integration and to the general increase in the importance of administrative regulation in the past decades.[3] On the one hand, the protection of society against risks associated with private activity such as banking, food production, energy production and distribution, transport, or activities threatening to the environment, to name just a few, and the achievement of a balance between their benefits and dangers have become increasingly important subjects of attention. On the other hand, the provision of services and infrastructure necessary to ensure and protect basic standards of living such as pensions, health care, access to water, energy supply, and telecommunications services have been the subject of mixed regimes, often still having a strong public service element, but increasingly left to private

[1] In Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, para 23, the ECJ famously stated that the European Community 'is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty'. The same holds true for the European Union. For the idea of integration through law, bringing to the mainstream of legal research a view of the political, historic, and economic contexts of law, see Mauro Cappelletti, Monica Seccombe, and Joseph Weiler, *Integration through Law—Europe and the American Federal Experience, Vol 1–V* (Berlin: de Gruyter, 1986).

[2] Jean Paul Jaqué, *Droit institutionnel de l'Union européenne*, 4th edn (Paris: Dalloz-Sirey, 2006) 21–31.

[3] See, eg, Richard B Stewart, 'Administrative Law in the Twenty-First Century', *NYULRev.* 78 (2003) 437–60.

provision subject to various levels of market regulation. Both kinds of motivation for regulatory measures and their implementation by appropriate authorities have added to, and substantially changed, the broad character of public administration in Europe in recent decades. Such changes have occurred not just on a national, that is, Member State level, but also, pre-eminently, on the level of the European Community and now Union. Indeed, many of the changes have themselves been triggered on the European level as integral or at least adjuvant elements of the establishment of the European internal market. The role, then, of administrative law and administrative activity on the European level is extensive and important.

Rules and principles governing the exercise of administrative functions, the organization of the institutions and bodies exercising these functions, and applicable procedures are the essence of EU administrative law. These are the subject of this book. There are, it must be observed, many perspectives from which one can view, analyse, and comprehend both administration and administrative law. Three models or perspectives appear to us to be particularly helpful: administration and administrative law may be usefully considered from *functional, organizational*, and *procedural* standpoints. The functional aspect of administration refers to the totality of the *tasks* of administration, no matter who undertakes them and how they are carried out. The organizational perspective emphasizes the *organization and structure* of the institutions, bodies, and actors engaged in undertaking such tasks. Finally, a procedural understanding of administration observes the *processes* which link the various actors and authorities in the performance of administrative functions. None of these models standing alone provides a fully rounded understanding or conceptualization of the subject matter of the book. A proper analysis of EU administrative law cannot view it from only one of these perspectives. Taken together, however, these three standpoints do offer a comprehensive perception, giving the subject a more multidimensional shape, and thus allowing a more tractable presentation of what is very complex material. For this reason, we offer a discussion of each of these three perspectives—the functional, organizational, and procedural aspects of European Union administration and the associated legal framework—by way of introduction. The three models are, of course, closely interlinked and in reality scarcely separable but, for analytical and presentational clarity, they are here addressed separately.

A The functional understanding of EU administrative law—an historical reconstruction

The specific circumstances and conditioning of the functions of the EC/EU administration have gone hand in hand with the changing nature of the Union and its development hitherto. The expansion in the number and range of policy fields falling within the scope of European integration and a deepening level of harmonization of national law and practice has had an influence on the extent and nature of administrative functions.[4] The character of European administration is closely related, and

[4] Often one will find these considerations discussed in the literature in the context of the term, 'European administrative space' (Herwig CH Hofmann, 'Mapping the European Administrative Space', *WEP* 31 (2008) 662–76). This has been used to describe an increasing convergence of administrations and administrative practices on the EU level and various Member States' administrations to a 'common European model' (Johan P Olsen, 'Towards a European administrative space?', *JEPP* 10 (2003) 506–31 at 506) and the Europeanization of the Member States' administrative structures (Edward Page and Linda

the growth in its importance can be linked, to the gradual expansion of the *acquis communautaire*. Thus, a brief reconstruction of the development of supranational law and its relation to the notion of the territorially bound implementation of public policy contributes to explaining the function of administrative law on the European level.

1 The starting point

Administrative functions were once essentially national (or, indeed, at certain times and in certain places, purely local). Prior to the creation within the European Communities of a supranational system of shared sovereignty in pursuit of European integration, states were more or less unrestrictedly sovereign within their territories. Under the 'traditional' notion of territoriality, the *summa potestas* of a sovereign state was characterized by the dichotomy between the concentration of public power within its territory, on the one hand, and the external independence of the state, on the other.[5] In this regard, the principle of territoriality served two major functions in public law. As a general principle of public international law, it limited the right of a state to exercise its sovereign powers outside its borders, thereby significantly constraining the activity of one state on or within the territory of another. As a principle of the conflict of laws, it became a connecting factor for the applicability of public law to a particular factual situation.[6] Under this approach, the territorial state had the freedom to go as far as to claim applicability of its law under the principle of *quiquid est in territorio, est de territorio*. In this context, national administrations developed as state-specific structures. Their functions were determined on the basis of different identities, historic traditions of organization, and certain underlying values such as regionalization or centralized unification within a state.

The creation of the European Communities, with their supranational legal order, changed this radically. In particular, one of the most innovative consequences of the notion of shared sovereignty in a supranational legal system was the creation of an alternative to the traditional differentiation between internal functions of a state, expressed in national public law, and the external relations of the state conducted

Wouters, 'The Europeanization of the national bureaucracies?' in Jon Pierre (ed), *Bureaucracy in the Modern State* (Aldershot: Elgar, 2005) 185–204). It has also been used to describe the phenomenon of the coordinated implementation of EU law and the Europeanization of national administrative law (OECD-PUMA, 'Preparing Public Administration for the European Administrative Space', *OECD SIGMA Papers* 23 (Paris: OECD, 1998); Stefan Kadelbach, 'European Administrative Law and the Europeanised Administration' in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe's Integrated Market* (Oxford: Oxford University Press, 2002) 167–206). Whilst the former definition of the European administrative space as an object of research is so broad as to be difficult to define sufficiently precise parameters for analysis, the latter definition of the European administrative space is too narrow. Cooperation amongst administrations in the EU goes beyond forms of cooperation for implementation of EU law by Union institutions and Member States' agencies. It is marked by a high degree of close administrative cooperation between all levels of Member States' administrations with the European institutions and bodies in various policy phases.

