A.M. Keessen, *European Administrative Decisions: How the EU Regulates Products on the Internal Market* (Europa Law Publishing, Groningen 2009), ISBN 978-90-8952-0562, 271p.

Since the birth of the European Economic Community, the area of European administrative law is one that has experienced an enormous growth. Despite this increasingly prominent role, EU administrative law has, until recently, attracted a fairly little small amount of academic interest.[1] This book contributes to the further development of the academic discourse on European administrative law, by critically analysing the current problems and challenges faced by the so-called 'integrated administration'.

Traditionally, two types of administration have been distinguished: indirect administration, which refers to the application and enforcement of Community legislation by national authorities of the Member States, in accordance with their own procedural laws, and direct administration, which refers to the European Commission implementing Community law in accordance with Community administrative law. The reality, however, is more complex than this distinction would suggest, in that these categories do not take into account the many situations which involve cooperation between the Community and the Member States authorities. In such cases, the administration of Community law is better described as integrated administration.

The topic of integrated administration' is a very current one and, while some publications have analysed this phenomenon from various perspectives, to date no study has comprehensively examined it with this level of depth.[2]

The starting point and reasons for the author's investigation is that integrated administration poses several threats in terms of democratic deficit, primarily because of the room left to the procedural autonomy of the Member States in the implementation of Community law. As a consequence, Member States are allowed to maintain reasonable procedural rules, and procedural administrative law is only harmonised to the extent that is necessary to achieve the substantive aims of a specific Community policy.

The importance of the book under review lies in its original investigation of how Community law ensures that the integrated administration does not suffer from a deficit concerning its effectiveness and respect for procedural guarantees. In particular, these two criteria are used to assess the legitimacy

[1] For recent publications, see J. Jans *et al.*, *Europeanisation of Public Law* (Europa Law Publishing, 2007); P. Craig, *EU Administrative Law* (Oxford University Press, 2006); M. Eliantonio, *Europeanisation of Administrative Justice? The influence of the ECJ's case law in Italy, Germany and England* (Europa Law Publishing, 2008).

[2] See, e.g., M.P. Chiti, 'Forms of European administrative action', *Law and Contemporary Problems*, 2004, 37-60; H.C.H. Hofmann and A. Türk, 'The Development of Intergrated Administration in the EU and its Consequences', *ELJ*, 2007, 253-271.

of the creation, enforcement and judicial review of European administrative decisions that arise from the integrated administration. European decisions are defined by the author as decisions by a Community or national administrative authority that are taken on the basis of Community legislation and that are binding on those to whom they are addressed.

This analysis is carried out with regard to four reference areas, namely endangered wildlife, medicines for human use, plant protection products and GMO's. These areas have been selected because, in such areas, different types of European administrative decisions are issued, while their common feature is that the marketing of all these products requires an authorisation in accordance with a procedure established by Community law.

Each chapter is organised by phase of the implementation activity, with the exclusion of transposition: chapter one deals with the application (referred to as decision-making) of European administrative decisions, while chapter two covers the enforcement phase. Chapters three and four are devoted to judicial review aspects. Each chapter analyses the European rules in each reference area, and assesses and compares the findings. In order to provide an answer as to the effectiveness of and the respect for procedural guarantees of the integrated administration, the author examines, for each reference area, how competences are divided, how differences are prevented or solved and which procedural guarantees the Community offers individuals.

The concluding chapter assesses to which extent national implementation has been superseded by cooperation in implementation between Member States and Community bodies and to what extent Community regulation can be effective and observe procedural guarantees. It also provides recommendations for the improvement of the effectiveness and respect for procedural guarantees of Community law, insofar as it produces European administrative decisions with potentially EU-wide effects.

As it was perhaps to be expected, the author shows that, if seen from the perspective of the capacity of achieving the two above mentioned goals, all types of European administrative decisions[3] present advantages and disadvantages. For example, the advantage of mutual recognition decisions is that they do not force Member States to accept a decision that is below their standards, but they do not completely ensure uniformity. Conversely, the use of a single licence decision implies that also Member States with higher standards have to accept that decision, and this system might provoke a race to the bottom. Community decisions are surely the most apt to ensure uniformity, but such decisions are adopted by qualified majority voting and thus may well be below the standards of some Member States, which nevertheless have to comply with them.

[3] The categorisation used in the book under review is taken from G. Sydow, *Verwaltungskooperation in der Europäischen Union, Zur horizontalen und vertikalen Zusammenarbeit der europäischen Verwaltungen am Beispiel der Produktzulassungsrecht* (Tübingen, 2004).

