

Administrative Law Reform in the EU: the ReNEUAL Project [new]

Herwig C.H. Hofmann¹ and Jens-Peter Schneider²

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This contribution to the handbook of comparative administrative law stands apart from the other chapters in that it offers a real-life big-scale case study on the possibilities and possible results of the application of comparative administrative law. The contribution presents project of the Research Network on EU Administrative (ReNEUAL) to develop a limited set of model rules addressing some of the most pressing needs at the current state of development of EU administrative law. The model rules were written using a comparative law perspective for a concept of innovative codification in view of streamlining administrative procedures with constitutional principles.

A. Background to the *status quo* in EU administrative law and the “ReNEUAL Project”

The Research Network on EU Administrative (ReNEUAL) is a collaboration of mostly, but not exclusively, academic lawyers from various corners of Europe with the objective of developing an understanding of EU public law as a field which ensures that the constitutional values of the Union are present and complied with in the exercise of public authority. This objective resulted in a concrete project, the so called ReNEUAL Model Rules on EU Administrative Procedure, initially elaborated since 2009 and published on-line in September 2014 in English and since translated and published (in chronologic order) in Spanish, Polish, German and Italian with French and Romanian versions ready for publication and a Portuguese version planned. An updated version taking into account the further understanding and lessons from comparing languages through the translation process will be published in English in book form. The

¹ Herwig C.H. Hofmann is Professor of European and Transnational Public Law at the University of Luxembourg, Luxembourg.

² Jens-Peter Schneider is Professor of Professor of Public Law and European Information Law at the University of Freiburg i.Br., Germany.

ReNEUAL model rules are thus the result of a multi-annual research collaboration with mostly but not exclusively European lawyers with backgrounds in different legal systems and linguistic approaches. The group consisted of a mix of specialists in national and European administrative law and constitutional law.

I. The Approach in view of the specific challenges in today's EU legal system

The ReNEUAL model rules were elaborated on the basis of an assessment of the *status quo* in EU administrative law. One of the objectives was to bring implementation of EU law by non-legislative means needs to par with constitutional standards of Union law. These have been developing on the Union level in line with the common traditions within the Member State constitutions. The objective to create the model rules on EU administrative procedure was to achieve the ReNEUAL goals by drafting the outcome of the studies not only in form of journal articles and book contributions but also to develop one set of accessible, functional and transparent rules which make visible rights and duties of individuals and administrations alike. The model rules were drafted with the legislature on the European and the national level in mind. The model rules are explicitly formulated in a manner to inspire the legislature to use them in legislation and are an offer to Courts looking for a compilation of good standards to review procedural developments against. The model rules are also designed to spur the further academic debates in the various European legal systems and linguistic groups towards ensuring high standards and fostering an understanding for the specific challenges which European integration brings to the field of administrative law.

The starting point, in a nutshell, is that EU law applies a mixture of tools in specific and evolving contexts of implementation of EU law and policies. Each of these tools – single case decisions, non-legislative acts of general application, agreements and contracts – has its own specific requirements for ensuring procedural justice. EU law on administrative procedures is also characterised by the multi-jurisdictional nature of many of its procedures and a pluralisation of the actors involved. Most transversal issues such as the adoption and implementation of binding decisions with identified addressees (single case decision), binding acts of general

application (rulemaking), binding agreements (contracts) or the handling of the collection and use of information as input into decision-making are not addressed in a transversal manner.

In the past, within EU law, rules on administrative procedures for the implementation of EU law had been developed very dynamically and often rather experimentally. An example of this is in the use of information networks as a flexible model to ensure decentralised implementation of EU law whilst creating common rules for a single market. The existing body of rules and principles on EU administrative law have emerged principally from legislation in specific policy areas. There is therefore significant fragmentation into sector-specific and issue-specific rules and procedures. Approaches to problems which are common throughout policy areas, and indeed Member States legal systems, are often re-invented and differently approached irrespective of whether a policy-specific solution is warranted or not. Examples include rights of and procedures for participation and hearing, inclusion of external expertise in decision-making, forms and formalities of decision-making, withdrawal, revocation of decisions, consequences of amendments, times and deadlines as well as consequences of procedural errors to name just a few.

This said, the ReNEUAL model rules are not predicated on the assumption that procedural heterogeneity is bad, nor are they premised on the assumption that one type of procedure is suitable for all cases. Nonetheless, in EU law, the diversity of solutions established without regard for an overarching, transversal concept in turn often results in - unwarranted - complexity and differences between areas that are not grounded in principle. The complexity becomes increasingly pronounced by the fact that the administrative procedural rules that pertain in any particular area will be an admixture of sector specific legislation, complex case law, and administrative practice, and even then many issues of practical importance for administrators and affected individuals will not be clearly regulated.

Next to complexity, gaps in regulation frequently appear. These result from the fact that some procedural elements are addressed within policy-specific rules only partially, which means that often under-specified general principles of law must fill the void. There is moreover a growing gap between the proliferation of new forms of administrative action in the EU and their integration into a coherent system of protection. The absence of a systematic transversal

approach is not just a formal problem. It is one of the main reasons why lacunae in the protection of procedural rights continue to exist.

Further, in EU Administrative law, emphasis has to be given to the multi-jurisdictional nature of many if not most administrative procedures. Despite ‘Europeanization’ of the policy areas, there is no fully fledged EU administration. Instead, implementation of EU law within the joint legal space is generally undertaken by national bodies which are in some cases supported by EU bodies. This distinguishes EU administrative law from the basic assumption of many federal legal systems, which like Germany or the US follow a model of separating the implementing competences more clearly either according to levels (Germany) or according to policy competencies (USA). The specificity of the integrated, multi-jurisdictional nature and high reliance of mitigation through a diverse set of agencies involved in the implementation of EU policies, reinforces fragmentation between sector-specific procedures. The lack of general rules of procedure at the level of EU institutions, bodies, offices and agencies has therefore a negative impact on the coherence of the approach to procedural issues of a Member State’s authorities. This creates barriers to administrative coordination within Member States.

The multi-jurisdictional nature and pluralisation of actors requires taking into account of another EU-specific feature: the high degree of procedural cooperation between the actors in many areas in practice which is achieved by composite procedures. Under these complex forms of integrated administrative procedures the procedural steps leading up to the decision result from a mix of applicable laws by different actors. This is irrespective of whether the final decision is taken by an EU or a Member State authority. Composite procedures require joint gathering and use of information as the raw material of decentralised decision-making. In many policy areas, EU authorities establish shared databases for the collection and exchange of information in those procedures. Today, the design of composite procedures is geared predominantly towards achieving efficiency and optimal use of pre-existing resources, but their multi-jurisdictional nature may diminish protection of individual rights and possibilities of effective judicial review.

In EU constitutional law, there is at present a very limited partial codification of some principles of good administration in Article 41 of the EU Charter of Fundamental Rights. There is also some guidance provided by the European Ombudsman’s Code and by the EU institutions’ internal rules of procedure. The general principles of EU administrative law as developed by the

CJEU have a broader scope than such partial codifications, but are more abstract in nature. Continuing voids in regulation within policy-specific rules are then generally filled by general principles of law. One example is the right to a fair hearing. According to the case-law of the Court of Justice of the European Union (CJEU), an authority implementing EU law will be in violation of the EU general principle on the right to a fair hearing even in cases where the legal basis which establishes the procedures to be followed by that authority does not oblige it to organise a hearing.³ The general principles of EU administrative law as developed by the CJEU, thus have a broader scope than specific legislation or soft law codifications by EU institutions and can be applied to cover rights and obligations arising in the context of rulemaking, contracts, planning procedures, information exchange systems, and enforcement networks. Yet the reality is that the development of general principles dealing with many of these issues is hampered by the limited standing rights of individuals especially when it comes to rulemaking, contracts and information management activities. And although the ReNEUAL Model Rules do not aim at reducing the dynamic, experimental nature of the system, they should instead allow for building blocks of standard models for decision-making procedures without limiting the possibility of further experimentalist developments in certain policy areas.

II. The Model Rules on EU Administrative Procedure

In view of this, the ReNEUAL model rules seek to provide for building blocks comprised of standard models for decision-making procedures, without limiting the possibility of modification for the needs of certain policy areas. The model rules' approach is therefore not to reduce the dynamic, experimental nature of the system of EU administrative law but, instead, to allow for building blocks of standard models for decision-making procedures without limiting the possibility of further experimentalist developments in certain policy areas.

The approach of defining these Model Rules as *lex generalis*, which could cover the general questions of protection of rights in the design of effective decision-making procedures, in our view, actually allows for a simplified dynamic adaptation of elements in *lex specialis* which require

³ C-135/92 *Fiskano AB v Commission* [1994] ECR I-2885, para 39.

policy specific adaptations. We are aware that this approach requires careful drafting of the rules governing the relationship between *lex generalis* and *lex specialis*.

