Matthias Ruffert (ed.), *The Model Rules on EU Administrative Procedures: Adjudication*, European Administrative Law Series (11), Groningen: Europa Law Publishing 2016, ISBN 9789089521859, 200 p.[1]

## Introduction

Since a couple of years, the Europeanisation of administrative law has once again been at the top of the political agenda. This is due to the European Parliament's desire for a general European administrative law act. In 2013 the European Parliament adopted a resolution providing recommendations to the Commission for a Law on Administrative Procedure. This law would *only* apply to the EU institutions, agencies, offices and bodies that deal with or make decisions affecting the public. In addition to this initiative from the European Parliament, a community of leading academics from all over Europe known as ReNEUAL (Research Network on EU Administrative Law), has developed a set of Model Rules on EU Administrative Procedure. These Model Rules were published in 2014 and were intended to enhance the debate on EU administrative procedural justice, dealing with among other things rules on single case decision-making. The source of inspiration for the Model Rules not only came from primary and secondary EU law and the Court of Justice's case law, but also the administrative law of EU Member States.

*The Model Rules on EU Administrative Procedures: Adjudication* looks at Book III of the ReNEUAL Model Rules. This book deals with single case decision-making which means that it only applies to administrative procedures by which an EU authority prepares and adopts a decision (Article III-1 (1)). The definition of 'decision' is given in Article III-2 (1). It refers to administrative action addressed to one or more individualised public or private persons, which is adopted unilaterally by an EU authority to determine one or more concrete cases with legally binding effect. The rules of Book III are therefore applicable to EU authorities whenever they make administrative decisions, whether in the context of direct, composite or shared administration. However, they are also applicable to Member State authorities where EU sector-specific legislation so provides, or where a particular Member State chooses to adopt the rules (Article III-1 (2)).

The information on the cover of the book *The Model Rules on EU Administrative Procedures: Adjudication* states that the book contains the results of the fourth workshop of the Dornburg Research Group of New Administrative Law that took place in Dornburg in May 2012. This would appear to be an oversight, since the acknowledgments on page v written by Matthias Ruffert refer to a

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meeting of the Dornburg Research Group in Rome in 2015. At that time, the Group decided to co-operate with ReNEUAL, which had just published its Model Rules on EU Administrative Law, and to critically discuss Book III of these Model Rules on a comparative basis. I would suggest that the latter is the correct version of events, since the Model Rules were indeed published in 2014.

The book does not contain a general introduction to the numerous contributions. The Acknowledgements by the editor only suggest that the book is about "an important part of these Model Rules on a comparative basis". It would have been helpful if the book had also contained a general introduction providing an overarching research question and giving an indication of how the contributions are connected to each other. It is not clear why particular themes in the book were selected and not other parts of Book III of the Model Rules, which are also very interesting. It is also slightly confusing that some chapters include a reaction that does not always appear to correspond to the actual contribution in that chapter. For instance, the contribution by Paul Craig is found in Chapter 3, but the comments provided by Andrew Le Sueur on Paul Craig's contribution appear in Chapter 8. I would describe the book more as a collection of individual contributions which address several topics that are covered by Book III of the Model Rules.

Having said this, the book remains very informative for all administrative law professionals who are interested in comparative administrative law. The book provides interesting insights into French, German, English, Spanish and even Greek administrative law.

**Contributions**

The first chapter of the book deals with the ReNEUAL Codification Project, and in particular Book III. Since the book contains no general introduction, this chapter is very important. A number of concepts referred to in other chapters are discussed here, such as the composite procedures. *Jens-Peter Schneider* looks at the relevance of the general rules that are contained in Book I preceding Book III. These include, for instance, the scope of application and the *lex specialis* principle. Schneider then goes on to discuss the contents of Book III. Chapter 1 of Book III contains General Provisions and Chapter 2 focuses on the initiation and administration of procedure. This chapter contains among other things the general duty of fair decision-making. The gathering of information is the central theme in Chapter 3 which is split into two sections: the first section establishes a set of general rules and the second section deals with specific issues relating to inspections. Chapter 4 specifies the rights relating to a hearing and Chapter 5 establishes the procedural principles that apply to the conclusion of the administrative decision-making. In Chapter 6 of Book III the withdrawal and rectification of decisions is considered. Schneider's contri-

bution provides a good overview of the provisions contained in Book III of the ReNEUAL Model Rules. In his opinion, Book III certainly serves as a starting point for any legislative attempt at EU level to create an administrative procedural law based on the rule of law.

