

Networking European Administration – Theoretical Concerns of Democratic Functioning and the Role of Administrative Procedural Rules

Abstract

The unique system of the European Union with its confirmation of its attachment to the principles of, *inter alia*, democracy, and respect of the rule of law gives another layer to the expression ‘democratic transition’. In the point of view of the multilevel administration of the EU, which is continuously formulating with new constructions, networking structures to a better execute the EU acquis while the improvement of the normative background tries to keep up with the emergence of practical solutions as required by the major principles. Concerning networking, the EU as a global player is often a chain in global networking structures. Given the lack of uniform normative background and the difference in internal and external aspects of European administration’s networks, they are determined and also challenged by the same democratic principles that give rise to further legislative steps and confirm the necessity of a European administrative procedural code.

Summary

Democratic transition in Europe is often used in the context with post-Soviet States, however, in a wider context, the transformation period has not ended with domestic regime change. As being a part of the European integration, the unique system of the European Union with its confirmation of its attachment to the principles of, *inter alia*, democracy, and respect of the rule of law gives another layer to the interpretation of the expression ‘democratic transition’. In the point of view of the multilevel administration of the EU, which is continuously formulating with new constructions, networking structures to better execute the EU acquis while the improvement of the normative background tries to keep up with the emergence of practical solutions as required by the major principles. Concerning networking, the EU as a global player is often a chain in global networking structures. Given the lack of uniform normative background and the difference in internal and external aspects of European administration’s networks, they are determined and also challenged by the same democratic principles that give rise to further legislative steps and confirm the necessity of a European administrative procedural code. To support this statement, the paper takes a glance at administrative networks and their growing significance in European administration both under and beyond the scope of the European Union and explores their normative background and

the possible relevance of a European administrative procedural code to bring the system closer to democratic functioning.

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Keywords: European administration, European administrative network, trans-national network, globalisation, legitimacy, procedural law

1.Introduction

Democratic transition has a certain domestic meaning for former socialist and candidate countries with a common element: all required the re-establishment of the original source of power, the people and those who practice it according to the principles of democracy. (Grammatikas, 2011, p. 14.)Democracy, which is the core value of a larger community, where they all belong or wish to belong, the European Union. Nowadays, the European Union is living its own democratic transition period while its functioning is balancing around the border of intergovernmentalism and supranationalism (Egeberg & Trondal, 2016, p. 5-7.) with a multi-level administrative system where democratic deficit still emerges. The key to a democratic functioning of the executive lies in the accountability and legitimacy ensured by the rule of law that is the backbone of European liberal democracy and is one of the founding principles of the Union stemming from the common constitutional traditions of all Member States.(2015/2254(INL), point E.) Every act thus shall be consequently traced back to the original source of power, the people.

However, the institutionalization of networking structure of European administration in the form of networks is increasing with the growing number of systematic cooperation, their

normative background leaves open questions in the view of democratic principles set as requirement. Beside the internal aspects of European Union, it is significant to notice that the EU is not only an area of administrative networks, but it appears as an actor of global administration in transnational networks. The internal and external administrative networking is different in nature, although they both get stuck on the test of democratic functioning. It is largely due to the lack of proper procedural rules that would establish transparency and accountability and strengthen legitimacy for the process of cooperation of the participating authorities and thus for the result of their proceedings.

2. European administration and its networks

The EU as an international organization has always lacked the administrative capacity to implement its policies, it relies on the Member States administration. The European administration is neither, hierarchical nor decentralised (Rowe, 2009, p. 191.), but a cooperating one; today, the European administration has grown to be a sphere of different forms of cooperation requiring a networking structure among the competent participants. The European Union is constantly working on a sphere where national borders are invisible, and the EU law can be enjoyed everywhere according to the same content and with the same guarantees. In order to overcome the deficiencies of the EU as lacking its own administrative authorities, different sort of *European administrative networks* is established. They consist of institutional representatives of national executives – primarily departments and/or agencies – with tasks in the realm of national implementation or enforcement of EU policies. It includes horizontal and vertical cooperation among the competent organs and authorities and the nature and normative background of such co-work depends on the Europeanisation of the policy in question. (Csatlós 2016, p. 47.; Radaelli, 2003, p. 29.)

For the implementation of EU law, *information management* is central to a growing number of networks which involve EU institutions, bodies, offices and agencies on the one hand, and Member States' authorities, on the other, while this latter stays the central factor in decision-making. (Model Rules, 2017, (32) p. 36.) Due to the immediate connection with the competent authorities, their problem-solving abilities so they fulfil an important role in facilitating the implementation and enforcement of EU policies. As the European Union's legislative competences are different, the EU *acquis* also varies in legal areas, so the implementation and the executive task of Member State administration which leads to a colourful variety and formality of their networking activity. As developed in practice by the