The ReNEUAL Model Rules are organised in six ‘books’. These books are designed to reinforce general principles of EU law and identify, on the basis of comparative research, best practices in different specific policies of the EU. ReNEUAL’s Model Rules do not follow the same definition of the scope of applicability across the various books. Some specific considerations have to be taken into account, which lead to differentiation between the general scope of the proposed Model Rules as reflected in Book I and the more specific scope of some of the other Books. Generally speaking Books II (on rule-making), III (on individual decisions) and IV (on administrative contracts) are drafted for the EU institutions, bodies, offices and agencies, whereas Books V (mutual assistance) and VI (information management) have been drafted for EU authorities and Member States’ authorities. Obviously, the model rules can be used as a template for the reform of existing procedural rules or for the adoption of new procedural rules.

However, at this stage, the ReNEUAL Model Rules do not go further and actually indicate the nature of the consequences of non-compliance. The reasons are two-fold: first, while some national administrative procedure laws indeed give binding indications as to the sanctions for non-compliance – annulment, damages or other – many others don’t and are nevertheless enforced by courts in the way they deem most appropriate; second, the EU courts have managed very well until now to adjudicate the appropriate sanction for non-compliance with EU law. The choice that has been made in this version of the ReNEUAL Model Rules does not, however, mean that a codification of EU administrative procedure law should not in the future try and find an appropriate formulation of the sanctions to be applied in the event of non-compliance.

The process of drafting the model rules began with consideration of the procedural rules currently prevailing in particular EU policy areas, which led to identification of a preliminary version of possible procedural rules. The approach was to take a traditional ‘restatement’ approach and enlarge its ambit in view of the many areas which require innovative developments

in the form of genuine ‘statements’ on how the law *de lege ferata* should be.⁴ The teams responsible for particular books then considered the gaps in the body of the existing procedural rules and proposed drafts to cover such situations. The rules thus drafted were subjected to a detailed process of discussion and review in consultation with a wide variety of practitioners and academics. The ReNEUAL Model Rules follow an approach of ‘innovative codification’. This involves bringing together in one document existing principles, which are scattered across different laws and regulations and in the case-law of courts. The notion of ‘innovative’ is that the model rules do modify existing principles and rules and add new ones where they were felt to be warranted by the drafting teams.

B. Comparative Studies as a core element of the ReNEUAL methodology

There were numerous sources of inspiration for the Model Rules, including, inter alia: primary and secondary EU law; the case-law of the Court of Justice of the European Union (CJEU) including its General Court (GC); the practice of EU institutions, bodies, offices and agencies; national codes of administrative procedure; the important work of the European Ombudsman; and the academic literature. Since legal systems around the world face similar difficulties when it comes to organising the administrative implementation of law, inspiration was be drawn from many national laws on administrative procedure, without any one single model transferable wholesale.

Comparison of approaches to developing solutions to problems common to various legal systems can be undertaken as comparison between legal orders (sub-national, national, supranational, international) as well as between policy areas or both. Inspiration for the model rules was drawn from solutions developed regarding specific EU policies which if, after careful review, appeared suitable to be generalised, as well as from Member State codifications enhancing compliance of the legal system with the rule of law. However, no single approach from Member States’ codifications, international organisations or EU policies is applicable as such to the EU and all of its policies. The sources of inspiration from EU law consist of primary, constitutional and secondary, legislative EU law, the case-law of the CJEU, the practice

⁴ See on this especially the contribution by George Bermann in the first edition of this handbook. George A. Bermann, A restatement of European administrative law: Problems and prospects, in Susan Rose-Ackerman, Peter L. Lindseth (eds.), *Comparative Administrative Law* (Elgar Publishing 2010) 595-605.

of EU institutions, bodies, offices and agencies, on the one hand, and the comparative law of the EU Member States and other relevant national and international experiences of full or partial codification of administrative procedure, on the other hand. Furthermore, some proposed rules are the result studies of the so-called ‘ombudsprudence’ of the European Ombudsman (EO) and especially the proposals frequently added to EO reports.

To the readers of a book like this, it hardly needs to be mentioned that comparative administrative law has a long tradition reaching back to the early 19th century and, although state-centered positivist thinking interrupted the importance of this line of comparative law in the late 19th century and early 20th century, in Europe, the rise of post-second world war integration brought the importance of this field back onto the agenda of judicial and legislative development of the European legal landscape.⁵ The two main objectives of comparative law in this field arising from this tradition have informed the work of the ReNEUAL working and drafting groups. One is the concept of comparative law as the only real-life laboratory of legal concepts and constructs. The comparative method applied across legal systems and across policy areas in this sense widens the pool of concepts and uses the reality in other countries as arena for observation of workability and weaknesses of solutions.⁶ This was in part also the approach used by the ReNEUAL drafters of the model rules. Another approach, a more theoretic undertaking, looks at using comparative law as a tool of comprehension, a key to understanding the reason and the functioning of different approaches. This theoretic understanding was brought into the process of comparative research by mixed groups of researchers representing different legal traditions and systems. The composition of the ReNEUAL team sought to ensure that this element was covered by background as well as ensuring that each legal researcher worked with awareness of differing legal concepts and sensitivities – a process which is best ensured by offering explanations and reasoning to legal thinking. This approach was followed by the explanations and the commentary to solutions suggested in the ReNEUAL model rules.

⁵ Peter M. Huber, Grundzüge des Verwaltungsrechts in Europa, in: A. v. Bogdandy, S. Cassese, P.M. Huber (eds.), *Handbuch Ius Publicum Europaeum* Band V, (C.F. Müller Verlag : 2014), 6-72 at 6.

⁶ Christoph Schönberger, Verwaltungsrechtsvergleichung, in: , in: A. v. Bogdandy, S. Cassese, P.M. Huber (eds.), *Handbuch Ius Publicum Europaeum* Band IV, (C.F. Müller Verlag : 2011), 493-540 at 509.

I. The comparative method being a central element to the development of EU law

The comparative approach used in the ReNEUAL project is essentially a continuation by other means of the general methodological approach of comparative law within of EU law. However, within EU law as developed by the CJEU, there is a strong penchant for use of the comparative method whilst, to a degree not followed by the ReNEUAL approach, only making limited use of analogy between policy-specific solutions within the legal system. The comparative method is central to the recognition and interpretation of unwritten principles of law such as general principles of EU law including its system of protection of fundamental rights. A comparative approach is also a systemic reality in within the CJEU composed of members representing all the legal traditions and systems found within the Union.

The use of the comparative method in EU law has two basic motivations. The first was expressed in *Stauder*⁷ and *Nold*, two of the seminal judgments on fundamental rights protection within the framework of, what was then, Community law in that the Court found to be ‘bound to draw inspiration from the constitutional traditions common to the Member States’ and that it could not ‘therefore uphold measures which are incompatible with fundamental rights recognised and protected by the Constitutions of those States’.⁸ In so holding, the CJEU underscored the *Leitmotiv* of the EU’s legal order as being embedded in the constitutional orders and traditions of the Member States. This essential element of the EU legal system also gives expression to the notion of a European common constitutional space protecting its common values through their expression in legal principles.⁹

The second motivation for the comparative method is to obtain guidance from the various solutions adopted for a common legal problem in different legal systems, the inspiration for a methodology best suited to the objective of the Union based on the rule of law.¹⁰ The various legal traditions thus compared and contrasted not only constitute the legal and philosophical

⁷ Case 29/69 *Stauder* [1969] ECR 419.

⁸ Case 4/73 *Nold v Commission* [1974] ECR 491, para 13.

⁹ See the seminal article by Peter Häberle, ‘Gemeineuropäisches Verfassungsrecht’, *EuGRZ* 18 (1991) 261–74.

¹⁰ Koen Lenaerts, ‘Interlocking Legal Orders in the European Union and Comparative Law’, *ICLQ* 52 (2003) 873–906 at 879.

background of the EU legal system but also amount to a pool of legal concepts, methods, and experience useful in solving genuine and current problems in the concrete application of abstract legal principles.¹¹

The CJEU has the right to review measures of the institutions and bodies, as well as agencies, of the EU unless exceptions are explicitly mentioned in the Treaties and has thus played a central role in identifying, applying, and developing the unwritten general principles of EU law.¹² The recognition of and reliance on these principles has provided many of the basic elements of European administrative law,¹³ and has often been central to the recognition of both procedural and substantive rights of individuals within the EU legal system. Once a principle has been recognized through the case law of the European courts, it may, as a ‘general’ principle, be adapted to the specific needs of the Union legal system.¹⁴ Being *general* principles, such sources of law are by their nature not limited to one policy area or one procedural context. They are capable of being generalized across policy fields and methodological categories.

The comparative method as approach to developing the EU ‘common law’ of administrative procedure through General Principles of law was first developed in *Algera* and the subsequent case law of the CJEU regarding the European Coal and Steel Community (ECSC). *Algera* was a case which arose in the context of the first steps towards European integration in the 1950s which consisted of pooling certain regulatory powers concerning only specific sectors such as coal mining and the steel industry. The case law of the early Court of Justice perceived the ECSC as being of a distinctively administrative nature, addressing legal problems mainly through the

¹¹ Guiding the translation of the *Rechtsprinzip* to the *Rechtssatz*—in other words, the transfer of an abstract general principle to a legal rule.