[5] As a general principle of public international law, territoriality limited the right of a state to exercise its sovereign powers outside its borders, thereby limiting government activity on foreign territory. As a principle of conflicts, territoriality became a connecting point for the applicability of public law to a real-life situation. See Georg Ress, 'Souveränitätsverständnis in den Europäischen Gemeinschaften als Rechtsproblem' in Georg Ress (ed), *Souveränitätsverständnis in den Europäischen Gemeinschaften* (Baden-Baden: Nomos, 1980) 11–16.

[6] Thus being a principle of international public law as opposed to a principle of public international law.

within the framework of public international law. With increasing European integration, the distinction between the 'inner sphere' of a state and its 'outer sphere' became less precise and less prominent. Member States allowed public power to be exercised externally to their own territorial base and organization. This opening toward a supranational system led to an ever more strongly developing de-territorialization through the joint exercise of public power. What were, in formal terms, essentially closed systems of territorial states opened up through the emergence of a supranational legal order. This in turn had a great influence on the way in which administrative functions came to be exercised.

A reconstruction of this transformation in respect of its effect on the functions of European public administration is best achieved by looking at the successive phases of integration. Admittedly, using a phase-model is a simplification of the far more complex reality.[7] Nevertheless, it does provide useful insights since the evolution of EU administrative law has in fact taken place in distinct, albeit overlapping, developmental phases. Reviewing the evolution of European public administration through this lens is a powerful way of illustrating the shift in the parameters of the administratively directed exercise of public power in Europe.

2 The vertical relation

The first steps towards European integration in the 1950s were characterized by the pooling of certain regulatory powers concerning specific sectors of industry. The six founding Member States of the European Coal and Steel Community (ECSC) set up in 1951 a joint organization with a distinctively administrative character. They delegated clearly circumscribed regulatory powers in a limited policy area to an organizational structure having a strong technocratic executive, the High Authority, empowered to make delegated (administrative) rules and take single-case decisions.[8] The simultaneously established European Court of Justice (ECJ), located then in Villa Pescatore in Luxembourg, established a case law perceiving the ECSC as being of a distinctively administrative nature. It addressed the then unfamiliar legal problems which emerged mainly through the lens of the administrative law traditions common to the six founding Member States.[9] These judgments laid down a number of the foundations of the administrative law system of the later European Communities.[10]

[7] Joseph HH Weiler, 'The Transformation of Europe', *YaleLJ* 100 (1991) 2403–83; Francesca Bignami, 'Three Generations of Participation Rights before the European Commission', *L & Contemp. Probs.* 68 (2004) 61–84; Christian Joerges, 'The Legitimacy of Supranational Decision-Making', *JCMS* 44 (2006) 779–802.

[8] For a summary, see Mario P Chiti, 'Forms of Administrative Action', *L & Contemp. Probs.* 68 (2004) 37–60 at 38; Francesca Bignami, 'Foreword', *L & Contemp. Probs.* 68 (2004) 1–20.

[9] The ECJ case law relating to the ECSC acknowledged the essentially administrative nature of the ECSC and its acts, reviewing them by reference to criteria developed in national administrative law, interpreted mainly in the light of the French administrative tradition. These concepts included *inter alia* the presumption of validity, the consequences for illegality, and the conditions for revocation of administrative acts, as well as the distinction between the non-existence and the nullity of administrative acts and the conditions for and consequences of the revocation of administrative acts, such as liability. See Case 4/54 *ISA v High Authority* [1954–56] ECR 91; Case 8/55 *Fédération charbonnière de Belgique v ECSC High Authority* [1954–56] ECR 245; Joined Cases 7/56 & 3–7/57 *Algera and others v Common Assembly* [1957] ECR 39; Case 9/56 *Meroni v ECSC High Authority* [1957–58] ECR 133; Case 10/56 *Meroni v ECSC High Authority* [1957–58] ECR 157; Joined Cases 43, 45, & 48/59 *Von Lachmüller v Commission* [1960] ECR 463; Case 105/75 *Giuffrida v Council* [1976] ECR 1395.

[10] See, with further explanations, Mario P Chiti, 'Forms of Administrative Action', *L & Contemp. Probs.* 68 (2004) 37–60.

The establishment of the European Economic Community (EEC) in 1957 changed this logic fundamentally and led to a long phase which perceived European integration from a constitutional, rather than an administrative, point of view. The E(E)C Treaty, as *traité cadre*,[11]—a framework treaty—gave the Community institutions far reaching legislative powers not limited to specific economic sectors. While the ECSC was concerned with a more limited transfer of administrative tasks to the supranational level, the creation of the EEC witnessed a paradigmatic shift involving the delegation of legislative tasks to the European level.

The initial approach towards the creation of a supranational order was thus the delegation of sovereign powers from the Member States to the ECSC and the E(E)C.[12] Member States opened up their political and legal systems vertically to the exercise of these powers on the European level. The consequence of this delegation was articulated in no uncertain terms by the European Court, most notably in the cases of *Van Gend en Loos* and *Costa v ENEL*, which established the notions of both primacy and direct effect of EU law. The vertical opening of the national legal systems to European law meant that Community law became part of the Member States' 'legal heritage'. It had the ability to override Member States' law in cases of conflict, and it could develop under certain conditions direct effect within their territory.[13] In this context, it is important to recall that the pooling of sovereignty on the European level was acceptable to Member States *inter alia* because the product, Community law, was not completely alien to their national systems and, in the process, Member States' executives had become key figures in agenda setting, legislative procedures, and the creation of common rules for implementation.[14]

This type of 'vertical' opening of the Member States towards EU law through primacy and direct effect, however, did not yet call into question either the traditional model of territoriality or the national model of administration, nor the functions of either. The effects of the exercise of public power on the European level remained limited to the state in which the legal order was established and to the territorial reach of its sovereignty. The 'legal heritage', of which supranational law had become part, was still exercised exclusively within the territory of each individual Member State.