competent actors of an area, administrative co-operation has led to intensive and often seamless co-operation between national and supranational administrative actors and activities. (Hofman, 2009, p. 33.) There is no general normative background for the networks, therefore categorisation is difficult, and the borders are traversable. In general, *information networks* are established to channel and to co-ordinate the generation and editing of data relevant to an administrative activity. These are *constant channels for systematic cooperation* to share information and ensure data flow in an automatic way, without the possibility of rejecting of collaboration or retaining of information. They are often supported common IT system for that purpose and by database. *Enforcement/executive networks* that establish a channel for cooperation to the aim of producing one single decision of one of them, so it is like a mixture of a systematic discussion forum and of mutual assistance without the limits and restrictions of the latter. In *composite administrative procedures* when the case has an international element, and the relevant authorities need to contact each other, share information, handle documents or other evidence that the other authority in different Member States need it to decide upon a case, therefore the decisive act is the result of cooperation of different jurisdictions. (Hofmann, 2009, p. 136.) *Regulatory networks* (*European regulatory networks*) cover systematic cooperation of competent authorities ensuring professionalism, with a central node (agency) in certain area with functional independence. (Everson et al., 2009, p. 58.) The agency may possess shifted power¹ to decide and/or competence to identify the best practice and help the interpretation of EU law and the application of EU norms to achieve its purposes with a normative content. They are not established to replace national or EU regulator, due to strict legislative competency rules of the EU, the network is not empowered to legislate, thus the harmonisation effort is *soft law*, although with legal effects. (Ştefan 2013, pp. 197-200)² Even if practical concerns would support the self-regulation of a policy area and while improving effectiveness and rule harmonization, European administrative networks may damage legitimacy expectations.

The existence of regulatory networks is an acknowledged feature of globalism when „*administrative functions are performed in often complex interplays between officials and institutions on different levels, and in which regulation may be highly effective despite its*

¹ The Treaty of Lisbon for the first time provides for a constitutional framework of European administration, including rules for the delegation of rule-making power from the Council to the Commission (TFEU Article 290), and administrative cooperation among the Union and the Member States so as to improve their administrative capacity to implement Union law. (TFEU Article 197) (Saurer, 2009, p. 480)

² According to Kovács, Tóth, and Forgács the legal effect of soft law could be described as a vertical indirect effect, “the same as is attributable to directly effective rules in an unimplemented directive”; that third parties can rely on soft rules against the EU authorities, but not in horizontal disputes against private parties. (Kovács, Tóth, and Forgács 2015, pp. 5-6; Csatlós, 2018, p. 64.)

predominantly non-binding forms". (Krisch & Kingsbury, p. 1.) Despite their legal challenges and requirement of re-thinking of the present legal order, the higher purpose they serve with professionalism seems to overcast the insufficiencies, thus they are considered as successful *standard setting* cooperation forms in the area of, inter alia, financial regulation (*Basel Committee on Banking Supervision*), antitrust (*International Competition Network*), food and drug regulation (*The Codex Alimentarius Commission*), telecommunication and aviation (Zarig, 2005, pp. 549-550.; Slaughter, 2004, p. 2-3.) Despite the soft law nature, guidance, standards, recommendations diffuse to State practice via this informal international decision-making and cause legitimacy concerns in the view of Westphalian sovereignty concepts. Parallel to the current developments in the globalised concept of problem solving, and within the EU, professionalization and practical value in administration has given renewed interest to the *agencification* under the Commission's auspices (Schout, 2018, p. 2.) while it's been recognized that the top-down approach of command and control administration was an inadequate regulatory technique. (Saurer, 2009, p. 445.) EU agencies have become more than non-regulatory facilitators of transnational networks and arenas for the exchange of information. Not only their number is increasing by years (Egeberg & Trondal, 2016, p. 5.), but their tasks and competences are also broadening: most decentralized EU agencies today have regulatory functions by making (or preparing for the Commission) individual decisions, issuing guidelines on the application of EU law at the national level, engaging in national agencies' handling of single cases, increasingly flexible and globalized industries. (Egeberg & Trondal, 2016, p. 3.) Therefore, they have a growing importance in the European administrative structure of policy areas and also, in the global sphere when the EU play as actor in global administration. (Emerson et al., 2011, pp. 65-114.; see, Orbie & Tortell, 2009, p. 27-241.)

3. Normative background to meet democratic standards for the functioning of European networks

The current legal framework applicable to the exchange and use of information through EU information systems is insufficient (Model Rules, 2017, (61) p. 44.) and does not ensure compliance with the basic values and the cornerstones of the EU including democratic legitimation.

3.1. Legitimacy of supra-state functioning

Legitimacy is the result of rule of law functioning and this is the main criteria for a democratic functioning. Democratic legitimation requires the clear apportioning of powers between institutional actors and that each exercise of competence must be traced back to an accountable institution established by the treaties, (Everson et al, 2009, p. 12.) or lacking common competences, accountable Member State authorities.

Legitimacy has two aspects which stand in complex reciprocal relations. *Input legitimacy* refers to the importance of representation of all relevant interests and points of view when making authoritative decisions. To ensure it, the participants in decision-making shall have the proper empowerment and their collaboration, their contribution to the result of the networking shall be transparent to meet the requirements of accountability. *Output legitimacy* points to the quality of the decisions produced and to their effectiveness in solving the problems that they supposedly address. (Piattoni, pp. 189-190.) It is irrelevant if it is a decision of regulatory nature or of an individual case; if the result is formulated in a non-conform way (procedural and substantial law breaches), it overstrains or disrespects the requirements of the legal order and legitimacy is injured.