¹² See, eg, with respect to state liability: Joined Cases C-46 & 48/93 *Brasserie du Pêcheur* and *Factortame* [1996] ECR I-1029, paras 24–30. For other general principles see Chapters 6 and 7.

¹³ Jürgen Schwarze, *Europäisches Verwaltungsrecht*, 2nd edn (Baden-Baden: Nomos, 2005) 193 et seq; Koen Lenaerts, ‘In the Union we Trust: Trust-Enhancing Principles of Community Law’, *CMLRev.* 41 (2004) 317–43; Ulf Bernitz and Joakim Nergelius (eds), *General Principles of European Community Law* (The Hague: Kluwer, 2000); Hans-Peter Nehl, *Principles of Administrative Procedure in EC Law* (Oxford: Hart, 1999); Takis Tridimas, *The General Principles of EC Law*, 2nd edn (Oxford: Oxford University Press, 2006); John Usher, *General Principles of EC Law* (London/New York: Longman, 1998).

¹⁴ Herwig C.H. Hofmann, Gerard C. Rowe, Alexander Türk, *Administrative Law and Policy of the European Union*, (Oxford University Press 2011), 112-113.

lens of the administrative law traditions common to the six founding Member States.¹⁵ These judgments laid down a number of the foundations of the administrative law system of the later EU.¹⁶ For example, in *Algera*, a case dealing with letters and communications by the Common Assembly, the Court ruled that these could constitute acts subject to judicial review as a consequence of their nature as ‘administrative measures’, a translation from the French ‘*acte administrative*’ or the German ‘*Verwaltungsakt*’, despite the different concepts behind the terminology in different legal systems.¹⁷

A more recent example for comparative method on action has been the identification of the general principles of EU law -the Right to Good Administration. The principles of good administration have been developed in close connection with the rule of law and the precept of procedural justice in public administration.¹⁸ Already in its early case law in administrative matters, the CJEU had recognized the relevance of proper procedural rules to the legality of administrative action.¹⁹ On the European level, one of the first Treaty documents dealing explicitly with the underlying principles of good administration was a 1977 resolution of the Council of Europe,²⁰ containing five fundamental principles: the right to be heard; the right of access to information; the right to assistance and representation; the obligation to provide reasons for decisions; and finally the obligation to notify affected parties of remedies available

¹⁵ The CJEU 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.

¹⁶ See, with further explanations, Mario P Chiti, ‘Forms of Administrative Action’, *L & Contemp. Probs.* 68 (2004) 37–60.

¹⁷ Joined Cases 7/56 & 3–7/57 *Algera and others v Common Assembly* [1957/58] ECR 39.

¹⁸ See for further elaborations of the concept of the rule of law in EU law, above in this chapter.

¹⁹ See especially the landmark Joined Cases 7/56 & 3–7/57 *Algera and others v Common Assembly* [1957] ECR 39, para 55; Case 64/82 *Tradax v Commission* [1984] ECR 1359 with further references: Lois Azoulai, ‘Le principe de bonne administration’ in Jean-Bernard Auby and Jacqueline Dutheil de la Rochère (eds), *Droit Administratif Européen* (Brussels: Bruylant, 2007) 493–518 at 496, 497.

²⁰ Council of Europe, Resolution 77 (31) On the Protection of the Individuals in Relation to the Acts of Administrative Authorities (adopted by the Committee of Ministers on 28 September 1977 at the 275th meeting of the Ministers’ Deputies). The resolution did not however use the term ‘good administration’.

against an act of the administration. The ‘right to good administration’ is now explicitly recognized in Article 41 CFR, a rare example of a set of fundamental rights relating to administrative procedure.²¹ Also in the wake of the CFR's initial proclamation in 2000, the European Parliament adopted a resolution on 6 September 2001 approving a Code of Good Administrative Behaviour, with the goal of ensuring the protection of individuals vis-à-vis the administration. Further, the European courts have over time developed various general principles of law falling under the umbrella term of ‘good administration’.²²

This approach of the CJEU to develop through the general principles of law a sort of ‘common law’ of EU administrative procedure would appear to stand to a certain degree in contrast to the experience within the US where the federal courts would seem to have been only very cautiously recognizing a federal ‘common administrative law’.²³ The CJEU case law developing a common administrative law of the EU through general principles of law has come much closer to the concept of a common law approach than that observed with regard to the US system.²⁴ It is exactly the shortcomings of this approach, that have led many national systems to codify their respective national administrative law based on principles and policy specific formulations thereof, most recently the French legal system.

²¹ This provision encompasses (1) the obligation to provide impartial and fair treatment within a reasonable period of time; (2) the right to be heard; (3) the right of access to one's own file; (4) the obligation to give reasons; (5) the right to receive compensation for harm caused by the Community; and (6) the right to write and receive a reply from Community institutions in a selected Treaty language. Aspects of the principle already exist in the EC Treaty—the obligation to give reasons (Art 296(2) TFEU), the right to compensation for harm caused by the Community (Art 340 TFEU), and the right to write to Community institutions and receive a reply in any chosen Treaty language (Art 24(4) TFEU). In addition, there is an existing provision on the right to be heard in the field of state aids (Art 108(2) TFEU).

²² The explanations to the text of the Charter prepared by the Presidium of the Convention confirm this approach by stating that ‘Article 41 is based on the existence of a Community subject to the rule of law whose characteristics were developed in the case-law which enshrined *inter alia* the principle of good administration’. Good administration can therefore be seen as the administrative law equivalent to the constitutional notion of the ‘Community of law’ concept proclaimed by the CJEU in Case 294/83 *Les Verts v Parliament* [1986] ECR 1339.

²³ Anthony J Bellia, ‘State Courts and the Making of Federal Common Law’, *University of Pennsylvania Law Review*, 153/3 (2005), 825-920.

²⁴ Catherine M Donnelly, *Les rapports entre droit administratif fédéral et droits administratifs des états aux États-Unis : Comparaison avec l’Union Européenne*, in : J-B Auby, J. Dutheil de la Rochère, *Droit Administratif Européen*, (Bruylant 2007), 1085-1110 at 1105.

II. Comparative law influences from cross-policy sector review and national legislation as well as international legal provisions

Since the use of the comparative method has been key to the development and evaluation of concepts applied in the ReNEUAL model rules. The comparison applied was threefold. Not only, first, was the comparative method used to assess solutions applied and deployed in various policy fields, also the more ‘classic’ comparative cross-systemic comparative law was widely applied looking at what was developed in national law within the EU and beyond and assessing which components, if any, could be suggested for use within the model rules, and, if necessary, be adapted for the specific needs of the EU. Third, public international law and global legal regimes were considered. In this sense the comparative influences have been taken into account from a comparative approach looking at policy specific regulation on various levels – national, supranational and international as well as the approaches to general structural questions. In this sense, the comparative method’s utilitarian approach as a source of knowledge and in the sense of using national legal systems as the real-world laboratory for solutions.

Comparison of EU Member States with national law and the EU member States and non-EU countries are highly relevant. Rules for EU administrative procedures do not exist in a vacuum. Legal systems around the world face similar difficulties when it comes to organising the administrative implementation of law. Especially during the last century, in line with the development of the ‘administrative state’, many legal systems have turned to codification of administrative procedures. It was and is clear to the drafters of the ReNEUAL Model Rules on administrative procedure that the challenges to implementation of EU law and policy might in many cases be characterised by a greater complexity than the issues encountered within states when implementing their own national law, even in federally organised states. Nevertheless, although national codification experiences are not generally transferable one-to-one to the EU level, they do contain valuable case studies and inspiration to be taken into account when analysing the possibilities of codifying EU administrative procedures.