3 The horizontal relation

The second major development towards a genuinely European administrative space was the 'horizontal' opening of Member States' legal and political systems. The requirements of cultivating a single market in the Community without internal frontiers required a transformation of the strictly territorially organized structures. From the mid-1970s ECJ determinations increasingly focused on the mutual obligation of the Member States to recognize the administrative and legislative decisions of other Member States, especially when necessary to allow for the exercise of fundamental freedoms within the EC. The reasons for, and political context of,

[11] Unlike the ECSC, which had been understood as *traité loi* (a 'law-making treaty') with limited executive competences in a certain policy field.

[12] Joseph HH Weiler, 'The transformation of Europe', *YaleLJ* 100 (1991) 2403–83 at 2413–23.

[13] Case 26/62 *Van Gend en Loos v Administratie der Belastingen* [1963] ECR 1, paras 10, 12, 13; Case 6/64 *Costa v E.N.E.L* [1964] ECR 585, para 3. This was so declared irrespective of the nature of the law, whether primary (treaty) law, derived secondary law, or individual decisions of administrative nature.

[14] Joseph HH Weiler, 'The transformation of Europe', *YaleLJ* 100 (1991) 2403–83; Herwig CH Hofmann and Alexander H Türk (eds), *EU Administrative Governance* (Cheltenham: Elgar, 2006) 74–112.

this so called 'negative integration' have been discussed in the literature on the evolution of Community law.[15] In the context of the development of European administration, it is important to note that the requirement of mutual recognition arose parallel to the holding that the EC Treaty provisions, including those on the fundamental freedoms, could have a direct effect in the Member States and in some cases even be relied on between individuals, without the need for implementation through Community secondary legislation or the intervention of Member States. This being the case, individuals would necessarily be allowed to rely on the fundamental freedoms of the EC Treaty *vis-à-vis* other Member State administrations.[16] This horizontal opening is most closely associated with the *Cassis de Dijon* jurisprudence, which required Member States to recognize each others' regulatory decisions in structurally equivalent situations.[17] National administrative and legislative decisions, through mutual recognition, could establish effects beyond the territorial reach of the issuing Member State. They thus had 'transterritorial' effect throughout the EC. By these means, EC law required Member States' public law to penetrate the boundary of the classical territorial reach of the legal system of the country of origin. The corollary of this effect was that Member State administrations were now also obliged not only to take into account the national effect of their decisions, but also to take into account the common Community good. The conditions for the exercise of administrative functions thereby changed significantly.[18] EC administrative law was thus born primarily as the law governing the exercise of the fundamental freedoms of EC law in the context of the creation of a single market.

4 Developing integrated administration in the EU

The third major development changing the conditions of a modern public administration in the EU was the move towards what we would describe as an 'integrated administration' in Europe. This has constituted an important shift in the legal and political environment of European administrative law. This development began with the need to address the requirements of horizontal cooperation between administrations arising from the creation of the single market. This led to the creation of obligations such as that of providing mutual administrative assistance.[19] For the

[15] See especially Joseph HH Weiler, 'The transformation of Europe', *YaleLJ* 100 (1991) 2403–83.

[16] In Case 104/75 *de Peijper* [1976] ECR 613, eg, the ECJ limited the possibility of a Member State's carrying out an administrative procedure already undertaken in another Member State. That would be a disproportionate limitation of the fundamental freedom. Where there were similar requirements for administrative procedures in two Member States but no harmonization, the ECJ went a step further and requested national administrations to make contact to establish the necessary information, Case 251/78 *Denkavit Futtermittel* [1979] ECR 3369. Case 35/76 *Simmenthal SpA v Ministero delle finanze* [1976] ECR 1871 provided for the obligation of a Member State to accept the veterinary certificates of another Member State in the case of an investigation procedure harmonized by a directive.

[17] Case 120/78 *Rewe Central Ag v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* [1979] ECR 649, paras 8 and 14.

[18] The de-linking of the territoriality of a state and the exercise of public power in the EU has however also had an additional effect which Maduro AG has referred to as the 'Community principle of territoriality' which describes the inherent conflict between EU powers, areas of remaining Member State competencies, and the rights and obligations of individuals arising from the two levels of the EU legal system (Opinion of Maduro AG in Case C-446/03 *Marks & Spencer plc v David Halsey (HM Inspector of Taxes)* [2005] ECR I-10837, para 6).

[19] Mutual assistance obligations are based either on Art 3(4) TEU (Art 10 EC) or are individually provided for in secondary legislation. One early example of rules for mutual assistance and horizontal exchange of information was created for tax authorities in Council Directive 77/799/EEC of 19 December

purpose of more regular administrative cooperation, simple forms of originally perhaps only sporadic mutual assistance were transformed in many policy areas into more regular reporting duties.[20] Such reporting duties then often evolved into joint planning structures.[21] These steps resulted in an increasing change in the functions performed by administrators, not just towards the implementation of the single market, but taking on a more active role in planning procedures and through delegated legislation. Administrative functions were now undertaken in an increasing number of policy areas, with input from several administrative actors both from the Member States and the European level, tied together through procedural provisions emanating from EU law. The development of vertical and horizontal relations was therefore a stage in the creation of an integrated network administration, established to allow the implementation of EU law and the administration of a Europe with disappearing internal frontiers.

The range of European administrative activity emerging from these developments has expanded the coordinating and structuring roles which the EC/EU administration and the individual national administrations play in all phases of a typical 'policy cycle', namely those of agenda setting, rule-making, and implementation. National administrations, for example, have come to play a central role in shaping the Commission's policy initiatives.[22] Similarly, supranational and national administrative actors exercise influence over the EU's decision-making process. The presence of the national administrations is felt mostly within the Council working parties that support the Committee of Permanent Representatives (COREPER).[23] The

1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, OJ 1977 L 336/15.

[20] In reality, one of most important acts of secondary law creating standing reporting duties is Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1998 L 204/37 and amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, OJ 1998 L 217/18 and others (replacing Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1983 L 109/8 amended by Council Directive 88/182/EEC of 22 March 1988, OJ 1988 L 81/75 (nlif)). Member States and their standardization bodies are under an obligation to inform the Commission about any draft standardization or technical regulation in areas which are not subject to harmonization legislation (Arts 1–2 and 8).