3.2. Legitimacy of networking in the form of EANs

In case of networking structures, the following basic issues are to be settled properly to see if the functioning is consistent with legitimacy and accountability. Following the summary what *Mastenbroek and Martinsen* made to examine the functioning of the European administrative networks, the (a) the co-operation between network members;(b) the Commission's control of the network (c) the autonomy of the network members from their national governments are the main indicators. (Mastenbroek & Martinsen, 2018, p. 426.)Concerning the above-mentioned elements, the existence of an agency as a central node in networking shall be stressed among the players as its function and competences are vital to precise the legal nature of networks. However, the degree of cooperation between Member State and EU agencies or the Commission is sector specific as the policy legislation is being dependent on the division of competences under EU law. (Model Rules, 2014, (61) p. 116.)

Democracy as a value has been mentioned by the Single European Act preamble, although it was only the Lisbon Treaty that explicitly connected the functioning to *openness, transparency and participation* at treaty level for the first time in the integration's history

under the title of ‘ democratic principles.’(Article 10(3) TEU, Mendes & Curtin, 2011, p. 7.)³ Since then, the relationships between the EU administration and its citizens shall meet these normative standards so “*the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system*” (Curtin & Mendes, 2011, p. 7.), and this requirement is not sector-specific.

Information and enforcement networks are mainly concerned with individual decision-making, European regulatory networks as the role of networking basically remains an added value, and the authority power stays at Member State level. However, the European regulatory networks are also an important expression of the institutionalization of a European Union’s multilevel regulatory administration; (Danielsen & Yesilkagit, 2013, p. 1.) although they “*create a bridge between national and supranational administrations in unprecedented ways*”. (Danielsen & Yesilkagit, 2013, p. 2.) The major challenge of networking lies in the traditional concept articulated as *Meroni doctrine* in both cases: democracy can only be preserved where a direct link can be maintained between the *daily* activities of the functionally independent administrative authority and a named, and so presumably, directly accountable, treaty-derived or constitutional organ. (Everson et al, p. 53.) Currently, the insufficiency of substantive and procedural norms are the main barriers and the internal inter-institutional normative insufficiencies aggravate the problems of democratic functioning once the EU appears at global level and takes part in the global administration and its networking.

4. Networking at global space

4.1. Informal international law-making and global administrative law

Besides internal networking, the EU is an active player of global governance, and participates in transnational regulatory networks *harmonisation networks/trans-governmental networks/transnational networks/TRNs* informal multilateral forums that bring together representatives from national regulatory agencies or departments to facilitate multilateral cooperation on issues of mutual interest within the authority of the participants. (Verdier (2009) p. 115.) Probably the collaboration is the most effective within the BCBS (cf. TFEU

³*Cf.* Maastricht Treaty preamble and Declaration on the right of access to information which considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration.

Protocol no. 4. Article 6; Meester, 2008, p. 101-102.) or the ICH,⁴(cf. TFEU Article 168. 3.) but despite the practical successes, the phenomenon has its own legitimacy, transparency and accountability challenges as they lack “*usual legitimacy and accountability mechanisms but possess capacity-based authority and are kept under control through surrogates.*” (Cassese, 2015, p. 466.) Slaughter envisages a new world order with a „*system of global governance that institutionalizes cooperation and sufficiently contains conflict such that all nations and their peoples may achieve greater peace and prosperity, improve their stewardship of the earth, and reach minimum standards of human dignity.*” (Slaughter, 2004, p. 15.) which better fits the new- age problem solving methods over the classical methods where States are predominant as actors. However, the supranational international authority practice vis-à-vis citizens is rare, the intermediary role of State and state administration is necessary as global administration and its networks are not executives; they focus on information exchange and regulatory functions. The phenomenon cannot be corresponded to domestic legal notions for administrative law of States, and in fact neither administrative nor law (Cassese, 2015, p. 466) but it is a *global administrative law* with a specific nature. By means of strengthening of input and output legitimacy by proper domestic norms in the view of democratic requirements, in legal practice, administrative procedures can ensure citizens’ rights when the soft law is applied in an implemented (domestic) form of law. In the global sphere, States are still actors in trans-regulatory networks in an underlying way: State administration is the filter to and from the global sphere.

The nature of trans-regulatory networks allows the EU as an actor in their work, but the EU is strictly connected to its competences laid down in the Treaties (TFEU, art.1; 2-6.). In European policy areas, it depends on its legislative competence: the powers of the EU outside its borders adjust its competences that exists inside the EU (implied powers) except for the

⁴The *International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use* (ICH) aims to achieve harmonisation in the form of guidelines via a process of scientific consensus with regulatory and industry experts working side-by-side worldwide to ensure that safe, effective, and high quality medicines are developed and registered. The key to the success of this process is the commitment of the ICH regulators to implement the final guidelines. The European Commission is a founding member and also the only supranational regulatory member which stands for the regulatory framework on pharmaceuticals is applicable across all the Member States of the EU and the European Economic Area. The *European Medicines Agency* the EU’s relevant agency (established in 1995), underpins the centralised authorisation procedure and supports coordination between national competent authorities. It is a European medicines network comprising over 40 national regulatory authorities guaranteeing a constant exchange and flow of information regarding the scientific assessment of medicinal products in the EU and it is providing the Commission with its technical and scientific support and is coordinating the scientific expertise put at its disposal by the EU Member States, notably through EMA’s main scientific committee, the *Committee for Medicinal Products for Human Use* (CHMP). See <https://www.ich.org/about/members-observers/ec-europe.html>. Legitimacy of the ICH guidelines we have discovered deficiencies regarding all requirements of acceptability: stakeholder participation, transparency, accountability and control. (Dorbeck-Jung, 2008, p. 69; in details: 65-66.)