The explanations to the ReNEUAL Model Rules, refer to the discussion within EU member states by giving also a very brief comparative overview over the Member State developments. Interestingly, ‘(m)any of the present EU Member States have adopted codifications of

administrative procedures – after a first attempt in Spain in 1889 – over the course of the twentieth century beginning with Austria in 1925.²⁵ The movement towards codification in EU Member States gained momentum in the second half of the twentieth century with most recently on January 1st 2016 the French code on administrative procedure having entered into force. But, as the ReNEUAL explanations recall:

‘National codifications differ with regard to their scope and purpose. In some countries, there are either different laws of administrative procedure for different levels of government, or their entry into force has been staggered. For example, in Denmark the law was introduced in 1986 for central government and in 1987 for local government. Also, some Member States have a regional level of government with their own legislative powers (for example, Austria, Belgium, Germany, Italy and Spain, as well as for certain parts of their territory, Finland, Portugal and the United Kingdom) which complicates the discussion of codification of administrative procedure at the different levels. Germany, for example, has a parallel existence of a federal law of administrative procedure applicable to federal authorities and alongside it the laws of each Land which are in turn applicable to the latter’s authorities. In Germany this was achieved in the context of a common and coherent legal and administrative culture. In Spain and in Italy, a single general law is applicable to all levels of administration – central as well as regional and local, but there is room for complementary legislation at the level of regions and autonomous communities.’²⁶

Further, the depth of regulation also differs across the national systems. The administrative procedure law of Italy, for example, is to a large extent built on principles to be fleshed out in specific policy legislation, an approach which was both a guiding principle of the ReNEUAL drafters in order to achieve a short and workable draft as well as to ensure that the *lex generalis* nature of the model rules would be visible from the outset. Further important differences exist with regard to the administrative actions which are codified and their definition. Many if not most administrative procedure acts in force within EU Member States apply only to unilateral administrative decisions (or adjudication). Some, such as the German law of 1976, also contain

²⁵ CITE THE FULL SOURCE IN THE 2014 PUBLICATION

²⁶ CITE THE FULL SOURCE IN THE 2014 PUBLICATION

some rudimentary rules applicable to contracts. Others, like the French code, understand contracts as a specific case of administrative acts. National approaches also differ as to whether rulemaking is covered. Where the US APA²⁷ applies generally to ‘rulemaking’ and establishing famously a ‘notice and comment’ procedure, which aims to facilitate the participation of stakeholders in rulemaking, in some Member States, like France, ‘administrative acts’ also include regulatory acts (decrees, ministerial regulations etc.) in others they are whole separate types of act. Therefore, in France, the codification of administrative procedure generally also applies to the latter in other, it does not. This confirms that, although inspiration can be drawn from many of the Member States’ laws on administrative procedure, no one single model is transferable as such. In some cases such as with regard to rule-making non EU legal systems like that of the US with the 1946 Administrative Procedure Act have shown to have developed an extensive practice well worth taking into consideration. A similar tendency is visible outside of the EU, for example, the US.

Examples for comparison and sources from public international law arise from e.g. the 1977 Council of Europe resolution on the protection of individuals in relation to the acts of administrative authorities²⁸ offers a good example for the power which even soft law by public international law organisations have had on the development of EU administrative law, the general principles governing it and consequently on the work of the ReNEUAL drafters for the model code.

Inspiration for codification on the EU level comes from the fact that the scope of administrative law is not only national and supranational but also global. Regulatory powers are increasingly transferred to international organisations at the global level. The study of the conditions of regulation and decision making at that level (sometimes referred to as ‘global administrative law’), show that general principles such as consultation and participation, access to information rights and reason-giving are increasingly seen as central to the legitimacy of administrative action beyond the state. This is of course not surprising given the role that public international law enjoys as a source of EU administrative law. It is also not surprising given that that the realms of

²⁷ Administrative Procedure Act of 1946, Pub.L. 79-404, §§ 500 – 596, 60 Stat. 237 (1946).

²⁸ Council of Europe, Resolution 77 (31) On the Protection of the Individuals in Relation to the Acts of Administrative Authorities (adopted by the Committee of Ministers on 28 September 1977 at the 275th meeting of the Ministers' Deputies). The resolution did not however use the term ‘good administration’.

public international law and administrative law are becoming increasingly convergent in that many international agreements and organizations are directly concerned with administrative activities and tasks and the prerequisites for the legality and legitimacy of their actions become increasingly similar to those expressed in traditional administrative law. On the other hand, the administrative law regimes of states, including those of EU Member States and of the Union itself, are becoming more and more internationalized. International organizations and their acts increasingly influence domestic (European or national) administrative practice and decision-making. Although international administrative cooperation itself demands a regulatory or constitutive framework, and the provision of such a framework has become one of the tasks of international administrative law, this dimension is awaiting further research by the ReNEUAL working groups to assess whether model rules addressing these aspects might be helpful at this stage of the development of the law.

C. Impact of comparative studies on the ReNEUAL Model Rules

According to the different forms of act addressed, each of the ReNEUAL model rules' books have a different focus on the comparative influence taken into account. Some areas draw more heavily on national experiences within EU member states and non-EU member states. Others draw more inspiration from a cross-policy sector comparison. Again others are altogether more innovative given a lack of applicable examples given the architectural specificities of decision making procedures. In the following we will try to highlight these different influences.

I. Book I (General Provisions)

Book I of the ReNEUAL Model Rules is rather short and consists of a preamble assembling the most important (constitutional) principles of EU administrative procedure and four articles providing rules on the scope of application, rules on the relation of the Model Rules to either specific procedural rules of the EU or to Member State Law, and definitions of relevance for more than one of the following books.

Comparative studies influenced these provisions only to a limited extent. With regard to the principles assembled in the preamble ReNEUAL did not pursue to establish new principles, maybe with the exception of the concept of the requirement to be able to identify responsibility which on an institutional basis is highlighted in German-speaking literature whereas this concept on the basis of the individual responsibility of a single decision-maker is a more wide-spread concept, but to highlight the relevant constitutional principles already existing in EU law. Thus, most of these principles are derived either directly from the EU treaties or from the jurisprudence of the CJEU on general principles of EU law. In the latter case, comparative law plays an indirect role, as the CJEU established the – at least originally unwritten – principles of EU law mainly by a “comparative analysis” of national constitutional concepts and fundamental rights as well as of international law namely the European Charter of Human Rights²⁹.

The rules of Book I as well as the following books concerning the scope of application are influenced by comparative studies only in the indirect way as the national codification processes very clearly demonstrated that these rules are very often highly controversial³⁰. This knowledge as well as early discussions with various high-ranking national judges motivated ReNEUAL to opt for a scope of application generally limited to EU authorities while – with the exceptions of Books V and VI – excluding administrative actions of Member State’s authorities³¹. National experiences with codifications of administrative procedure influenced also the *lex specialis* rule in Article I-2. Although such rules introduce the risk of de-codification the respective codifications still regulate many procedures and serve as points of reference even beyond their direct scope of application. Moreover, national examples show that such *lex specialis* rules are needed in order to provide flexibility to the administrative legal order³².

The influence of comparative studies on the definitions in Article I-4 is very limited with the exception of the definition of the term “administrative action”, a term which is used in Article I-1(1) to define the applicability of the ReNEUAL Model Rules. The definition consists of a list of specific actions and refers to additional definitions of these actions in the other books of the

²⁹ See AG Roemer, [1969] ECR 419, 427-428# - Stauder; this approach is now codified in Art. 6(3) TEU.

³⁰ See Schneider, Chapter 10. Germany, in: Jean Bernard Auby (ed.), *Codification of Administrative Procedure*, Brussels 2014, p. 203, 208. ###references concerning other countries##

³¹ ReNEUAL MR, Explanations to Book I para 4-7; Introduction to Book III para 4.

³² See Schneider, Chapter 10. Germany, in: Jean Bernard Auby (ed.), *Codification of Administrative Procedure*, Brussels 2014, p. 203, 213-214. ###references concerning other countries##

Model Rules. Thus the concept of administrative action as well as the substantive scope of application of the Model Rules is technical and restricted. The reasons are twofold: First, most national codifications within the EU are applicable to very specific administrative actions only³³ as the legislators refrain from imposing advanced procedural requirements on a broad and unlimited set of activities and they try to avoid disputes about the scope of application³⁴. Second, a more general definition would need to take into account divergent ideas about the concept of administration as a whole and consequently also of administrative action in the various legal orders of the EU and its Member States³⁵.

II. Book II (Administrative Rulemaking)

Book II of the Model Rules addresses rulemaking procedures by the EU authorities acting in an executive capacity, i.e. those that remain outside the formal legislative procedures provided for in EU law. The scope of the proposed rules is not limited to rulemaking by the Commission. Importantly, it also includes the making of other non-legislative acts of general application by other EU institutions, bodies, offices and agencies. The objective of the procedural rules proposed is to ensure that the constitutional principles of participatory democracy and transparency as well as principles of EU administrative law, in particular, the ‘duty of care’ (full and impartial assessment of all relevant facts), are observed in rulemaking procedures.

Book II aims to fill a gap in the existing legal system of the EU. It links the provisions, general principles of law and values arising from primary law with the procedure for adoption of non-legislative acts of general application. Over the past decades, a set of constitutional values emerged as general principles of law both in the case law of the CJEU and in Treaty amendments. Such principles have until now mainly shaped the EU’s formalised legislative procedure. Rulemaking outside of legislative procedures has been much less influenced by these constitutional principles. The implementation of such principles is, in any event, scattered across

³³ §§ 56 ff. APA (Austria); Artt. L200-1 ff. APA/CRPA (France); § 9 APA (Germany); Artt. 2 ff. APA (Italy); Art. 1:3 APA/GALA (Netherlands); Artt. 104 ff. APA (Poland); Artt. 87 ff. APA (Spain); Sections 7 ff. APA (Sweden).

³⁴ Schneider, Single case decision-making and the ReNEUAL codification project: Book III in particular, in: Matthias Ruffert (ed.), *The Model Rules on EU Administrative Procedures: Adjudication. Proceedings of the 5th Workshop 2015 of the Dornburg Research Group of New Administrative Law*, Europa Law Publishing Groningen (forthcoming), under C.I.