[21] Eg, Arts 25–27 of the Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ 2008 L 152/1 impose obligations on Member State authorities to provide information on ambient air quality both vertically to the Commission and relevant agencies, and horizontally to other Member States' authorities, as well as to the public generally, in order to help combat air pollution and to establish its causes and those affected by it. Such information-exchange leads to the creation and implementation of plans in relation to the protection and improvement of air quality (Art 23).

[22] This takes place mainly through expert groups generally composed of national civil servants as well as independent experts within the comitology framework. These groups are used to develop and test ideas, build coalitions of experts, and pre-determine policy directions to be formally presented later by the Commission to the EU legislature as a legislative initiative. Expert groups are used as arenas for deliberation, brainstorming, and intergovernmental conflict-solving and coalition-building amongst national experts. See Torbjoern Larsson, *Pre-Cooking—The World of Expert Groups* (Stockholm: ESO Report, 2003); Jarle Trondal, 'Re-Socialising Civil Servants: The Transformative Powers of EU Institutions', *AP* 39 (2004) 4–30; Torbjoern Larsson and Jarle Trondal, 'Agenda Setting in the European Commission' in Herwig CH Hofmann and Alexander H Türk (eds), *EU Administrative Governance* (Cheltenham: Elgar, 2006) 11–43.

[23] Here, national civil servants have to balance their national mandate against the need to reach a consensus in pursuance of EU goals and the performance of associated tasks. See, eg, Christine Neuhold and Elissavet Radulova, 'The involvement of administrative players in the EU Decision Making Process' in Herwig CH Hofmann and Alexander H Türk (eds), *EU Administrative Governance* (Cheltenham: Elgar,

integrated administration has, from this point of view emerged from the fundamental needs of the Member States to forge links both between national and European administrations and between and among Member State administrations *inter se*, in order to maximize their problem-solving capacity, influence, and effectiveness.[24]

Evolution towards an integrated administration has, however, had the most profound impact on the development of the nature of implementation of EU law. One important factor that may be identified was the changing approach of the ECJ towards the extent of Member State autonomy in the creation of the institutional and procedural conditions for performing functions associated with implementation of EC law.[25] Until the 1970s the ECJ had proclaimed that a principle of national procedural autonomy existed, under which Member States were obliged only to observe the precepts of equal treatment and effectiveness.[26] By the 1980s, with stronger focus on uniform and effective implementation of EC law, the Court's case law continuously amplified the obligations of Member States under EC law. The catalogue of general principles of EC law to be observed by Member States in implementing EC law widened at the same time as the sanctions for non-compliance were steadily strengthened.[27] In situations without detailed legislative provisions and rules, EU administrative law was governed by a growing body of general principles of EU law recognized by the case law of the ECJ.[28]

2006) 44–73. Such interaction, albeit to a lesser extent, also exists through what is known as the 'Open Method of Co-ordination', group of methods of policy cooperation and coordination of implementation of certain policy tasks in the grey zone between Community powers and Member State competences (see further below Chapters 11 and 17).

[24] The success of integration has been ascribed to the fact that purely intergovernmental structures would not have been capable of addressing the joint regulatory problems faced by a market as integrated as that of EU. A federal structure, on the other hand, could be expected to threaten the very existence of the EU Member States by establishing strong hierarchical structures which the Member States may not be prepared to support. Creating an integrated administrative structure is the third way characterized by decision-making and implementing strategies on the European level where necessary, but satisfying Member States by maintaining a strong role through broad and intensive participation (Wolfgang Wessels, 'Verwaltung im EG-Mehrebenensystem: Auf dem Weg in die Megabürokratie?' in Markus Jachtenfuchs and Beate Kohler-Koch (eds), *Europäische Integration* (Opladen: Leske and Budrich, 1996); Wolfgang Wessels, 'An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes', *JCMS* 35 (1997) 267–99; Wolfgang Wessels, 'Comitology: fusion in action. Politico-administrative trends in the EU system', *JEPP* 5 (1998) 209–34).

[25] See especially Francesca Bignami, 'Foreword', *L & Contemp. Probs.* 68 (2004) 1–17 at 3–6.

[26] See, eg, Case 33/76 *Rewe-Zentralfinanz EG v Landwirtschafts-Kammer für das Saarland* [1976] ECR 1989, para 5: 'Accordingly, 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.'

[27] Examples in the case law indicating this arose in areas such as state aids (eg Case C-24/95 *Land Rheinland Pfalz v Alcan Deutschland* [1997] ECR I-1591) and state liability (eg Joined Cases C-6 & 9/90 *Francovich and Bonifaci v Italy* [1991] ECR I-5357).

[28] See, eg, with further references: Graínne de Búrca, 'The Institutional Development of the EU: A Constitutional Analysis' in Paul Craig and Graínne de Búrca (eds), The Evolution of EU Law (Oxford: Oxford University Press, 1999) 55–81; Hans-Werner Rengeling and Peter Szczekalla, Grundrechte in der Europäischen Union - Charta der Grundrechte und Allgemeine Rechtsgrundsätze (Köln: Carl Heymanns Verlag 2004); Takis Tridimas, The General Principles of EU Law 2nd ed. (Oxford: Oxford University Press 2006); Ulf Bernitz, Joakim Nergelius and Cecilia Cardner, General Principles of EC Law in a Process of Development (Alphen aan den Rijn: Wolters Kluwer 2008); Jürgen Meyer (ed.), Charta der Grundrechte der Europäischen Union 3rd ed. (Baden-Baden: Nomos 2011). Detailed legislation generally applicable to the administration is, as noted elsewhere, relatively sparse (see below pp. 60–70 and 98), most detailed provisions being specialised ones for a specific policy sector.

Such factors relating to administration in Europe have profound effects on the nature and scope of EU administrative law. They show that, from a functional point of view, European administrative action extends to contributing to agenda setting in the EU, rule-making, and the implementation of policies, irrespective of which actors from which jurisdictions are procedurally involved in such steps. From a functional point of view, however, there is a unity of administrative concept and purpose: EU administrative action is essentially geared towards meeting Union policy objectives, and EU administrative law encompasses the rules and legal principles which govern the conduct of administrative action necessary for both the creation and the implementation of EU law.