common foreign and security policy area. (Reuter, 2013, p. 89.) In international sphere, the EU shall act according to serve *input and output legitimacy*. When it enters the global space, the distance between the source of power and the place of activity extends, and the detailed rules on the external action are crucial to maintain the democratism in the course of action. When institutions and bodies act on behalf of the EU, their *accountability* and the *transparency* on the input and output phase of the procedure is evaluated. Even if on EU's side the procedural details would be available to that end (which is often not the case), the transparency of the TRN's functioning is not ensured or due to economic-political reasons, are confidential. Accountability has two sides; internal accountability refers to the decision-making processes within the organisation, including checks and balances and a clear division of roles and responsibilities. External accountability consists of the supervisors' obligation ability to explain to external stakeholders the impact of their activities. (BCBS Report, 2015, p. 25.) Enabling stakeholders to seek and receive a response for grievances and alleged harm is a critical aspect of accountability. This is the mechanism through which stakeholders can hold an organisation to account by querying a decision, action or policy and receiving a proper review and act upon their claim. Effectivity of global institutions would also require that the standards they established are treated as an obligation, and there is a mechanism that monitors the compliance and enforce them is necessary. (Barr, 2014, p. 31-32.) Due to the non-State actors and soft law nature of their rule-making result, the answers to the assumptions are available below a global level and depend on domestic acceptance. In the case if the EU appears as an actor, the EU is bound by its own internal requirements in external dimension, therefore, EU legislation shall establish the legal background to fill out the gaps of democratic legitimacy. It means mainly procedural rules strengthening transparency and accountability of the external activity of the institution acting on behalf of the EU. On the other hand, it continues with the incorporation of the soft law into the decision-making procedure to make the legitimacy line unbroken and traceable.

4.2. Legitimacy of networking by the EU

Both the determination of the Union negotiator or negotiating team, and that of the legal bases of international agreements have seen internal friction among EU institutions and the Member States. (Wouters et al., 2013, p. 4.) The trans-regulatory networks are standard setters who are neither vested with legislative power, nor they are entitled to assume obligation for a State, although their product acts as a normative act in a non-conform way defined by the classical

Westphalian regime.(Barr, 2014, pp. 31–32; Corkin & Boeger, 2014, p. 227.) The spreading practice of such trans-regulatory networks and their growing importance reveals the necessity of the articulation of a new legal order and re-thinking of the current one. The EU faces the same challenges while it is trying to improve the effectiveness of its policies and at the same time, it should improve democratic deficit within its own institutional structure. Both tasks are heavily connected to the question of administrative procedural improvement.

To respond challenges in the global context, *Cassese* reveals, that the key might be the change of conception of the current legal order. It considers the State as the locus of democracy. If the State is taken out of the equation, shifting decision-making from the national to the global level deprives citizens and corporations of these participatory rights. So, the top-down legitimacy “could be, at least partially, compensated by means of reinforced guarantees for civil society.” Greater *participation* in the formation of the national position ahead of global administrative negotiations, or actual participation in these negotiations, directly or through (similar global) non-governmental organizations are the key towards. (Cassese, 2005, pp. 688-689) The EU is keen on improving the participation, the direct involvement of stakeholders in decision-making procedures, but not in those ones which are the preparatory phases of its participation in the global sphere as highlighted in the case of the a trans-regulatory networks’ work.

In order to ensure the ECB fulfils its mandate properly, ECB policymakers need to be informed about developments in the global economic and financial environment. (Recommendations of the European Ombudsman, 2018, para 25.) To that end, the ECB president takes part in the G30 meetings.⁵ There was a European Ombudsman investigation about how to ensure the participation of members of decision-making bodies of the ECB in the G30 while avoiding any possible impact on its integrity, reputation, and independence, or a perception that there could be such an impact. (Recommendations of the European Ombudsman, 2018, para. 49) The European Ombudsman’s Decision is based on concerns that G30 membership could create a possible perception of a close relationship between supervisor and supervisee and undermine public confidence in the independence of the ECB. The Ombudsman revealed that participation does not generate the same potential difficulties as does membership although she highlighted that there is increased public awareness, expectation and demand that public institutions should comply with the highest possible

⁵ The G30 gathers current and former central bank governors, ministers of finance, academics and private sector representatives, including bankers from the largest and most important economies which make it a relevant and useful forum in view of information- and intelligence-gathering (Recommendations of the European Ombudsman, 2018, para. 48.)

standards of ethical conduct and transparency, legitimacy and accountability. (Recommendations of the European Ombudsman, 2018, para 34. 2) These standards must apply irrespective of the forum or context within which such dialogue takes place (Recommendations of the European Ombudsman, 2018, para. 55.) If the G30 is not yet ready to be more transparent, to meet these standards, together with the requirement of an “*open, transparent and regular dialogue*” with representative associations and civil society set out in Article 11(2) TEU, it is the ECB that should consider proactively informing the public about the content of meetings in which members of the ECB decision-making bodies participate. To that end the Guiding Principles which refers to the procedural steps shall be clarified and add more details and broaden the scope of the Guiding principles for external communication of application in the view of the subject and the object as a lack of transparency could create a public impression of secrecy, which would reflect negatively on the image and reputation of the EU’s decision-making bodies, including the ECB. (Recommendations of the European Ombudsman, 2018, 54.; 57; 63-64.) clarity and legal certainty and to contribute to the full and proper application of the rules of ethical conduct.⁶

The principle of *sincere cooperation* is a reciprocal obligation the EU institutions and the Member States and the institutions among each other. (TEU Art. 4(3); C-45/07, para. 30) The ultimate duty of the EU to ensure participation is an obvious consequence of the obligation of the Member State to consult its position even in those international organisations in which the EU is not a party to, but EU law expands to the scope of action. (Opinion 2/91, para 36.; cf. Opinion of Advocate General Poiares Maduro, para. 57.)