³⁵ ReNEUAL MR, Explanations to Book I para 13.

single provisions in some but not all policy areas. The provisions of this book are designed to ensure their systematic infusion into non-legislative rulemaking more generally.

In order to establish an innovative codification on administrative rulemaking the drafting team of Book II examined various sector-specific procedural regimes. According to this evaluation recent rulemaking frameworks like those for the European Aviation Safety Agency's (EASA) or the European Securities and Markets Authority's (ESMA)³⁶ provide best-practice examples which inform for instance the rules of Book II on the initiation of rulemaking procedures, on the preparation of draft rules, on consultations, and on requirements of a reasoned report³⁷.

Further, the discussions of the ReNEUAL Model Rules on administrative procedure concerning rulemaking also explored experiences in non-EU jurisdictions, including a debate on US rules on executive rulemaking. With regard to US rules on rulemaking, they – not unlike the provisions in Article II-4 – require a 'notice and comment' procedure for draft rule-making. Moreover, they have led to a certain degree of jurisprudence which by some authors has been referred to as 'ossification' of rule-making. After in-depth analysis with US scholars of this matter, the drafting group of Book II came to the conclusion that the phenomenon of 'ossification', i.e. lengthy rulemaking procedures due to frequent involvement of Courts to review compliance of agencies involved in rule-making with participation rights and subsequent obligations of justification of regulatory choices, was less due to the rule-making procedures per se but owed maybe more to specific rules on standing in Court. Given the considerable differences between the judicial procedural rules of the US and the EU, the drawbacks of establishing formal procedural rules for rule-making appeared less relevant. Meanwhile, the benefits are considerable in terms of both the quality of rule-making and the compliance with constitutional provisions strengthened under the Treaty of Lisbon.

III. Book III (Single Case Decision-Making)

³⁶ EASA-Regulation (EC) 216/2008; ESMA-Regulation (EU) 1095/2010; see also Commission Implementing Regulation (EU) 354/2013 on biocidal products; Commission Delegated Regulation (EU) 114/2013.

³⁷ See ReNEUAL MR, Explanations to Book II para. 25, 29, 40 ff., 50.

Book III is concerned with single case decision-making, which is central to any regime of administrative procedure. While only some national codifications on administrative procedure regulate administrative rule-making, there is no codification of this kind that neglects single case decision-making. The general objective of Book III is to provide a clear set of rules applicable to all stages of an administrative procedure preparing and adopting a single case decision, from its initiation (Chapter 2), through the gathering of the relevant information (Chapter 3), particularly through hearings and consultations (Chapter 4) to the making of the final decision (Chapter 5) as well as rules on its potential rectification and withdrawal (Chapter 6). A characteristic of Book III in comparison to national codifications is the integration of several rules concerning so-called composite procedures which are a special feature of the EU administrative space. Article I-4(4) defines a “composite procedure” as “an administrative procedure where EU authorities and the authorities of a Member State or of different Member States have distinct functions which are inter-dependent. A composite procedure may also mean the combination of two administrative procedures that are directly linked”³⁸. Some rules of Book III directly regulate composite procedures (Articles III-10(3), III-11(4), (5), III-18 to 21, III-24, 26, 27, III-29(2)), while other rules are only indirectly important for composite procedures (Article III-7)³⁹.

The influence of the different forms of comparative studies introduced above varies among the different chapters and provisions of Book III. As already mentioned the substantive scope of application is determined by the rather restrictive and formal definition of “decision” as the relevant administrative action for Book III⁴⁰. This concept reflects similar approaches in national codifications⁴¹. In contrast the definition of “party” in Article III-2(3) and the general principles of fair decision-making laid down in Article III-3(1) are more or less influenced by Article 41 of the EU Charter of Fundamental Rights (CFR)⁴² while the more concrete rules in Article III-3(2)-(5) guaranteeing impartiality of decision-makers draw on examples from national codifications as well as from sector-specific EU law⁴³. An even broader mix of sources of inspiration has been

³⁸ For more details see ReNEUAL MR, Introduction of Book I para. 26-27; Explanations to Book I para 21.

³⁹ For a more detailed analysis of these rules see Schneider, Single case decision-making and the ReNEUAL codification project: Book III in particular, in: Matthias Ruffert (ed.), *The Model Rules on EU Administrative Procedures: Adjudication. Proceedings of the 5th Workshop 2015 of the Dornburg Research Group of New Administrative Law*, Europa Law Publishing Groningen (forthcoming), under C.III.

⁴⁰ See Artt. III-1; III-2(1).

⁴¹ See above footnotes 33 to 35.

⁴² See ReNEUAL MR, Explanations to Book III para 8, 15.

⁴³ See ReNEUAL MR, Explanations to Book III para 16-20.

used for Article III-4 on online information on existing procedures. In this case ReNEUAL has been inspired by the US APA and codification of EU Member States as well as by EU secondary law or policy report of EU officials⁴⁴.

Thus, comparative legal studies of the various dimensions mentioned earlier have been intensively used in drafting these model rules. Similar observations can be made with regard to most provisions of Book III. The footnotes in the explanations to Book III indicate this clearly even if it was not possible to display all the material which has been used throughout the discussions within the drafting team consisting of scholars of (different) national, EU and comparative administrative law as well as with external experts representing various additional jurisdictions. In a short overview one can distinguish the following sources and areas of influence:

The EU Charta of Fundamental Rights informed in addition to Article III-3(1) especially the rules on impartial investigation⁴⁵, on access to the file and the right to be heard⁴⁶, and concerning the use of languages⁴⁷. Other relevant provisions of EU primary law are Art. 296(2) AEUV on the duty to give reasons⁴⁸ and Art. 297(2) TFEU on form and notification of non-legislative legal acts⁴⁹. Secondary EU law has been a major source of inspiration with regard to the rules on investigation by request or by mandatory decision⁵⁰, the article establishing duties to cooperate of parties⁵¹, the section on inspections⁵², and the article concerning the consultation of the interested public⁵³.

The jurisprudence of the CJEU has been especially relevant for the drafting of the rules codifying duty of care⁵⁴, the privilege against self-incrimination and the legal professional

⁴⁴ See ReNEUAL MR, Explanations to Book III para 21-23.

⁴⁵ Art. III-10; ReNEUAL MR, Explanations to Book III para 47.

⁴⁶ Art. III-22, III-23; ReNEUAL MR, Explanations to Book III para 76, 78.

⁴⁷ Art. III-31(2); ReNEUAL MR, Explanations to Book III para 114-115.

⁴⁸ ReNEUAL MR, Explanations to Book III para 102-103.

⁴⁹ ReNEUAL MR, Explanations to Book III para 112, 119.

⁵⁰ Art. III-11; III-12; ReNEUAL MR, Explanations to Book III para 49.

⁵¹ Art. III-13; ReNEUAL MR, Explanations to Book III para 54-55.

⁵² Art. III-16 to III-20; ReNEUAL MR, Explanations to Book III para 60 ff.

⁵³ Art. III-25; ReNEUAL MR, Explanations to Book III para 89, 92.

⁵⁴ Art. III-10(1); ReNEUAL MR, Explanations to Book III para 46.

privilege⁵⁵, the provision on access to the file and the right to be heard⁵⁶, and the chapter on rectification and withdrawal of decisions⁵⁷.

National law of EU Member States has influenced especially the provisions concerning the responsible official⁵⁸, the principle of investigation⁵⁹ as well as the articles concerning the consultation of the interested public⁶⁰, the duty to specify the decision⁶¹, the duty to indicate available remedies⁶², the use of electronic forms⁶³, the notification of a decision⁶⁴, the correction of obvious inaccuracies⁶⁵, and specific features with regard to the withdrawal of legal decisions that are beneficial⁶⁶. In some cases the Model Rules deviate explicitly from national solutions⁶⁷ or choose explicitly between several national options⁶⁸.

Additional sources of inspiration are the European Code of Good Administrative Behaviour drafted by the European Ombudsman⁶⁹ and Recommendations of Council of Europe⁷⁰. These recommendations are prepared by the Committee of Ministers and are based on comparative legal studies within this international organization distinct from the EU.

IV. Book IV (Contracts)

⁵⁵ Art. III-14; ReNEUAL MR, Explanations to Book III para 56-57.

⁵⁶ Art. III-22, III-23; ReNEUAL MR, Explanations to Book III para 77-82.

⁵⁷ Art. III-35 and III-36; ReNEUAL MR, Explanations to Book III para 123-127.

⁵⁸ See Art. III-7; ReNEUAL MR, Explanations to Book III para 33.

⁵⁹ Art. III-10; ReNEUAL MR, Explanations to Book III para 46.

⁶⁰ Art. III-25; ReNEUAL MR, Explanations to Book III para 91.

⁶¹ Art. III-28; ReNEUAL MR, Explanations to Book III para 100.

⁶² Art. III-30; ReNEUAL MR, Explanations to Book III para 106-108.

⁶³ Art. III-32; ReNEUAL MR, Explanations to Book III para 116-117.