B An organizational understanding of EU administrative law

As noted at the outset, three alternative perspectives illuminate our understanding of the EU administration and its legal underpinnings. The preceding discussion of the functional dimension of Union administration incidentally points out that, invariably, the other two dimensions, the organizational and the procedural, are never far away. In the EU legal system, the exercise of the administrative function is undertaken by a diverse range of actors. These actors are—or are found within—institutions and bodies of the Union and/or of its Member States. EU administrative law of itself contains many rules and principles concerning the organization of such actors on both the national and Union level. Such rules represent administrative law in its organizational dimension, which we explore here in outline.

One of the distinctive features of administrative tasks in the EU is that they are undertaken on different levels: when administrative functions are undertaken on the European level, their exercise is organizationally fragmented insofar as executive authority on the EU level is spread across several institutions, most notably the Commission and the Council, which are increasingly supported by EU agencies. This type of arrangement is often referred to as 'direct administration' in which implementation by the institutions and other authorities of the Union takes place only when there is a clear legal basis conferring administrative functions on them as such.[29] Provisions of EU law allowing for direct administration may merely entrust Union authorities with the power of abstract-general administrative rule-making, leaving individual decision-making to the Member State administrations. Legal provisions providing for direct Union administration can, however, also grant powers to EU institutions and other bodies to issue externally binding single-case decisions. Additionally, direct administration can take place in the context of rules dealing with the Union's own internal organization, such as the self-organization of the institutions and bodies, human resources, and the management of the administrative budget.[30] Executive functions on the Union level are almost always undertaken in cooperation with administrative players from the Member States and with

[29] For an example of delegation in primary law, see the field of competition policy, including delegations to the Commission under Art 105 TFEU (Art 85 EC) for antitrust matters and under Art 108 TFEU (Art 88 EC) for state aid control, and of monetary policy, with delegation to the ECB under Art 126 TFEU (Art 106 EC). For delegation of administrative implementing powers in secondary law, see, eg, merger control under Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ 2004 L 24/1.

[30] Art 317(1) TFEU (Art 274(1) EC).

private parties, and in some policy areas within networks involving participants external to the EU.[31] Structures serving to coordinate the activities of such diverse actors include comitology committees functioning in relation to both the development of EU law and the coordination of its implementation between Member States and the Commission, as well as agencies performing special tasks in relation to network administration.[32]

Despite the possibility of direct administration of the kinds just referred to, implementation of EU law is generally within the power of the Member States, normally referred to as 'indirect administration'. Member States, under Article 4(3) TEU (slightly amending Article 10 EC), are obliged to 'take any appropriate measure, general or particular, to ensure fulfillment of the obligations arising out of the Treaties or resulting from acts of the institutions of the Union'.[33] They may do so by applying existing national legislation, but may also be obliged by European law to pass specific implementing legislation and associated administrative regulations in order to create the conditions necessary for implementation on the national level. Member States, under this model, enjoy limited institutional or procedural autonomy to implement EU law.[34]

Such limitations on autonomy arise from the fact that, in the fields of Union policy, Member States' substantive and procedural administrative law is to be applied within the framework of EU law. This is set by reference to three basic factors. First, Member States' substantive and procedural law is applicable as such only in the absence of any explicit requirements in Union law for the adoption of either specific procedures or of organizational arrangements within Member States' administrations. Secondly, the application of national procedural rules in the implementation of Union law, where this has not been pre-empted by explicit EU provisions, must be exercised in strict compliance with the principles of *equivalence* and *effectiveness.*[35] Thirdly, in the area of indirect administration, Member States are subject to general principles of EU law and fundamental rights. Therefore, insofar as Union law itself makes provision as regards procedures, criteria, or organizational requirements, national administrations are obliged to act in conformity with these.[36] Nevertheless, it should be remembered that, absent a specific legal conferral of implementing power on a Union institution or body, indirect administration is

[31] Hussein Kassim, 'The European Administration: Between Europeanization and Domestication' in Jack Hayward and Anand Menon (eds), *Governing Europe* (Oxford: Oxford University Press, 2003) 139–61.

[32] See below Chapter 9.

[33] That principle of sincere or loyal cooperation arising from Art 3(4) TEU (Art 10 EC) is also a general principle of EU law (Case C-105/03 *Pupino* [2005] ECR I-5285).

[34] See originally formulated in Case 33/76 *Rewe-Zentralfinanz EG v Landwirtschafts-Kammer für das Saarland* [1976] ECR 1989, para 5.

[35] See below Chapter 7. The principle of equivalence requires that national arrangements for the implementation of Community law 'are not less favourable than those governing similar domestic actions' and the principle of effectiveness requires that the Member States' arrangements 'do not render practically impossible or excessively difficult the exercise of rights conferred by Community law'. See Case C-261/95 *Palmisani v INPS* [1997] ECR I-4025, para 27. See also Case C-453/99 *Courage and Crehan* [2001] ECR I-6297, para 25.

[36] National administrations, when engaged in indirect administration, may thus be confronted with situations in which national law is inconsistent or even incompatible with EU provisions in the area. The solution to such conflicts of law under EU law has been sought in the principle of primacy and the possibility of direct effect of EU law. These interpretative principles oblige the Member States' administrations to set aside national law which is in conflict with EU law provisions; see, eg, case law since Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA (Simmenthal II)* [1978] ECR 629, where the national law can no longer be interpreted in conformity with EU law; see also the case law following Case C-106/89 *Marleasing v Comercial Internacional de Alimentación* [1990] ECR I-4135).

the default position. Thus, whether or not there are such limitations on Member State autonomy, it will normally be the Member States which implement EU policy and law.