The duty of sincere cooperation obliges Member States to refrain from certain autonomous actions within international bodies or fora, both in areas of exclusive and shared Union competence. (Larik, 2017, p. 92.) When the EU is exclusively competent, the Member States are under an obligation of result, meaning either following an established EU position or refraining from act at all (*duty to remain silent*). Regarding shared competences, the duty of cooperation implies an obligation of conduct. (Elsuwege, 2019, p. 294.) However, „*sincere cooperation is not to be understood as a duty of blind obedience for the Member States.*” (Larik, 2017, p. 87.), procedural rules on participation shall make prior coordination available depending on the nature of the EU’s competence at stake and there shall be available options

⁶ Following the European Ombudsman’s recommendation, the ECB has encouraged the G30’s recent initiatives to increase transparency. In that spirit, when the ECB announces, on its website, the participation of its decision-makers at G30 events it will include a link to the G30’s website. The ECB has also informed the G30 of the European Ombudsman’s suggestion to publish the names of the members of the G30 Board of Trustees and now this information is available on the G30’s website. (ECB Response, 2018, p. 2.)

for judicial review if the EU breaches its obligations.⁷ Besides exclusive competences, the EU also can act *at the international level as soon as there is a link with the realisation of the Treaty objectives in a particular policy area* (C-600/14, para. 58.) and it can adopt position even if it is not a party to the agreement. (C-399/12, para. 52.) In many IOs the EU will be left with no formal representation, even though it exercises significant competences in the field. (Wouters et al., 2013, p. 6.) It does not mean that the achievement of such bodies is without influence on the EU. This shall be emphasised as Article 218 TFEU⁸ regulates clearly the roles but once the EU participates in a TRN or just relies on/accepts its achievements and for such external activity, there are no explicit treaty provisions. The requirements of sincere cooperation require the possibility of opinion exchange. It follows, that procedural rules should ensure the EU institutions to *organise the procedure for the adoption of the EU's position* in such a way that the Member States have enough time to seek clarification on the competence questions. The EU institutions should work together in good faith, in order to clarify the situation which might lead to disagreement with the Member States at the international sphere and to overcome difficulties that arise internally. Accordingly, the procedure for the adoption of a legal instrument on common position shall ensure that *“a Member State that challenges the competence of the European Union may bring proceedings before the Court sufficiently early to permit clarification on the question of competence to be obtained”*. (C-600/14, para 95.)

So, it seems that the EU tends to adapt to the reasonable advantages of global governance and profit from its achievements, but it has not implemented a legal background for input legitimacy.

5. What to learn for the benefit of European administrative law?

⁷The Member States and even individuals against the European Parliament, the European Council, the Council, the Commission or the European Central Bank or to bodies, offices, and agencies of the Union may invoke Article 265 TFEU and there could be a place for an action for annulment if an international legal norm is incorporated into EU legislation with the violation of the previous coordination obligation concerning the formulation of position for the Member States that are parties.

⁸ Article 218 TFEU governs the procedure for negotiating and concluding an agreement between the European Union and third countries or international organisations. It is the Council, as the institution representing the interests of the Member States, which is the primary decision-making body in that procedure. As such, it is to authorise the opening of negotiations while it is usually the Commission which conducts negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them. Article 218 TFEU also governs the degree of involvement of the European Parliament, whether in the form of consent in the cases listed exhaustively or, alternatively, consultation. In the remaining cases, the Parliament is to be informed at all stages of the procedure. Throughout the procedure, the Council is to act by a qualified majority except where otherwise provided. (Opinion of Advocate General Szpunar, 2017, para. 54.)

The European administration is a political hybrid between a national and international administration (Nedergaard, 2007, p. 7.) and it is especially true if networking is in focus. Informal, that is beyond the legitimate rulemaking, settling of administrative cooperation of different actors' relationship and their cooperation, either horizontal or vertical within the multilevel system of European administration of authorities and organs, leads to incompatibility with democratic functioning as it endangers the continuity of the legitimate flow of empowerment. The legal effects of *soft law* in international law has roots in the economic or political interdependence of States while the legitimacy and administrative control is missing from this system so as the equality of access to courts and other machinery for adjudication as a guarantee. (Harlow, 2006, p. 14) Within the EU, the clear, transparent administrative procedural rules that ground responsibility and keeps the competency rules respected is crucial due to its multi-level governance and administration. In global administrative trans-regulatory it seems that most elements of public law is put aside while foreign elements infiltrate into domestic public administration and their daily authority practice; however, the constitutional basis and the domestic public administrative law guarantees are present to narrow and balance the legal challenges of activity at the global sphere both on input and output legitimacy. In international administration, the basis of legitimacy is more detached as "*international administration is dependent on external and shifting circumstances to a larger extent than a national administration.*" (Nedergaard, 2006, p. 12.) Although, when the EU, which has its democratic deficit issues is also present as the structure between the state and the global sphere with different competencies in each policy, tracking legitimacy is even more challenging. As the empowerment and the limits of competence are fragmented and various according to policies, the *clearer allocation and use of competences* (Follesdal, 2008, pp. 395-396.) is hard to achieve, then the well-balanced and transparent rules for their conduct of cooperation is crucial intracing legitimacy. The assumption is not pragmatic if it is not the Commission, but its agencies appear in global space by enforcing the role of functionally independent agencies and their regulatory nature. The European Parliament stresses that „*the lack of a coherent and comprehensive set of codified rules of good administration across the Union makes it difficult for citizens to easily and fully understand their administrative rights under Union law*". Administrative rights also pertain those procedural chain of legal steps that leads to the ultimate decision-making in individual cases and also contributes to a deterioration of their legal protection. It assumes rules of good administration in the form of a regulation which set out the various aspects of the administrative procedure that reveals transparency (2017/2011(INI), point 35.) Citizens'