⁶⁴ Art. III-33; ReNEUAL MR, Explanations to Book III para 118, 120.

⁶⁵ Art. III-34; ReNEUAL MR, Explanations to Book III para 121.

⁶⁶ Art. III-36(3) sentence 3 lit. (c); ReNEUAL MR, Explanations to Book III para 126.

⁶⁷ See ReNEUAL MR, Explanations to Book III para 104 concerning the duty to give reasons; para 113-114 concerning language requirements.

⁶⁸ See ReNEUAL MR, Explanations to Book III para 111-112 concerning formal requirements.

⁶⁹ See ReNEUAL MR, Explanations to Book III para 30 with footnote 24; para 31 with footnote 26; para 33 with footnote 28; para 34 with footnote 32; para 36 with footnote 35; para 98; para 103 with footnote 94; para 109 with footnote 101; para 114; 119.

⁷⁰ See ReNEUAL MR, Explanations to Book III para 25 with footnote 17; para 26 with footnote 19; para 30 with footnote 24; para 31 with footnote 26; para 36 with footnote 38; para 38 with footnote 41.

Book IV regulates administrative procedures leading to the conclusion of a public contract as well as procedures and governing the execution or termination of such contracts⁷¹. Book IV does not regulate the substantive law of obligation. Only contracts regarding administrative activity concluded between EU authorities and private entities or, with some reservations, with Member State administrations fall within the scope of Book IV. Thus, public contracts concluded by Member State authorities with other parties than EU authorities are not covered by Book IV. This differentiation is in line with the general approach of the ReNEUAL Model Rules⁷².

The drafting team of Book IV faced several challenges⁷³. First, the team had to screen an abundant amount of restatement material (EU legislation, case law, ombudsprudence (the ‘jurisprudence’ of the EO), standard contracts and contract templates developed by the Commission), which coincidentally is nonetheless very ambiguous and fragmentary in nature. Second, there is no consensus among lawyers on how to understand this material. The same rules and clauses are interpreted in different ways by different contracting authorities, courts, lawyers, advocates general and scholars. Thus, a very heterogeneous landscape already exists at the European level. Third, this landscape becomes even more complex when the national level is taken into account. The national concepts to public contracts (and public contract law) differ considerably – regardless of whether these contracts are governed by national public or national private law, or by a mixture comprising public and private law elements.

Like Book III Book IV is influenced by a variety of sources of inspiration. Thus, Book IV is clearly a product of comparative legal scholarship and represents again a mix of sources of inspiration.

Sectoral EU law has been especially influential with regard to the section on the competitive award procedure⁷⁴. This important element of Book IV is inspired by the Commission

⁷¹ ReNEUAL MR, Introduction to Book IV, para 5.

⁷² ReNEUAL MR, Introduction to Book IV, para 8, 14.

⁷³ ReNEUAL MR, Introduction to Book IV, para 2.

⁷⁴ Art. IV-9 to Art. IV-19.

Communication on contract awards⁷⁵ as well as by Title V of the EU Financial Regulation 966/2012⁷⁶ and by Title V of the respective implementing Regulation 1268/2012⁷⁷.⁷⁸ Sector-specific EU Law has been a source of inspiration also for some more specific rules of Book IV⁷⁹. Several other rules either codify existing CJEU jurisprudence or propose solutions to problems arising from this case law⁸⁰.

Even more important – and interesting for this analysis – is that the general concept of Book IV to distinguish the authority’s decision to enter a contract (first level legal act) from the contract itself (second level legal act)⁸¹ is derived from the CJEU jurisprudence. This jurisprudence for its part follows the French public contract model⁸². Thus, national public contract law inspires the ReNEUAL Model Rules indirectly through the CJEU jurisprudence in this regard. Nevertheless, the ReNEUAL Model Rules follow the French model not in a pure version, but the Model Rules modify it with regard to the contractual consequences (i.e. on the second legal level) of legal defects of the decision on the first legal level. While the French public contract law empowers the courts to modify the contract, the ReNEUAL Model Rules prefer an innovative approach of obligations for the contracting parties to renegotiate the contract⁸³. Other model rules are inspired especially by the German APA⁸⁴. Also other national legal concepts have influenced Book IV – although less obviously – as the drafters had been the coordinator or members of the research network “Public Contracts in Legal Globalization”⁸⁵. Various publications on International, European and Comparative Public Contract Law have resulted

⁷⁵ Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement directives (2006/C 179/02).

⁷⁶ Regulation (EU, Euratom) 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union.

⁷⁷ Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

⁷⁸ ReNEUAL MR, Explanations to Book IV, para 30-47.

⁷⁹ ReNEUAL MR, Explanations to Book IV, para 70 (concerning Art. IV-31), 75 (concerning Art. IV-34)

⁸⁰ ReNEUAL MR, Explanations to Book IV, para 26-29 (concerning Art. IV-8), 50 (concerning Art. IV-21), 52 (concerning Art. IV-22), 54-62 (concerning Art. IV-24)

⁸¹ See in this regard especially Art. IV-7.

⁸² See *Rennert*, in: Schneider/ Rennert/ Marsch (eds.), ReNEUAL-Musterentwurf für ein EU-Verwaltungsverfahrenrecht – Tagungsband. Dokumentation der Fachtagung im Bundesverwaltungsgericht vom 5. und 6. November 2015, München 2016 (forthcoming), p. 15*; *Stelkens*, *ibid.*, p. 5* f.; less clear ReNEUAL MR, Introduction to Book IV, para 5.

⁸³ See *Rennert*, in: Schneider/ Rennert/ Marsch (eds.), ReNEUAL-Musterentwurf für ein EU-Verwaltungsverfahrenrecht – Tagungsband. Dokumentation der Fachtagung im Bundesverwaltungsgericht vom 5. und 6. November 2015, München 2016 (forthcoming), p. 19 f*.; ReNEUAL MR, Explanations to Book IV, para 71-74 (concerning Art. IV-33).

⁸⁴ ReNEUAL MR, Explanations to Book IV, para 49 (concerning Art. IV-20(2)), 63 (concerning Art. IV-25), 66 (concerning Art. IV-28), 68 (concerning Art. IV-29)

⁸⁵ See: www.public-contracts.eu. This network, headed by Jean-Bernard Auby, is composed of an international group of experts working on public contracts and involves regular meetings for workshops and seminars on this topic.

from the scientific exchange within this network⁸⁶, which enabled ReNEUAL to handle the complex topic of public contracts within a relatively short period of time.

Another source of inspiration especially relevant for Chapter 4 of Book IV dealing with subcontracts has been findings of the European Ombudsman, the so-called Ombudsprudence⁸⁷. Finally, a specific feature of Book IV is that the drafting team use for a limited number of rules the wording of the Draft Common Frame of Reference⁸⁸, an equivalent to the ReNEUAL project in the field of European private law⁸⁹.

V. Book V (Mutual Assistance)

Mutual assistance constitutes an important part of European administrative law. As mentioned earlier, EU is implemented mostly by Member State authorities. While the persons and enterprises regulated by these authorities engage in cross-border activities by using the fundamental freedoms within the Single market as enshrined in the EU treaties, national authorities are – with very few exceptions – still bound by the principle of territorial reach of public authority restricting their administrative powers to the respective state territory. Thus, supervision of cross-border movements of goods, services, workers or capital depends on the cooperation between the respective national authorities. This horizontal cooperation is complemented by vertical cooperation if central EU agencies provide information or expertise to competent Member State authorities or national authorities support EU authorities and especially the European Commission if such authorities are directly implementing EU law and need local knowledge or national enforcement powers.

⁸⁶ Most notably: Noguellou / Ulrich Stelkens (eds.), *Comparative Law on Public Contracts*, Bruxelles 2010; Trybus/Caranta/Edelstam (eds.), *EU Public Contract Law*, Bruxelles 2014.

⁸⁷ ReNEUAL MR, Explanations to Book IV, para 77-80, 85, 86; see also para 53 concerning Art. IV-23.

⁸⁸ Draft Common Frame of Reference: Principles, Definitions and Model Rules of European Private Law - Draft Common Frame of Reference (DCFR) - Outline Edition, Prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), Based in part on a revised version of the Principles of European Contract Law, available at http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf.

⁸⁹ See ReNEUAL MR, Explanations to Book IV, para 7 (concerning Art. IV-2(1)), 23 (concerning Art. IV-6(4)), 69 (concerning Art. IV-30), 81 (concerning IV-37(1)); in some cases the ReNEUAL Model Rules differ explicitly from the DCFR: ReNEUAL MR, Explanations to Book IV, para 66-67 concerning Art. IV-28.