This dualist model of direct and indirect administration, based on the organizational distinction between Union and Member State administrations, has come to be referred to as 'executive federalism',[37] an expression traditionally employed in order to conceptualize the interrelationship of the multiple levels of administration in the EU.[38] Within this notion, it typically falls to the Member States to apply and enforce policies and law adopted on the European level. Only in certain limited fields is the implementation of European law directly entrusted to European institutions or agencies. Hence, direct administration on the European level is the exception to the rule according to which the Member States take all appropriate measures to ensure the fulfilment of obligations arising either directly out of Treaty provisions or out of secondary legislation.[39]

Under this dualistic conceptualization of direct and indirect administration, the organizational aspect of European administrative law can been conceived of as being constituted by three distinct sets of legal rules.[40] The first comprises rules and principles governing the execution of EU law by its own institutions, either for internal administration or for the making of externally binding administrative decisions.[41] The second set governs the implementation of European law by national authorities, essentially comprising rules created by the Member States but heavily influenced and modified by European legal rules and principles, as noted above. These are often referred to as a body of 'Europeanized' (national) administrative law. The third set is located in an area of law not directly connected with the implementation of EU law, but where that law has nevertheless influenced the development of national law and thereby transformed the national legal systems. None of these sets has been systematically codified. Each is the outcome of very specific legislation together with general principles of law developed mainly in

[37] Jochen Frowein, 'Integration and the Federal Experience in Germany and Switzerland' in Mauro Cappelletti, Monica Seccombe and Joseph Weiler, *Integration through Law—Europe and the American Federal Experience, Vol 1: Methods, Tolls and Institutions, Book 1: A Political, Legal and Economic Overview* (Berlin: de Gruyter, 1986) 573–601 at 586–7; Koen Lenaerts, 'Regulating the regulatory process: "delegation of powers" in the European Community', *ELRev.* 18 (1994) 223–49 at 28; Jacques Ziller, 'L'autorité Administrative dans l'Union européenne', *EUI Working Papers Law* 14 (2004) 1–43 at 9.

[38] Within this system, administration on the European level—mainly in the Commission but also to a certain degree the Council but both with the help of national administrations—has been regarded as primarily engaged in the conception of policy rather than its implementation (Loïc Azoulay, 'The Judge and Administrative Governance' in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe's Integrated Market* (Oxford: Oxford University Press, 2002) 110). The European level was expected to be involved in implementation only in certain clearly defined areas such as competition law and budgetary matters. In other matters, Member States' administrations fulfil the role of implementation authorities.

[39] This is explicitly stated in Art 291(1) TFEU which explicitly restates that 'Member States shall adopt all measures of national law necessary to implement legally binding Union acts'. Only where 'uniform conditions for implementation' are needed, can implementing powers under Art 291(2) TFEU be conferred on the Commission and in exceptional cases, the Council.

[40] Stefan Kadelbach, 'European Administrative Law and the Law of a Europeanised Administration' in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe's Integrated Market* (Oxford: Oxford University Press, 2002) 167–206; Stefan Kadelbach, *Allgemeines Verwaltungsrecht unter europäischem Einfluß* (Tübingen: Mohr, 1999).

[41] Schwarze's groundbreaking work from the 1980s was an investigation into the origins and manifestations of essentially this part of EU administrative law. See Jürgen Schwarze, *Europäisches Verwaltungsrecht* (Baden-Baden: Nomos, 1988).

the case law of the ECJ.[42] Each comprises a very substantial body of law, doctrine, and subject matter. The concept of a dispersed organizational implementation of EU law, under which administrative tasks are undertaken both by institutions and bodies from the Member States as well by those of the EU as such, thus give rise to considerable practical and legal complexity.

It needs to be kept in mind, however, that the organizational perspective of EU administration is only one of a number available to aid our understanding of administration and the scope of administrative law in the EU. The *organizational* model of executive federalism—separate bodies of administrative actors on the Member State and EU levels—can certainly be regarded as valid at least insofar as final administrative decisions are taken by authorities either on the European level or on the national level. However, this model must be seen as having shortcomings because it leaves out the functional and procedural dimensions. In particular, this perspective makes it difficult to appreciate both the *functional unity* of EU administration and the *procedural cooperation* among the many actors from various jurisdictions.[43]

C A procedural understanding of EU administrative law

The legal rules and principles of the European Union not only establish administrative functions and address aspects of the organization of the actors involved in performing them. Most importantly, they may and do lay down the procedures applicable for administrative rule-making and single-case decision-making. Various models have been postulated to describe and systematize the forms of administrative procedure governed by EU administrative law. The following brief presentation of some of these both points to the importance of, and picks up the origins of, a procedural understanding of EU administrative law.

The organizational separation and dispersal of administration between and among the EU and the Member States does not stand in the way of very significant forms of procedural cooperation. Indeed, cooperation across the different levels is an essential component of administration in the European Union. Therefore, diverse procedures have been established to enable and shape cooperation in administering the various policy areas. Amongst these are the 'comitology' committee procedures,[44] first developed in the 1960s, and subsequently codified by the Comitology Decisions

[42] All three, however, also have their very specific modes of interaction in the relation between the European and the national and sub-national levels. The first is given effect through the principles of direct effect and supremacy. The second receives binding influence from EC legislation which either transforms the national legal system or requires national law to be interpreted in conformity with EU law. Interactions with actors from other Member States or EU executive powers are regulated according to the rules of secondary legislation and general principles of EU law. Although the third category is not subject to EU law, it demonstrates a reaction to the ambient transformation of legal systems. The interaction of these different sets is governed in the same way as traditional rules of international administrative law, as a subsection of national conflicts rules.

[43] Whereas in the legal literature the main misunderstanding of the nature of EU administrative law often arises from an unreflected equation of the administrative organization with administrative law, in political science literature sometimes the opposite can be observed. The so called 'fusion theory', eg, describes administration in the EU as a merger of elements of the public sector on the European and the Member States' national and sub-national levels (Wolfgang Wessels, 'Verwaltung im EG-Mehrebenensystem: Auf dem Weg in die Megabürokratie?' in Markus Jachtenfuchs and Beate Kohler-Koch (eds), *Europäische Integration* (Opladen: Leske and Budrich, 1996) 165–92; Wolfgang Wessels, 'An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes', *JCMS* 35 (1997) 267–99).