rights in administrative procedures are connected in a wider context to the organisational aspects of democratic functioning including the cooperation of the authorities taking part in the individual decision-making and in an even further approach: the administrative side of rule-making that leads not only to procedural and substantive norms. The European Parliament strains the importance of transparency in the drafting and application of the law by the EU institutions and the Member States; points out that in the interest of both facilitating the implementation of EU law by the Member States and making it accessible to EU citizens, EU legislation needs to be clear, understandable, consistent and precise, while also taking into consideration the jurisprudence of the CJEU, which insists on the need for foreseeability and predictability in EU norms (2017/2011(INI), point 38.)

On 4 October 2016, the Commission indicated that it remained unconvinced that the benefits of codifying administrative law would outweigh the costs. Instead, the Commission proposed that concrete problems should be analysed as they arise and met with specific actions. The European Parliament refuted this with the result of its recent public consultation on an open, efficient and independent European Union administration. Operational incoherence was identified among the most crucial issues by the public consultation launched by the European Parliament on the topic of the need for an open, independent and efficient administrative code.⁹ Most responders supported additional measures at EU level to simplify EU administrative rules, (Evas, 2018, pp. 14-15.) necessary to establish a new mechanism, providing a single and coherent framework, building on existing instruments and mechanisms, which should be applied in a uniform manner to all EU institutions and all Member States (2017/2273(INI), point G) A mechanism should be to prevent violations and non-compliance with democracy (2015/2254(INL), annex, (2)) to identify possible systemic threats to the rule of law at an early stage (2015/2254(INL), annex,(7)) A coherent code in the form regulation may set as an indicated course of line to increase and could also lay down a procedure applicable as a *de minimis* rule where there is no specific law under the new legal basis of Article 298 TFEU. (Boros, 2017, p. 12.) In the global sphere, the global legal pluralists see the *stabilized cooperation* as a solution for structures of overlapping jurisdictions with flexible coordination by decentralized mechanisms which are not grounded in substantive norms. (Faude & Gehring, 2017, p. 185.)

⁹ The consultation was open from 15.12.2017 to 09.03.2018 aiming to obtain a better understanding of the interactions of businesses and citizens with the EU institutions and 166 fully completed online responses from 20 EU Member States were received. Most responders supported additional measures at EU level to simplify EU administrative rules. See, Findings and results of the public consultation on EU Administrative Law. 30-10-2018 <http://www.europarl.europa.eu/committees/en/juri/eu-administrative-law.html?tab=Introduction>

6. Conclusion

Democratic transition in Europe is often used in the context with post-Soviet States, however, in a wider context, the transformation period has not ended with domestic regime change. As being a part of the European integration, the unique system of the European Union with its confirmation of its attachment to the principles of, *inter alia*, democracy, and respect of the rule of law gives another layer to the expression 'democratic transition'. In the point of view of the multilevel administration of the EU, which is continuously formulating with new constructions, networking structures to better execute the EU acquis while the improvement of the normative background tries to keep up with the emergence of practical solutions as required by the major principles. Concerning networking, the EU as a global player is often a chain in global networking structures. Given the lack of uniform normative background and the difference in internal and external aspects of European administration's networks, they are determined and also challenged by the same democratic principles that give rise to further legislative steps and confirm the necessity of a European administrative procedural code. To support this statement, the paper takes a glance at administrative networks and their growing significance in European administration both under and beyond the scope of the European Union and explores its normative background and the possible relevance of a European administrative procedural code to bring the system closer to democratic functioning.