Today, no general piece of legislation exists which provides a clear procedure for cross-border or multi-level mutual assistance. Instead, EU and Member State Authorities rely either on sector-specific rules which exist in a limited number of cases or on respective conventions of the Council of Europe. The obligation to adhere to the principle of sincere cooperation pursuant to Article 4(3) TEU may positively influence the interpretation of sector-specific rules on mutual assistance, but it provides no concrete obligations for mutual assistance. Therefore, the inclusion of rules on mutual assistance within the ReNEUAL project is not only useful, but in fact necessary. This is all the more true, as at present diverse concepts of mutual assistance exist in academic literature as well as in sector-specific EU law. The respective rules in sector-specific law are quite diverse both regarding legal solutions for certain topics and in the level of detail. Today, many acts of secondary law provide only quite general obligations to mutual assistance but omit more detailed rules needed for effective cooperation among authorities with such different legal and cultural backgrounds as can be observed within the EU of 28 Member states.

Book V of the ReNEUAL model rules establishes mutual assistance between public authorities as a generally applicable default obligation. Its detailed rules about the duties of either the requesting authority or the requested authority, the grounds for refusal of a request, the right of a person concerned to be informed, and the allocation of costs are directly applicable to all fields of EU law as long as no more advanced forms of inter-administrative cooperation such as those for information exchange established in Book VI are applicable. Consequently, the rules of Book V provide a minimum standard for mutual assistance where EU law triggers a need for the cooperation between two authorities. This has several consequences: Generally, the assistance rendered is supplementary. This supplementary character affects *inter alia* the grounds on which an authority may refuse a request. Hence, requests for mutual assistance should not be excessive so as to not overburden the requested administrative authorities either of a Member State or of the EU.

Again, comparative legal studies play an important role in drafting Book V. The main sources of inspiration are twofold and originate from either international law or supranational EU law. A characteristic of Book V is that it is inspired to a great extent by conventions of the Council of

Europe⁹⁰, especially the European Convention on the obtaining abroad of information and evidence in administrative matters of 1978⁹¹. One reason for this is that this convention today closes the existing gap in EU law as mentioned above. Thus, it reflects the state of play. In addition, Convention No. 100 of 1978 is drafted as a general instrument while most other international conventions or supranational instruments of EU law are of a more sector-specific nature. Nevertheless, the comparative study of sector-specific mutual assistance provisions are second important source of inspiration for Book V. A major and dynamic component of cross-border cooperation concerns the implementation of tax law⁹² or customs law⁹³. Other provisions analysed for Book V concern other aspects of the internal market⁹⁴. This wide range of comparative material informed *inter alia* the provisions on grounds for refusal of a request for mutual assistance in Article V-4(3), (4)⁹⁵. It is noteworthy, that the drafting team did not include reciprocity as a ground for refusal. Currently, a number of instruments still provide for a ground of refusal which is linked, in a more or less direct way, to a notion of reciprocity. In view of Article 197(1) TFEU, the drafters regarded this to be an outdated requirement which should not be part of an innovative codification on mutual assistance⁹⁶. Another important innovation included in Book V is the right to be informed where personal data is about to be transmitted in response to a request for mutual assistance. This right is currently not standard practice in mutual assistance instruments but it complies with EU Data Protection law⁹⁷.

⁹⁰ See ReNEUAL MR, Explanations to Book V footnotes 12, 13, 17, 20, 21, 24, 29, 31, 37, 39, 40, 45, 48, 51, 52, 61, 63.

⁹¹ See European Convention on the obtaining abroad of information and evidence in administrative matters [1978] European Treaty Series (ETS) No. 100; see also: European Convention on the service of documents abroad of documents relating to administrative matters [1977] ETS 94.

⁹² See for instance: Council Regulation (EU) 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties; Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation; Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures; Council Regulation (EU) 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax; Convention on mutual administrative assistance in tax matters [1988] ETS 127 amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters [2010] ETS 208.

⁹³ Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters; Council Act of 18 December 1997 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations [1998] OJ C24/1.

⁹⁴ Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market; Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States;

⁹⁵ See ReNEUAL MR, Explanations to Book V para 27-34.

⁹⁶ See ReNEUAL MR, Explanations to Book V para 35.

⁹⁷ ReNEUAL MR, Explanations to Book V para 36.

In contrast to Books III and IV national codifications of administrative procedure are not a source of inspiration explicitly mentioned in the explanations to Book V. National law played only an indirect role as a background standard to evaluate the provisions developed from international and supranational examples. The reason is the rather divergent state of play in national legal orders. In many member States no general provisions on mutual assistance seem to exist⁹⁸. Only few Member States possess comprehensive general rules on mutual assistance either integrated into their codifications of administrative procedure⁹⁹ or outsourced to supplementary acts¹⁰⁰. A number of other states rely on very short provisions either within their procedural codifications¹⁰¹ or in their constitutions¹⁰² obliging authorities to mutual assistance without any further guidance. This last option is no model for the EU as the divergent institutional and cultural backgrounds of the national and supranational authorities within the enlarged EU administrative space need more detailed guidance for effective and efficient mutual assistance among each other¹⁰³.

VI. Book VI (Administrative Information Management)

Book VI supplements Book V (and Book III) by regulating advanced forms of inter-administrative information exchange which are central features of information networks within the composite European administration¹⁰⁴. While Book V presents a comprehensive regulation of a standard procedure for mutual assistance Book VI establishes innovative general rules concerning advanced information exchange which shall be supplemented by additional rules in a so-called basis act. Thus Book VI combines a general codification with pre-structured, but flexible rules in order to allow for adaptations to the specific needs of a sectorial information exchange. Central features of Book VI consist

⁹⁸ Important examples in this regard are France, Italy and the United Kingdom.

⁹⁹ See for example §§ 4-8 APA (Germany); Art. 4(5), 34-37 APA (Lithuania).

¹⁰⁰ Estonian Administrative Cooperation Act; see also *Pihing*, Chap. 7. Estonia, in: Jean Bernard Auby (ed.), *Codification of Administrative Procedure*, Bruylant Brussels 2014, p. 157, 159.

¹⁰¹ See for example Section 6 APA (Sweden); Section 10 APA (Finland); see also Art. 4 APA (Spain; Act 30/1992) which will be replaced in 2016 by Art. 140-142 of Act 40/2015.

¹⁰² See Art. 22 of the Austrian Constitution.

¹⁰³ ReNEUAL MR, Introduction to Book V para 11-13; see also *von Danwitz*, in: Schneider/Rennert/Marsch (eds.), *ReNEUAL-Musterentwurf für ein EU-Verwaltungsverfahrenrecht – Tagungsband. Dokumentation der Fachtagung im Bundesverwaltungsgericht vom 5. und 6. November 2015*, C. H. Beck Verlag, München 2016 (forthcoming).

¹⁰⁴ See Diana-Urania Galetta/Herwig Hofmann/Jens-Peter Schneider, *Information Exchange in the European Administrative Union – An Introduction*, in: *European Public Law (EPL) 20* (2014), p. 65 ff.

- in the combination of rules on effective information exchange among authorities with rules on data protection¹⁰⁵,
- in an innovative classification of advanced information management activities (structured information mechanisms, duties to inform without prior request, shared databases) as the basis for specific and appropriate legal requirements for each of these three categories¹⁰⁶;
- in a combination of clearly defined individual rights and the creation of innovative organisational structures which shall contribute to the objective of clear allocation of responsibilities and transparent information management¹⁰⁷;
- in the establishment of a new supervisory authority which shall – first – serve as arbiter in case of conflicts amongst the participating authorities as well as – second – provide individuals with a clearly defined one-stop-shop for enforcing their individual rights in such complex inter-administrative information networks¹⁰⁸;
- in innovation rules in order to provide a more coordinated external data protection supervision with regard to shared databases used by EU authorities as well as by national authorities¹⁰⁹;
- in provisions rendering effective compensation for damages caused by complex inter-administrative information exchange¹¹⁰.

Book VI is probably the most innovative Book of the ReNEUAL Model Rules. The drafting team could not rely on national codifications as a model for this book. Instead, the drafters had to compare and analyse intensively a wide range of sector-specific and often very recent material of EU law in order to develop the classification mentioned above and to identify best-practice solutions to the legal problems arising from advanced information exchange within horizontal and vertical administrative information networks¹¹¹. Especially instructive have been the

¹⁰⁵ ReNEUAL MR, Explanations to Book VI para 5-9.

¹⁰⁶ ReNEUAL MR, Explanations to Book VI para 17-23.

¹⁰⁷ ReNEUAL MR, Explanations to Book VI para 24-25.

¹⁰⁸ ReNEUAL MR, Explanations to Book VI para 89-97.

¹⁰⁹ ReNEUAL MR, Explanations to Book VI para 98-114.

¹¹⁰ ReNEUAL MR, Explanations to Book VI para 115-118.

¹¹¹ See the material referred to in the footnotes of ReNEUAL MR, Explanations to Book VI; see also Schneider, Basic Structures of Information Management in the European Administrative Union, in: *European Public Law (EPL)* 20 (2014), p. 89 ff.; Schneider, Information exchange and its problems, in: Carol Harlow/Paivi Leino-Sandberg/Giacinto della Cananea (eds.), *Research Handbook on EU Administrative Law*, Edward Elgar Cheltenham 2016 (forthcoming).

frameworks for the internal market information system (IMI)¹¹², for various early warning systems for food, feed or other products¹¹³, and for the important information systems in the area of freedom, security and justice¹¹⁴ as well as the EU data protection legislation¹¹⁵.

