# Editorial

Despite the relentless advance of the COVID-19 pandemic and the fact that many Member States have been forced to prolong strict prevention measures, or, in some cases, adopt increasingly stringent public health policies, the overall situation allows for a certain degree of optimism. The first authorisations have been issued in the EU for the first vaccines, for which the Commission has concluded purchase contracts on behalf of the Member States, which, in turn, have already organised (or are in the process of organising) extensive vaccination campaigns due to start in January 2021. In addition, despite numerous difficulties, the European Union has managed to agree on a highly ambitious economic recovery plan, totalling over EUR 1,800 billion, aimed at stimulating growth (with the long-term EU budget and the NextGenerationEU initiative) and helping to rebuild post-COVID-19 Europe. This unprecedented initiative is likely to represent a milestone in the European process of legal and political integration and its implementation must be observed closely by administrative law scholars.

But the good news does not end there. In early December, as a part of the European Green Deal, the EU Commission submitted a legislative proposal amending Regulation No 1367/2006[1] to bring European law more in line with the Aarhus Convention.[2] Non-compliance of European law with the Aarhus Convention is directly linked to the rules on standing laid down in Article 263(4) TFEU and has given rise to serious concern among civil society organisations and scholars, as witnessed by various contributions published in the Review of European Administrative Law over the years. Under Regulation No 1367/2006, non-governmental organisations (NGOs) can request an internal review only of administrative acts of individual scope issued under environmental law, before having the possibility to challenge the decision on the administrative appeal before the General Court. In 2017, the Aarhus Convention Compliance Committee, following a long and complex process, found this legal framework to be in violation of Article 9 of the Convention, as it excludes all acts of general scope and those of individual scope which are not adopted under environmental law from internal review.[3] According to the Commission's proposal, which is

1 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13.

2 Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2020] COM(2020)642 final.

3 UNECE, Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Report of the Compliance Committee on its Fifty-Seventh meeting, Findings and recommendations with regard to communication ACCC/C/2008/32 concerning compliance by the European Union [2017] UN Doc ECE/MP.PP/C.1/2017/7 1-24.

based on a request of the Council[4] and follows a wide public consultation, NGOs will be able to request internal (and subsequently judicial) review of any non-legislative act adopted by a Union institution or body, including those of general scope which, due to their effects, contravene environmental law, with the exception of 'those provisions of this act for which Union law explicitly requires implementing measures at Union or national level'.

The Commission's proposal, however, leaves the fundamental problem of the difference that currently exists between the subject of the internal review (i.e. the reassessment of the contested administrative act) and that of the judicial proceeding (i.e. the legality of the decision on the internal review that is addressed to the complainant NGO) unresolved.[5] This means that even under the amended version of Regulation No 1367/2006 the judicial review will probably only concern the way the institution or body has dealt with the request for internal review and whether it complied with procedural requirements, without directly examining the initial act itself. Nevertheless, this legislative initiative is to be welcomed, since it represents a significant development in a pivotal field of action for the European Union and in the relationship between civil society and European bodies and institutions.

In this complex and evolving scenario, this issue of the Review of European Administrative Law contains seven contributions of great interest and relevance. Catherine Warin examines a central topic of European administrative law, that of the protection of rights in the context of horizontal administrative integration in the EU. She highlights how, even in the absence of legislative provisions, the Court of Justice, in order to ensure the effective protection of rights, has reduced the scope of the principle of mutual trust, i.e. the Court has ruled that in certain circumstances national courts may review manifest errors committed by administrative authorities of other countries. Agnė Andrijauskaitė, on the other hand, deals with the principle of legality and shows how the European Court of Human Rights, interpreting Article 7 of the ECHR (concerning criminal offences), has set out principles that are valid also for administrative punishment. Petr Mádr then examines the topic of the national application of the EU Charter of Fundamental Rights: after outlining the case law of the Court of Justice on Article 51 of the Charter, he illustrates the different ways in which the Czech Supreme Administrative Court is approaching this issue.

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4 Council Decision (EU) 2018/881 of 18 June 2018 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006 [2018] OJ L155/6.

5 Case C-82/17, *TestBioTech eV and Others v European Commission* [2019] EU:C:2019:719 para 37-39; or more clearly, Case C-82/17, *TestBioTech eV and Others v European Commission*, Opinion of AG Szpunar [2018] EU:C:2018:837, paras 36 and 45.

Last June the Review of European Administrative Law launched a call for papers 'which critically examine regulatory measures taken in response to the COVID-19 emergency from a national administrative law perspective'. Following the evaluation process, three papers were selected. In this issue, a first article (Francesco Scalia) is published, outlining the precautionary measures taken in Italy to counter the pandemic and discussing their compliance with the principle of proportionality. The remaining articles with a focus on the COVID pandemic will be published in the 2021 issues of the Review.

A case note (Menelaos Markakis) concerning the *Iccrea Banca* judgement[6] follows, highlighting how this ruling of the Court of Justice fails to address a number of questions that go beyond composite procedures in the Banking Union. The issue closes with reviews of two interesting and valuable books: the first regarding the volume edited by Mariolina Eliantonio and Chris Backes, *Cases, Materials and Text on Judicial Review of Administrative Action* (Giulio Napolitano) and the second concerning the volume edited by Marta Cantero Gamito and Hans-Wolfgang Micklitz, *The Role of the EU in Transnational Legal Ordering. Standards, Contracts and Codes* (Sabrina Wirtz).

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6 Case C-414/18, *Iccrea Banca SpA Istituto Centrale del Credito Cooperativo* [2019] EU:C:2019:1036.
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