References

- Barr, M.S. (2014) Global Administrative Law and the Post-Crisis Financial Order. *Proceedings of the ASIL Annual Meeting* 108 (31), 31–33
- BCBS Report. Basel Committee on Banking Supervision Report on the impact and accountability of banking supervision. Bank for International Settlements, July 2015. <https://www.bis.org/bcbs/publ/d326.pdf>
- Boros, A. (2017). The Current Situation of The Regulation of EU Administrative Procedure Law in the Light of European Parliament Resolutions. *Pro Publico Bono–Public Administration*, 5 (3) 4–17.
- Cassese, S. (2005). Administrative Law Without the State? The Challenge of Global Regulation. *International Law and Politics*, 37(4), 663–694.
- Cassese, S. (2015). Global administrative law: The state of the art. *International Journal of Constitutional Law*, 13(2), 465–468.
- Corkin, J. & Boeger, N. (2014) Endogenous Transformations in European Public Administration: Soft-Law, Transnationally Networked Governance as a Self-Reinforcing Trend. In E. Bohne, J. D. Graham, J. C. N. Raadschelders & J. P. Lehrke, *Public Administration and the Modern State Assessing Trends and Impact*. London: Palgrave Macmillan, 223–237
- Csatlós, E. (2016). Perspectives of the Cooperation of National Administrative Authorities in the EU. *Jogelméleti Szemle - Journal of Legal Theory*, 16(3) 45-55
- Csatlós, E. (2018). The European Competition Network in the European Administrative System: Theoretical Concerns. *Yearbook of Antitrust and Regulatory Studies*, 11(17) 53-75
- Curtin, D. & Mendes J. (2011). Citizens and EU Administration. Direct and Indirect Links. Brussels: European Parliament.
- Danielsen, O. A. & Yesilkagit, K. (2013). The Effects of European Regulatory Networks on the Bureaucratic Autonomy of National Regulatory Authorities. Accessed: https://www.academia.edu/3858735/The_Effects_of_European_Regulatory_Networks_on_the_Bureaucratic_Autonomy_of_National_Regulatory_Authorities
- Dorbeck-Jung, B. R. (2008). Challenges to the Legitimacy of International Regulation: The Case of Pharmaceuticals Standardisation. In A. Follesdal, R. A. Wessel & J. Wouters (eds.) *Multilevel Regulation and the EU. The Interplay between Global, European and National Normative Processes*. (pp. 51-72.) Leiden/Boston: Martinus Nijhoff.
- Egeberg, M. & Trondal, J. (2016). Agencification of the European Union Administration Connecting the Dots. *ARENA Working Paper* 3, <https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2016/wp-3-16.pdf>
- Elsuwege, P. V. (2019) The Duty of Sincere Cooperation and Its Implications for Autonomous Member State Action in the Field of External Relations. In M. Varju (ed.) *Between Compliance and Particularism. Member State Interests and European Union Law*. Cham: Springer.

- Emerson, M., Balfour, R., Corthaut, T., Wouters, J., Kaczyński, P.M. & Renard, T. (2011). *Upgrading the EU's Role as Global Actor Institutions, Law and the Restructuring of European Diplomacy*. Brussels: Centre for European Policy Studies. <https://www.ceps.eu/wp-content/uploads/2013/02/Upgrading%20the%20EU%20as%20Global%20Actor%20e-version.pdf>
- Evas, T. (2018). EU law for an open independent and efficient European administration. Summary report of the public consultation. Brussels: European Union.
- Everson, M., Majone, G., Metcalfe, L. Schout, A. (2009). *The Role of Specialised Agencies in Decentralising EU Governance*. Report Presented to the Commission. https://ec.europa.eu/dorie/fileDownload.do;jsessionid=IBCnhpIxPOgadX2Qq03ovzozQvh7A4n9V_KwGO6I1dA73cxBCm3i!-83065915?docId=2077237&cardId=2077236
- Faude B. & Gehring T. (2017). Regime complexes as governance systems. In W. Sandholtz & C. A. Whytock (eds) *Research Handbook on the Politics of International Law*. (pp. 176-203) Cheltenham: Edward Elgar.
- Follesdal, A. (2008). Epilogue: Toward more Legitimate Multilevel Regulation. In A. Follesdal, R. A. Wessel & J. Wouters (eds.) *Multilevel Regulation and the EU. The Interplay between Global, European and National Normative Processes*. (pp. 377-398) Leiden/Boston: Martinus Nijhoff.
- Grammatikas, V. (2011). Administrative Convergence in the Context of EU Accession Negotiations: Structural Necessity or Creeping Political Criteria. In A. Matei & C. Rădulescu (eds) *National and European Values of Public Administration in the Balkans*. South-Eastern European Administrative Studies, ASsee Online Series, No. 4. 19-24.
- Harlow, C. (2006). Global Administrative Law: The Quest for Principles and Values. *The European Journal of International Law*, 17(1) 187–214.
- Hofmann, H.C.H. (2009a). Mapping the European Administrative Space Towards. In D. Curtin & M. Egeberg (eds) *A New Executive Order in Europe?* (pp. 24-38.) London: Routledge
- Hofmann, H.C.H. (2009b). In H.C.H. Hofmann & Alexander H. Türk (eds) *Legal Challenges in EU Administrative Law. Towards an Integrated Administration*. (pp. 136-167.) Cheltenham: Edward Elgar.
- Kovács, A., Tóth, T. and Forgács, A. (2016) Effects of European Soft Law at National Administrative Courts. *Loyola University Chicago International Law Review* 14(1) 1–30.
- Krisch, N. & Kingsbury, B. (2006). Introduction: Global Governance and Global Administrative Law in the International Legal Order. *The European Journal of International Law*, 17(1), 1-13.
- Larik, L. (2017). Sincere Cooperation in the Common Commercial Policy: Lisbon, a “Joined-Up” Union, and “Brexit” In M. Bungenberg et al. (eds.) *European Yearbook of International Economic Law*, 8. 83-110.
- Mastenbroek, E. & Martinsen, D. S. (2018). Filling the gap in the European administrative space: the role of administrative networks in EU implementation and enforcement. *Journal of European Public Policy*, 25(3), 422-435.