D. Modifications following the translation into various languages and future comparative discussion fora

As mentioned earlier, the ReNEUAL Model Rules were drafted originally in English. Since 2014 they have translated and published (in chronologic order) in Spanish, Polish, German and Italian with French and Romanian versions ready for publication and a Portuguese version planned. In the translation process the ReNEUAL members responsible for the translations identified various wordings which should be modified in order to avoid misunderstandings or confusion. Thus, the translations with their need to very close reading served as a quality check for the English version which will be published accordingly in an updated book form. Moreover, the ReNEUAL Steering Committee decided to include into the English book version a glossary with a broad range of (English) terms of EU administrative law and their counterparts in the Spanish, Polish, German, Italian and French language. This glossary does not only support the additional

¹¹² Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

¹¹³ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety; Commission Regulation (EU) 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed; Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX'.

¹¹⁴ Regulation (EU) 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints; Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice; Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code); Regulation (EC) 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS); Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); Regulation (EC) 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

¹¹⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data; Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final.

translations of the model rules into the Romanian and Portuguese language but shall also foster the better understanding of central terms of EU administrative law in future comparative studies.

Based on the translations ReNEUAL has organized a series of so-called “national” or “regional” conferences within many EU Member States¹¹⁶. These conferences attract scholars and practitioners from the various EU jurisdictions and provide a very useful tool for a comparative analysis of the ReNEUAL Model Rules from a mainly national point of view. A prospective updated version of the ReNEUAL Model Rules will certainly profit from the input obtained from these conferences. For example, at the “regional” conference in the German Federal Administrative Court in Leipzig in November 2015, the Court president as well as other contributors argued that the ReNEUAL Model Rules should not only inform the EU legislator concerning a future codification of EU administrative law but also national legislators like the German parliament. They highlighted innovative ideas in the Model Rules gained from comparative legal studies which could result in improvements of existing national codification like the German APA for instance with regard to its regulation of public contracts¹¹⁷.

E. Impact of the ReNEUAL Model Rules on future codifications and the development of administrative law in the EU and the national level

Since the publication of the first edition of the ReNEUAL Model Rules two drafting processes of administrative procedure stand out in which have actively taken the ReNEUAL work into account.

¹¹⁶ For a list of these conferences please consult www.reneual.eu.

¹¹⁷ Rennert, in: Schneider/Rennert/Marsch (Hrsg.), ReNEUAL-Musterentwurf für ein EU-Verwaltungsverfahrenrecht – Tagungsband. Dokumentation der Fachtagung im Bundesverwaltungsgericht vom 5. und 6. November 2015, C. H. Beck Verlag, München 2016 (forthcoming).

On the EU level the European Parliament has been most active in promoting an EU administrative procedure act in the form of EU legislation. After a resolution of 15 January 2013 which had called for a codification of general principles of administrative procedural law. Incidentally, the issue of the drafting of such code has taken on the dimension of a major political message in which the European Parliament is expressing vis-à-vis the executive branch of powers in the EU that it is in the position to draft legislative proposals and will do so if the European Commission, which is according to the legislative provisions of the Union, in charge of initiating legislative procedures. In preparation, the EP's legal affairs committee which took on the task of drafting had commissioned several 'in-depth-reports' on matters related to the drafting technique and the possible substance of the approach acknowledging that ReNEUAL's preparatory work enabled it to take this unprecedented step. Key ReNEUAL members were invited by the European Parliament to provide expertise in this respect.

The drafting objective of the EP draft regulation on administrative procedures in the EU took on the objectives of establishing an EU regulation on administrative procedure in order to improve the quality of the EU's legal system, foster compliance with the general principles of EU law in implementation of EU law by reducing fragmentation and complexity of the applicable law. In line with the ReNEUAL findings the EP found that the existing fragmentation of the law applicable to administrative procedure was due to an increase in sector-specific legislation and the subsequent differentiated jurisprudence of the CJEU. An important finding was also that further complexities arise from the multi-jurisdictional implementation of EU policies and the necessary cooperation between European and Member State actors.

Nonetheless, in view of the near revolutionary act of the European Parliament to itself draft an act, much political compromise had to be made and the European Parliament chose to be very selective regarding the content. In view of this, the Parliament's draft, although heavily influenced by the ReNEUAL work, addresses the notion of administrative action in a way that is based in single-case decision making but also allows for rule-making and contracts to be included into the notion applied. The approach is one of incremental inclusion than a 'big-bang' approach. In any case, the draft shows that a codification of EU administrative procedure law is not only feasible, but also recommendable at this time in the development of the EU legal system. It will not only clarify and operationalise the relevant elements of the right to good

administration enshrined in Art. 41 of the Charter of Fundamental Rights of the European Union (hereafter Charter) in terms understandable by citizens and civil servants but will also ensure that the obligations arising from Art. 298 of the Treaty on the Functioning of the European Union (TFEU) are complied with by the EU legislature. Art. 298 TFEU requires that legislative regulations establish provisions enhancing an open, efficient and independent European administration.¹¹⁸

On the Member State level, the most recent codification is that of France. The influence of the ReNEUAL project on the drafting of the new French code on administrative procedures, the 'Code des relations entre le public et l'administration' which entered into force on January 1st 2016 may be assessed by reference to both the start of the drafting process and its result.¹¹⁹ Originally, the project to draft the Code was characterised by the clear intention to draw inspiration from comparative and European law.¹²⁰ This intention had tangible impact on the composition of the group of experts nominated by the French government to advise on the drafting of the code. This 'cercle d'experts', composed of about 20 individuals with academic, judicial or administrative backgrounds included two prominent members of the ReNEUAL project amongst the only 6 academic members of the advisory committee, Jean-Bernard Auby and Herwig Hofmann (one of the authors of this report), the latter being the only non-French member of the advisory committee. The input into the drafting process therefore included many discussions about principle and organisation. Influences arose from the ReNEUAL experience. The outcome of this procedure in form of the final code shows some limited influence of the ReNEUAL model code. Limitations stem, on one hand, from the very different context of a multi-level integrated administrative structure in the EU by comparison to the situation within the unitary French state. But also the French drafters were reluctant, like most national

¹¹⁸ Purpose of the draft proposal of Regulation, as stated very correctly by Art. 1(2), which derives from Recommendation 1 of the European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)) (hereafter EP 2012/2024).

¹¹⁹ A general law has been adopted by delegated legislation on 23 October 2015: see JORF n° 0248 du 25 octobre 2015 : Rapport au Président de la République relatif à l'ordonnance n° 2015-1341 du 23 octobre 2015 relative aux dispositions législatives du code des relations entre le public et l'administration; Ordonnance n° 2015-1341 du 23 octobre 2015 relative aux dispositions législatives du code des relations entre le public et l'administration ; Décret n° 2015-1342 du 23 octobre 2015 relatif aux dispositions réglementaires du code des relations entre le public et l'administration (Décrets en Conseil d'Etat et en conseil des ministres, décrets en Conseil d'Etat et décrets) available at <http://www.legifrance.gouv.fr/>.

¹²⁰ Maud Vialettes, Cécile Barrois de Sarigny, "Le projet d'un code des relations entre le public et les administrations", AJDA (2014) 402

legislators, to acknowledge the reality of composite, multiple step and multiple jurisdictional decision making in the EU. Further, the new French code is not structured according to the various types of administrative activity (as is the case in the ReNEUAL Model Rules) but rather according to the various types of relations between the administration and the citizens which limits the possibilities of direct taking into account of approaches developed in ReNEUAL. Yet, some elements in the Code do reflect concerns similar to those of ReNEUAL, especially where the ReNEUAL model rule drafters shared these concerns with the French Conseil d'Etat. One example of such situation is the preliminary title in the Code which is the equivalent of the recitals of the ReNEUAL model code. The discussions within the advisory group was capable of convincing the drafters of including the more broad, transversally applicable principles of administrative procedure, for example the "principe de légalité" (similar to the "rule of law" principle laid down in Book I of the Model Rules) in the general introduction. Another example is Title III of Book I of the ReNEUAL model code which has its equivalent in the French code in the provisions on participation and hearing: "l'association du public aux décisions prises par l'administration". This reflects the importance of public participation in administrative decision-making processes, as emphasized also at Article 11 TEU and taken into account by ReNEUAL and is an example of mutual influencing of the developing common administrative law in Europe. However, publications and statements of the Conseil d'Etat were influential to the ReNEUAL work and the take-up of these concepts in the ReNEUAL model rules can be found to have eased the take up of these concepts into the binding norms enacted in France. Therefore, although the exact influence of ReNEUAL on the Code des relations entre le public et l'administration is not easily assessed, there are undeniable common elements in the approaches underlying the Code and the Model Rules as well as examples of recognition of debates undertaken in the EU Members States. The process is a typical example of the ongoing export of concepts from the national to the European level and the subsequent re-importation of concepts as evolved by the European approach.