[44] See below Chapter 11 with further explanations and references.

of 1987, 1999, and 2006 and the Comitology Regulation of 2011.[45] In certain policy areas this approach has been modified by what is known as the 'Lamfalussy' process.[46] Further, agencies and their administrative networks play an ever-increasing role.[47] Networks of cooperation may also encompass private parties acting as recipients of limited delegation.[48] These different forms of implementational procedures are not mutually exclusive and are generally used in combination with each other in particular policy areas.

Various authors have suggested ways of systematizing the great variety of procedural arrangements in EU administrative law. The need for this follows from the fact that the concept of administration in the EU, with its diverse actors, is fraught with considerable complexity, exacerbated by the absence of a hierarchic relationship between them.[49] Such complexity is heightened by the lack of a harmonized approach across the great diversity in the fields of Union policy. We outline some of the suggested conceptualizations here.

1 Shared administration

Models of procedural cooperation have been referred to as 'shared administration', a term coined by the Committee of Independent Experts set up by the European Parliament and the Commission to investigate alleged misconduct of the Santer Commission in 1999. The Committee applied the expression to a particular category of administrative procedures, which it identified as posing specific problems of oversight and accountability of acts. In the Committee's view, shared administration consists of forms of administrative cooperation for the management of Union programmes:

> where the Commission and the Member States have distinct administrative tasks which are interdependent and set down in legislation and where both the Commission and the national administrations need to discharge their respective tasks for the Community policy to be implemented successfully.[50]

[45] Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 1987 L 197/33 (nlif), Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 1999 L 184/23 amended by Council Decision 2006/512/EC of 17 July 2006, OJ 2006 L 200/11; Regulation (EC) 182/2011 of 16 February 2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ 2011 L 55/13.

[46] See Chapter 11.

[47] See Chapter 9.

[48] See Chapter 17. The 'new approach' Directives provide only the essential requirements with which products must comply in order to benefit from free movement within the EU. CEN (Comité Européen de Normalisation), CENELEC (Comité Européen de Normalisation Electrotechnique), and ETSI (European Telecommunications Standards Institute) are charged with providing specific standards on the basis of such requirements. Even though they are not binding on the producer of goods, these harmonized Community standards are given a presumption of conformity, where they have been published in the Official Journal and transposed into national standards. See, eg, Art 7(2) of Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast), OJ 2006 L 157/24.

[49] Joël Rideau, 'L'administration communautaire et les administrations nationales', IX *Annuaire Européenne d'Administration Publique* (1986) 183–207 at 193 et seq.

[50] Committee of Independent Experts, First report on allegations regarding fraud, mismanagement and nepotism in the European Commission, 15 March 1999 (available at: <http://www.europarl.europa.eu/experts/report1_en.htm>).

The notion of shared administration encompasses those administrative procedures in which administrative interactions have their foundation in EU law. Shared administration is a central element in the delivery of Union policies, notwithstanding the fact that the modus operandi and the nature of the powers accorded to the various actors differ considerably from one policy area to another. The notion of shared administration, however, although helpful to some extent, lacks comprehensive explanatory value in itself since an understanding of the substantive law governing a certain specialized policy area is necessary to understand the nature of the specific legal and administrative difficulties within that particular field.[51] The notion of shared administration, being in each case linked to such a specific policy context, is thus too narrow and limited—or simply too variable—to be able to embrace the full range of the procedural dimension of EU administrative law.

2 Cooperation in information management

The starting point for a wider notion of procedural cooperation lies in a conceptualization relating essentially to the flow of information between the participant executive branches. This perspective requires identification of the intensity and level of complexity of information exchange, and the pertinent obligations, as criteria for differentiating between different forms and levels of procedural cooperation.[52] Reliance on these distinguishing characteristics derives from the fundamental idea that most forms of procedural cooperation in implementing EU policies are based on the joint production, gathering and management of information, and/or exchange of information.

The various forms of such administrative cooperation range from *ad hoc* single-case information exchange to settled procedures involving ongoing administrative cooperation. They have engendered procedural networks comprising the European Commission and national bodies, as well as European agencies.[53] The resultant networks also include those allowing for direct contact between the different Member States' own agencies *inter se*. Conceiving of information (including its generation, management, and distribution) thus as a legal *topos* in turn requires the establishment of legally defined structures of administrative cooperation—horizontally—between the Member States themselves and—vertically—between the Member States and the Union bodies.

[51] The increased regulatory diversity of a Union of 27 Member States will ensure that the 'multi-level governance that is inherent in the very idea of shared administration will nonetheless continue to be central to the delivery of many important Community initiatives'; see Paul Craig, *EU Administrative Law* (Oxford: Oxford University Press, 2006) 3 et seq; Paul Craig, 'Shared Administration, Disbursement of Community Funds and the Regulatory State' in Herwig CH Hofmann and Alexander Türk (eds), *The Move to an Integrated Administration—Legal Challenges in EU Administrative Law* (Cheltenham: Elgar, 2009) 34–64.

[52] See Eberhard Schmidt-Aßmann, 'Verwaltungskooperation und Verwaltungskooperationsrecht in der Europäischen Gemeinschaft', *EuR* [1996] 270–301. Eberhard Schmidt-Aßmann, 'Der Europäische Verwaltungsverbund und die Rolle des Verwaltungsrechts' in Eberhard Schmidt-Aßmann and Bettina Schöndorf-Haubold (eds), *Der Europäische Verwaltungsverbund* (Tübingen:, Mohr, 2005) 1–23 and the contributions in Eberhard Schmidt-Aßmann and Wolfgang Hoffmann-Riem (eds), *Strukturen des Europäischen Verwaltungsrechts* (Baden-Baden:, Nomos, 1999).

[53] Cooperation mainly exists in mutual assistance requirements and where ad hoc or systematized reporting duties have been established. For further detail on this type of obligation and examples of policy areas, see Chapter 12.

Cooperative procedures which have been developed in this context include certain forms of implementation such as individually binding decisions[54] and joint planning procedures.[55] The task of such procedures, and of the associated and further network elements, is the implementation of EU rules in effect through the integration of national regulators into an EU framework.[56] Forms of even more complex administrative cooperation also exist in many policy areas where administrative actors from various jurisdictions participate in single administrative procedures, so-called 'composite procedures'.[57] The most striking characteristic of such administrative networks is, however, that they now often involve both vertical cooperation (on various levels) between EU and Member State authorities, and horizontal cooperation between and among the national authorities. These forms of cooperation are generally demanded by EU law and may include EU bodies acting as network coordinators, arbitrators of disputes, and managers of joint procedures.