- Meester, B. D. (2008). Multilevel Banking Regulation: An Assessment of the Role of the EC in the Light of Coherence and Democratic Legitimacy. In A. Follesdal, R. A. Wessel & J. Wouters (eds.) *Multilevel Regulation and the EU. The Interplay between Global, European and National Normative Processes.* (pp. 101-144.) Leiden/Boston: Martinus Nijhoff.
- Model Rules. Craig, P., Hofmann, H.C.H., Schenider, J-P. & Ziller, J. (2017). *ReNEUAL Model Rules on EU Administrative Procedure.* Oxford: Oxford University Press.
- Nedergaard, P. (2006). *European Union Administration: Legitimacy and Efficiency.* Leiden/Boston: Martinus Nijhoff.
- Orbie, J. & Tortell, L. (eds.) (2009). *The European Union and the Social Dimension of Globalization How the EU influences the world.* London: Routledge.
- Piattoni, S. (2010). *The Theory of Multi-level Governance Conceptual, Empirical, and Normative Challenges,* Oxford: Oxford University Press.
- Radaelli, C.M. (2003). The Europeanisation of Public Policy. In K. Featherstone & C. M. Radaelli (eds) *The Politics of Europeanization.* (pp. 27-56) Oxford: Oxford University Press.
- Reuter, K. (2013). *Competence creep via the duty of loyalty? Article 4(3) TEU and its changing role in EU external relations.* PhD thesis, European University Institute, Florence. https://cadmus.eui.eu/bitstream/handle/1814/28050/2013_Reuter.pdf?sequence=1&isAllowed=y
- Rowe, G. C. (2009). Administrative Supervision of Administrative Action in the European Union. In H. Hofmann & A. Türk (eds) *Legal Challenges in EU Administrative Law: Towards an Integrated Administration.* (pp. 179 – 217.) Cheltenham: Edward Elgar.
- Saurer, J. (2009). The Accountability of Supranational Administration: The Case of European Union Agencies. *American University International Law Review*, 24(3) 429-488.
- Schout, A. (2018). EU agencies after 25 years: Policy Brief a missed opportunity to enhance EU governance. *Clingendael Policy Brief.* https://www.clingendael.org/sites/default/files/2018-12/PB_EU_Agencies_0.pdf
- Slaughter, A.M. (2004). *A New World Order.* Princeton: Princeton University Press
- Ştefan, O. (2013) *Soft Law in Court: Competition Law, State Aid, and the Court of Justice of the European Union.* European Monographs Series Volume 81, Alphen aan den Rijn: Kluwer Law International.
- Verdier, P-H. (2009). Transnational Regulatory Networks and Their Limits. *The Yale Journal of International Law*, 34(1), 114-172.
- Wouters J., Odermatt, J. & Ramopoulos, T. (2013). The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities. *Leuven Centre for Global Governance Studies, Working Paper No. 121.* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2340080
- Zaring, D. (2005). Informal Procedure, Hard and Soft, in International Administration. *Chicago Journal of International Law*, 5(2) 547-603.

Legal sources

C-399/12 *Federal Republic of Germany v Council of the European Union*, ECLI:EU:C:2014:2258.

C-45/07 *Commission v Greece*, ECLI:EU:C:2009:81.

C-600/14 *Federal Republic of Germany v Council of the European Union*, ECLI:EU:C:2017:935.

Maastricht Treaty. Treaty on European Union. OJ C 191, 29.7.1992. 1–112.

Opinion 2/91 *Opinion delivered pursuant to the second subparagraph of Article 228(1) of the EEC Treaty*, ECLI:EU:C:1993:106.

Opinion of Advocate General Poiares Maduro delivered on 1 October 2009 in C-246/07 *Commission of the European Communities v Kingdom of Sweden*, ECLI:EU:C:2009:589

Opinion of Advocate General Szpunar delivered on 24 April 2017 Case C-600/14 *Federal Republic of Germany v Council of the European Union*, ECLI:EU:C:2017:296.

TEU. Treaty on European Union. Consolidated version. OJ C 326, 26.10.2012. 13–390.

TFEU. Treaty on the Functioning of the European Union. Consolidated version. OJ C 326, 26.10.2012. 47–390.

Recommendations of the European Ombudsman on the involvement of the President of the European Central Bank and members of its decision-making bodies in the 'Group of Thirty' (1697/2016/ANA) Strasbourg,

15/01/2018, <https://www.ombudsman.europa.eu/en/recommendation/en/88592>

ECB Response. The European Central Bank's response to the Decision of the European Ombudsman on the involvement of the President of the European Central Bank and members of its decision-making bodies in the 'Group of Thirty' (Case 1697/2016/ANA) ECB-PUBLIC 27 September 2018. <https://www.ombudsman.europa.eu/en/correspondence/en/105178>

European Parliament resolution of 26 October 2017 on monitoring the application of EU law 2015 (2017/2011(INI))

European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) http://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html

European Parliament resolution of 14 June 2018 on monitoring the application of EU law 2016 (2017/2273(INI)) http://www.europarl.europa.eu/doceo/document/TA-8-2018-0268_EN.html?redirect

Findings and results of the public consultation on EU Administrative Law. 30-10-2018 <http://www.europarl.europa.eu/committees/en/juri/eu-administrative-law.html?tab=Introduction>