Chapter 2 of the book takes a closer look at the single case decision. Here *Pascale Gonod* compares the French *Actes Administratifs Unilatéraux* and the German *Verwaltungsakte*. She describes the 'roots' of unilateral decision-making in Germany and France from the perspective of the two founding fathers of the French and German administrative legal systems: the Frenchman Edouard Laferrière and the German Otto Mayer. According to Gonod, their writings display strong similarities in their analysis of acte administratif/Verwaltungsakt conceived of as acts of commandment. In his reaction on the contribution of Gonod, Thomas Groβ compares the German 'Verwaltungsakt' as defined in §35 VwVfG (German Administrative Procedure Act), the 'decision' according to Article 288 (4) TFEU and the definition according to Book III of the ReNEUAL Model Rules. According to Groβ, the definition in Book III of the ReNEUAL Model Rules is closer to the German tradition than the definition laid down in the TFEU.

In Chapter 3 *Paul Craig* outlines the development of UK Administrative law. Although UK administrative law is not constructed around the concept of the administrative act and moreover does not have a general code of administrative procedure, UK law nonetheless does provide legal coverage for most of the issues dealt with in Book III of the ReNEUAL Model Rules. According to Craig, in reality there is nothing in Book III that should cause any alarm to a person schooled in the common law tradition. In paragraph D of his contribution, Craig discusses the scope of application of Book III. He sees advantages to the application of the Model Rules to Member States when acting within the sphere of EU law. According to Craig, the exclusion of the national administration from the scope of such rules will make life more complex for claimants, national administrations and the EU administration, especially within the context of shared administration. On the other hand, applying the Model Rules to Member States when they act within the sphere of EU law could give rise to problems in relation to national administrative law. The national administration would have to apply two sets of administrative law: one for acting within the operational sphere of EU law, and one for when acting only at a national level. Although this is also currently the case – namely to the extent to which sector-specific administrative law exists at EU level – the application of Book III will give rise to a situation where Member States can no longer apply their national administrative law in various EU policy areas. Andrew Le Sueur (note: this response can be found in Chapter 8) is very critical of Craig's claims. In view of the developments within the EU – particularly the British referendum which has now led to the Brexit – the applicability of the Model Rules to the actions of Member States is not realistic. Moreover, in the United Kingdom the senior judiciary chooses to emphasise the continuing importance of common law values and

techniques. For these reasons, Le Sueur believes that the ReNEUAL proposal to limit the application of the administrative procedure code to EU institutions would be a wise decision.

*Athanasios Gromitsaris* also makes some comparative remarks in Chapter 3 concerning unilateral single case decision-making. He considers not only the British, French and German perspectives, but also the Greek and even the American angle. He concludes that the Model Rules on EU administrative Procedure present an opportunity to simplify and stabilise administrative proceedings and foster integration without leveling out national differences.

In Chapter 4 *Oriol Mir* discusses Book III of the Model Rules from a Spanish perspective. He believes that the Model Rules deal with certain matters in a much better way than the Spanish *Ley de Procedimiento Administrativo*. To illustrate this he refers among other things to the regulation of the rectification and withdrawal of decisions. He sees the Spanish regulation as very confusing, incomplete and unbalanced on this point. The fact that the Spanish rules allow parties to request the rectification or withdrawal of unlawful decisions outside the time limits for legal challenge, without conceiving this to be a discretionary power of the public authority, makes it difficult to distinguish the Spanish regulation from legal remedies. No rules are envisaged regarding the effects of this rectification and withdrawal. In the case of unlawful decisions that are beneficial to a party and annullable, the public authority may only challenge them before the courts within four years after the decision was adopted. This regulation may infringe upon the EU principle of effectiveness. According to Mir, the Model Rules adopt a more flexible and substantive solution for all kinds of unlawful decisions based on the principle of legitimate expectations.

