REVIEW OF EUROPEAN ADMINISTRATIVE LAW; VOL. 9, NR. 1, 1-2, PARIS LEGAL PUBLISHERS © 2016

From the Editors

On 11 January 2016 the development of European administrative law took another step forward towards codification of rules on administrative procedure for the European Union's administration. A proposal was submitted for a Regulation of the European Parliament and of the Council on the Administrative Procedure of the European Union's Institutions, bodies, offices and agencies (DV1081253EN.doc; PE573.120v01-00). The specific legal basis for this proposal was introduced with Article 298 TFEU and focuses – in order to achieve an open, efficient and independent European administration – on the way the institutions, bodies, offices and agencies of the Union are to carry out their duties. Also relevant for this latest development is of course Article 41 of the Charter of Fundamental Rights of the European Union, which enshrines the right to good administration. As we all know, the European Ombudsman initiated the first steps towards a code for good administrative behaviour for European institutions. In April 2000 the Ombudsman submitted a Special Report (C5-0438/2000) to the European Parliament in which the Ombudsman recommended the following: 'In order to achieve rules of good administrative behaviour which apply equally to all Community institutions and bodies in their relations with the public, the Ombudsman recommends the enactment of a European administrative law, applicable to all the Community institutions and bodies. This law could take the form of a Regulation'. A draft Code was attached as an annex to the report. The European Parliament approved this Code of Good Administrative Behaviour (C5-0438/2000 - 2000/2212 (COS)) and called on the European Commission to submit a proposal for a Regulation containing the Code of Good Administrative Behaviour (based on Article 308 of the Treaty establishing the European Community). As the European Commission saw insufficient grounds to introduce such a regulation, many institutions and European bodies introduced their own Codes of Good Administrative Behaviour, often similar to the one proposed by the Ombudsman. Despite these developments, Union administrative law is fragmented. For that reason, implementing rules on the administrative procedure by way of a regulation has been called for repeatedly by the European Parliament. In an important resolution on 15 January 2013 it requested the Commission to table a proposal for a Law of Administrative Procedure of the European Union (2012/2024(INL)) on the basis of Article 298 TFEU. Since that resolution think-tanks like the Research Network on EU Administrative Law (ReNEUAL) have contributed to developing ideas. The recent proposal has however a very narrow scope; it explicitly states that the regulation shall not apply to the Member States' administration and it mainly focuses on providing those citizens and economic operators that deal with the Union's administration directly with 'effective, foreseeable and accessible procedures: principles and rights need to be translated into rules which give clear and simple answers to basic questions concerning issues such as initiation of an administrative procedure, time limits and remedies'. Rules on 'legislative procedures, judicial proceedings and the procedures for the adoption

of delegated acts and implementing acts as well as non-legislative acts directly based on the Treaties are explicitly excluded'. Despite the narrow scope, the proposal indicates the need for uniform rules on administrative procedure at the Union's level. Although the formal answer would be 'none', we feel that the adoption of the proposed regulation could have consequences for the development of national administrative law of the Member States and the field of European Administrative Law as such.

This issue of *REALaw* strives to contribute to the existing knowledge of EU Administrative Law. Maciej Bernatt presents in his Article the challenges of building an adequate and proportionate system of administrative sanctions. The author's analysis is based mainly on the Polish situation but is relevant for many of the Member States that struggle with implementing a system of administrative sanctions. Bernatt states that the efficiency of the functioning of such a system should be balanced with the appropriate level of observance of procedural fairness as well as with appropriate rules governing the attribution of administrative liability. Focusing on the bases for administrative liability, the scope of procedural rights, and the institutional arrangement of the system, the Article names two factors that should be taken into consideration when deciding how to reconcile efficiency with procedural fairness: first, the complexity of the given area of administrative law and, second, the severity of the sanctions.

In their Case Law Analysis Mariolina Eliantonio and Franziska Grashof analyse case C-71/14, East Sussex County Council v Information Commissioner. The case concerns the question of what the adequate scope of review is that national courts should apply when they assess decisions of public authorities applying Union law. The analysis considers the European requirements for the national scope of review. The authors argue that the Court of Justice has set a new benchmark against which the national scope of review has to be tested, although it refers rather clearly to the principle of national procedural autonomy. In that perspective Eliantonio and Grashof assess the way in which national procedural competence is limited concerning questions relating to the scope of review where the application of Union law is at stake.

This issue of *REALaw* also provides two Book Reviews. The first is by Tobias Nowak. He criticizes the book on *European Judicial Systems as a challenge for Democracy*. Michiel Duchateau read *Europe at the edge of Pluralism* and shared his opinion in the second Book Review.

The Editors, Groningen & Utrecht