Not only-decision making, but also enforcement must be effective. In this area, by reference to the four product areas, the author shows that EC law does not provide for specific enforcement provisions on compliance control and that the system relies excessively on self enforcement. This might of course hamper the functioning of the internal market. With regard to enforcement, the author also points out the well-known deficiencies of the enforcement carried out by the European Commission. Another gap discovered by the author is in the area of network control, with regard especially to the cooperation between the competent authorities in a given area and the customs authorities.

The starting point of the debate on the respect for procedural guarantees is the idea of a Community based on the rule of law, in which, therefore, the relevant rules should ensure that the administration give adequate consideration to the interests of the persons affected by the decisions they take, and that these persons are able to enforce their rights before a court.

In this area the author identifies several gaps in the system: the most notable one concerns instances in which the authorisation holder or the applicant of a marketing authorisation is not heard before the administration takes a decision. Third parties logically receive even less rights, and their right to be heard when their interests might be affected by a marketing authorisation issued to another individual or have filed a request for enforcement or for the withdrawal of an authorisation still largely depends on national law.

Also with regard to judicial protection the author concludes that the EU legal system has not been adapted to give full and effective judicial protection for all cases of shared administration, with the consequence that, in some instances, no judicial protection is offered vis-à-vis a certain measure. This might depend on the different standing conditions applying throughout the Member States of the EU and the restrictive conditions applied at the EU level. Another problem is that parallel proceedings might take place (at the Community or at the national level), because of the absence of a duty of judicial cooperation in administrative law cases. Consequently, national courts might not even be aware of judgments issued by other courts. This means that they could issue contradictory rulings, or that the applicant could be obliged to bring proceedings in all Member States (for example, against mutual recognition decisions).

The author's analysis is consistent and detailed throughout the book and manages to reach the grounded conclusion that, in order to ensure a sufficient level of effectiveness and respect for procedural guarantees in the administration of Community law, it is necessary to improve the cooperation between the different actors concerned. Hence, in order to ensure the effectiveness of decision-making and enforcement of European administrative decisions, it is essential to create adequate mechanisms of cooperation between the national authorities amongst themselves, and between the

national authorities, the European Commission and the relevant Community agencies. Furthermore, with regard to the aim of achieving a complete system of judicial protection vis-à-vis European administrative decisions, the author concludes that it is necessary to provide for better cooperation between the national courts amongst themselves, and between the national courts and the Community courts.

While these are the most important findings of the book, it is important to point out the book under review also provides for some recommendations on how to improve effectiveness of and the respect for procedural guarantees in the area of Community product regulation. While all of these recommendations seem desirable, some doubts could be cast on the feasibility of some of them. The proposals put forward in the area of judicial protection, for example, while unequivocally useful for the purposes of creating a more complete system of remedies in the Community legal order, appear to be rather unrealistic.

For example, the author suggests the inclusion of the right for third parties to access the Community courts. While this reform would certainly fill one of the most debated gaps in the Community system of judicial protection, given the stand of the ECJ's case law and the minor changes made to Article 230 EC by the Treaty of Lisbon, it does not seem likely that this reform is going to be introduced in the near future.

Another interesting, yet quite far-fetched, proposal is to include a provision to the effect that third parties have to be granted access to national courts. While this provision would certainly contribute to reducing the inequalities in the conditions of standing of individuals throughout the European Union, it is unclear what the legal basis of such Community action would be. In the absence of a general legal basis for the harmonisation of procedural law, a Community legislative competence may be exercised only within specific sectors. One could in principle turn to Article 95 EC. However, it is at least questionable whether this article could constitute a correct legal basis for the harmonisation of administrative procedural law: one would need to show how the rules on the administration of justice have as their object, among other things, 'the establishment and functioning of the internal market', and that the national differences between these rules somehow impair the proper functioning of the internal market.

In conclusion, it can be said that the book under review provides a coherent and in-depth analysis of a very current topic, that of the administration of Community law and of the gaps in the system of integrated administration. While the feasibility of many of the improvements to the system proposed is questionable, it is, however, by all means desirable that a debate takes place concerning this issue. In this sense, the book under review is an important contribution to the examination of a phenomenon of increasing importance in the Community legal order and will hopefully spark a debate

concerning an objective whose attainment can no longer be postponed, that of more efficient, transparent and democratic Community administration.

Dr. Mariolina Eliantonio[4]

[4] Assistant Professor, Faculty of Law, Department of Public Law, Maastricht University (m.eliantonio@maastrichtuniversity.nl).