In Chapter 5 *Roberto Caranta* deals with the Chapter of Book III on the 'gathering of information', consisting of two parts: general rules and some specific rules on inspections. The gathering of information is translated in the Model Rules as 'investigation'. Caranta believes that 'investigation' is not the best possible term to be used to refer to fact-finding activities in administrative proceedings. He claims the chapter is written too much from the perspective of competition law procedures and does not take sufficient account of the fact that the EU institutions also grant benefits to individuals and undertakings. Therefore the more neutral term 'fact-finding' would be a more appropriate choice. In response to this contribution, *Jacques Petit* points out the legal complexities that arise from the fact that when carrying out inspections, the EU is dependent on national law. The safeguards provided through these inspections are ultimately dependent on the national law that applies to the inspection concerned.

*Francisco Velasco* also considers the gathering of information in Chapter 6. He focuses on the relationship between the investigative authority and the authorities of the Member State where the person or the premises holding the information sought are located. He explains that the various actions of the EU authority and the national authorities are closely connected and he outlines the

complex legal issues that arise as a result, particularly in the area of fundamental rights.

In Chapter 7 *Gunilla Edelstam* discusses the establishment of facts that precedes an administrative decision. She explains that 'sufficient investigation as to collection of proof as well as correct evaluation of the collected information is needed'. The issue of the evaluation of proof is complicated by the fact that it is unclear what the standard of proof should be in administrative unilateral single cases. Unfortunately Edelstam provides no solutions for this problem.

*Jacques Ziller* considers the protection of third parties in administrative procedure law in Chapter 8. His contribution is not limited to third parties in relation to Chapter III of the Model Rules; he also discusses third parties against the background of the Model Rules in their totality. He shows that the idea of the ReNEUAL Steering committee is that it is perfectly manageable to have different definitions of 'party' – and hence of 'third party' – for each of the books, as the issues are quite different. Ziller calls for the development of a broader research agenda to include the protection of third parties in administrative procedure.

Chapter 9 contains the contribution by *Jean-François Lafaix* and a comment by *Wolfgang Hoffmann-Riem* on the expert influence in unilateral single decision-making. Lafaix takes a close look at the role of experts not only in the decision-making processes but also the role of experts in judicial procedures. Furthermore he focuses not only on the expert's influence at the individual decision-making level, but also at the level of rule-making. According to Lafaix, the Model Rules pay too little attention to the principles that determine the choice of experts, their precise status in the process and the definition of their task. Is the public authority also empowered to ask for expertise even if the law does not specifically require it? The Model Rules are not clear on this point. Another question is whether parties may propose experts even when the law has predetermined who is to be chosen. Furthermore, the Model Rules remain silent on the question of what conditions experts have to satisfy in order to fulfill their function adequately. According to Lafaix, transparency is the most important principle that should guide the development of the Model Rules in relation to experts. This means that administrative authorities should be obliged to give the reasons for using expertise, for choosing a particular expert, for defining the content of their mission and possibly for taking a decision that is not in accordance with the opinion of the expert. Hofmann-Riem points out that the Model Rules are silent on the issue of the remuneration of experts.

Chapter 10 written by *Diana-Urania Galetta* is a bit of an outsider compared to the other chapters. This chapter does not concern Book III but Book VI of the Model Rules on information management. Book VI deals with specific categories of inter-administrative information management activities consisting either of certain forms of inter-administrative information exchange or databases directly accessible to public authorities. In this regard it supplements the other Books – including Book III – by regulating certain horizontal aspects which

give rise to distinct problems of information law. Important is that Book VI includes not only information management activities of EU authorities, but also those of national authorities. The book is therefore applicable to all forms of composite information management activities. Although Book VI contains many obligations for authorities or establishes organizational structures, the Book also concerns rules which provide – explicitly or implicitly – subjective rights for individuals in order to effectively protect their legal interests.

Chapter 11 provides the conclusions of *Eberhard Schmidt-Aβmann*. Here again it is a pity that the conclusions do not explicitly refer to all the contributions in the book. The conclusions deal more with the Model Rules as such. According to Schmidt-Aβmann, Book III illustrates the double function of administrative law. Rules on administrative procedure need to be designed not only to protect the rights of individuals, but at the same time to also ensure that public duties can be discharged effectively. Schmidt-Aβmann holds the opinion that many rules in Book III are innovative. He believes the Model Rules will not lead to inflexibility. They are a codification of binding law, but do not exist in a vacuum. Furthermore, sector-specific law will be the first reference for the administration and the courts. According to Schmidt-Aβmann, this should be a permanent learning process between codification and special needs, between legislation and case law and between practising lawyers and legal scholarship. This learning process is the best guarantee for further innovation.

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