3 Cooperation in final decision-making

Another possible basis for categorizing forms of procedural cooperation is to look at who takes the final administrative decision.[58] This approach distinguishes 'top-down' proceedings, which may begin with measures taken on the European level and conclude with measures taken by national authorities, from 'bottom-up' proceedings, which begin at the national level and conclude with measures taken by EU institutions and bodies. This distinction should not be understood too literally, however, because there also are mixed or hybrid models that present features typical of both types of process. Indeed, the very notion of hybrid procedures acknowledges that there is hardly any EU policy area which, taking both administrative rule-making and single-case decision-making into account, will not be subject to at least some form of cooperation from different jurisdictions. The appellation of hybrid procedures is increasingly frequent because it is attached to all procedures in which

[54] A prominent example of the latter is enforcement networks in the area of competition law with the 'European Network of Competition Agencies'. See Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 2003 L 1/1 and the Commission Notice on Cooperation within the Network of Competition Authorities, OJ 2004 C 101/43.

[55] Increasingly common are joint planning structures, in which EU law provides for the organization of the Commission (and sometimes European agencies) together with national agencies into 'planning networks'. An example of such a network is 'Eionet' (Regulation (EC) 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version), OJ 2009L 126/13).

[56] See, eg, the 'European Regulators Group' in the telecommunications sector (Commission Decision 2010/299 of 21 May 2010 repealing Decision 2002/627/EC establishing the European Regulators Group for Electronic Communications Networks and Services, OJ 2010 L 127/18), the 'Committee of European Securities Regulators' in the financial services sector (Commission Decision 2009/77/EC of 23 January 2009 establishing the Committee of European Securities Regulators, OJ 2009 L 25/18), and the 'European Competition Network' (Regulation (EC) 1/2003).

[57] See for more details below Chapter 11. Such administrative procedures are generally marked by the fact that a mix of EU and national law is applicable. If a national administration takes the final decision it will generally have transterritorial effect, that is, it will have effect across the entire EU, and not be limited to the territorial reach of the issuing jurisdiction.

[58] See Gianna della Cananea, 'The European Union's Mixed Administrative Proceedings', *L & Contemp. Probs.* 68 (2004) 197–218 with further references and examples; Edoardo Chiti, 'The administrative implementation of EU law: a taxonomy and its implications' in Herwig CH Hofmann and Alexander Türk (eds), *The Move to an Integrated Administration—Legal Challenges in EU Administrative Law* (Cheltenham: Elgar, 2009) 9–33.

various procedural steps are undertaken in joint organizations or networks of authorities.[59]

A brief look at such understandings of EU administrative law paints an interesting portrait of its procedural aspects. The diversity of actors involved in the creation and implementation of EU law demands often complex procedures in order to further their cooperation. Such procedures differ in accordance with the scope and intensity of, and the level of detail addressed by, a given administrative measure, for example whether it emerges as an administrative rule or a single-case decision. The procedures vary considerably from one policy area to another. Often, as postulated above, the core of procedural cooperation will be defined by the degree of joint creation and sharing of information upon which the final administrative determination will rest.

D A concept of functional unity, organizational separation, and procedural cooperation

The preceding discussion shows that EU administrative law, considered as the rules and principles governing the functional, organizational, and procedural aspects of EU administration, cannot be adequately understood by limiting one's perception to only one of these elements. The rules and principles governing all three elements make up the administrative law of the European Union. Administrative cooperation takes place in policy areas in which responsibility for implementation rests on the European level, and also in fields where, in the absence of EU administrative capabilities and competences, Member State authorities are responsible.[60] In other words, cooperation and the procedures which construct it diffuse the system, operating even where organizational arrangements would apparently indicate separation and, in a strict sense, independence. Union and national administrations are all charged with the implementation of EU policy as embodied in legal measures, and all are as well intimately connected with its creation and specification. National actors are affected by the outcome of the European policy process, but the EU is also dependent on the capability and achievements of national administrative structures.[61]

The vectors of interaction between all the component actors (on numerous levels ranging, for example, nationally from heads of government down to technical officers) are either bi- or multidirectional, but rarely unidirectional. The tasks to be undertaken, the functions allocated by Union law, and the nature of possible outcomes will typically recognize some distinction between Union and Member State level, and yet in many cases the undertaking of tasks and carrying out of functions on one level will be interdependent with doing so on another level. In the case of Member State measures with transterritorial or transnational effect under EU law, such mutual interdependence will perhaps relate even more strongly to the

[59] This is often used for regulatory purposes of the financial industries, energy or telecommunications sectors, where representatives of Member State authorities are members of a European regulatory group. It has been referred to as 'regulatory concert', see Sabino Cassese, 'European Administrative Proceedings', *L & Contemp. Probs.* 68 (2004) 15–61 at 21.

[60] It should be noted that there is in fact a mismatch between the allocation of functions and administrative resources to the Commission when compared with those available to national bureaucracies, with the Commission equalling in size the administration of a major European city: Hussein Kassim, 'The European Administration: Between Europeanization and Domestication' in Jack Hayward and Anand Menon (eds), *Governing Europe* (Oxford: Oxford University Press, 2003) 139–61 at 151.

[61] Ibid, 139–61 at 139.

horizontal dimension of the Union than to its vertical one. Even there, and procedural cooperation the carrying out of many such functions will not be possible without the reliance on cooperative, network, or composite procedures.

All of these factors and perspectives indicate that the administration of the European Union betrays characteristics which set it apart in a signal fashion from national systems. They may also suggest possible models for other entities which in the future may seek to emulate at least certain aspects of the Union. At the same time, the interaction of—and sometimes indeed tensions between—the functional, organizational, and procedural dimensions of EU administration can be seen as posing not just problems of comprehension and conceptualization. In particular, substantial issues emerge concerning, for example, the accountability of actors involved in European administration, especially in administrative networks, the efficiency, and effectiveness of such multidimensional administrative arrangements, and the relationship of Union administration with both civil society and particularized interests and their representatives.