

DOI: 10.53116/pgafnr.6850

# Principles for the Europeanisation of Public Administration

## In Search of the European Procedural Administrative Principles

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**Abstract:** Administrative regimes are no longer isolated phenomena: they are constantly confronted with international influences, which shape the internal structure and system of the states. The cooperation between the European Union and the Member States' administration is today a kind of convergence in principles. This is what the EU expects from the candidate countries and in the neighbourhood policy. The main question of the study is whether the content of the principles used by the EU is cognisable and consistent. The study covers two policy instruments: the SIGMA project, which is a joint EU–OECD collaboration, and the comparative legal activities of the ReNEUAL. These instruments testify two completely different attitudes: one does not explain the principle but holds it accountable, the other seeks the means to understand its content and the reasons for the differences in interpretations. Both programs have undergone internal development, but while SIGMA has moved away from its administrative procedural roots, ReNEUAL has confirmed it. The paper is another argument in favour of the need for administrative research using the tools of comparative law.

**Keywords:** EU, OECD, SIGMA, ReNEUAL, principles, accountability

### 1. Integration and sovereignty – The path towards cooperation on fundamental principles

#### 1.1. Peaks and troughs

The Europeanisation of public administration faces constant challenges. Ever since the European Economic Community came into being, the Western half of Europe has aimed for economic cooperation. In his speech at the University of Zurich on 19 September 1946, Sir Winston Churchill mentioned his vision of a 'United States of

Europe’, which has since become the identity-shaping symbol of European international organisations (in particular the Council of Europe and the European Communities). The initial enthusiasm and desire for unity soon evolved into ‘convergence’, as it became clear how strongly Member States were attached to their sovereignty and power positions within Europe.

This was probably one of the reasons that the expansion of the Community’s sphere of competence, and later that of the Union, has been such a gradual process. It was also that, until the late 1980s, regional policy and the related statistical cooperation were the most prominent examples of active and genuinely harmonised administrative cooperation. During the decades preceding its codification, the NUTS system became an influential factor, by establishing a link between the territorial structure of Member States and statistical reporting. Indeed, all member states’ spatial structure have become comparable on a European scale.

The transformation into a Union in 1992 and the emergence of the ten candidate countries provided further impetus for administrative convergence, or to put it more aptly, the development of a ‘willingness and ability’ for cooperation. The SIGMA program, to be further discussed below, is a good illustration of the fact that there has been no ‘unification’, in the Churchillian sense, in the European Union since its beginnings. Instead, the focus has been on providing *support* to individual Member States and disseminating good practices in an effective manner. In the first decade of the 2000s, the significance of coordinative and networked bodies, such as the so-called ‘agencies’, increased within the operation of the EU (Polt, 2019, pp. 67–70). The reason for convergence replacing uniformity is that Member States are so strongly attached to sovereignty and autonomy. First, it is therefore worth taking a closer look at this issue.

## **1.2. The external necessity for cooperation among administrations as a force-shaping sovereignty**

“In society, power is a fact” (Varga, 2020, p. 258). Power, a conceptual element of the establishment and functioning of the state, is also an essential component of sovereignty (Tamás, 2010, p. 67). Sovereignty is conventionally defined as an “actual and theoretically absolute (supreme) power within a given territory over a given population, which is acknowledged as such by other similar power holders” (Varga, 2020, p. 259). According to the traditional differentiation between the external and internal aspects of sovereignty, the former includes independence, autonomy and decision-making capacity without external control, whereas the latter includes the right to command and the obligation of subordination (obedience) (Varga, 2020, p. 259).

Also according to the conventional approach, administration means functioning on the basis of popular sovereignty; in other words, functioning based on a position of power (Waldo, 2006). This way, the relationship between administration and power points to the internal aspects of sovereignty, as administration is an activity of executive power, which results, among other things, in the actual performance of state functions through governance in possession of the state’s authority (Varga, 2017, p. 91). The conceptual

framework makes it clear that, within the public law doctrine, administration is an internal power, characteristic of the state. On a conceptual level, one could stop here, as it is at the discretion of each state to choose the kind of internal set of rules, functioning and implementation; taken altogether, the kind of administration it wants. This diversity is illustrated, for example, by the fact that, in Germany, certain aspects of federalism, namely judicial review and parliamentary governance, have supported and applied that public administration should continue to be the ability of general government branches to define and pursue rational policies while respecting constitutional requirements. In France and the United States, however, administrative agencies partly reflect a departure from regular governmental power in order to protect the public interest better (Rose-Ackerman et al., 2019).

Experience, however, shows that the administration of each state is subject to significant external influences. Rather than stemming from power, such influences emerge on the basis that the external and internal aspects of sovereignty continuously interact with and thus influence each other. Rather than being seen as isolated phenomena, countries should be interpreted as parts of larger or smaller systems of relationships. These may be bilateral relationships between countries with or without a common border, looser (political or economic) multilateral cooperations (such as the Visegrád cooperation between Poland, the Czech Republic, Slovakia and Hungary), or a stronger political and legal relationship (such as the European Union, the Council of Europe or other international organisations). In order to be able to maintain the balance among its diverse external and internal relationship networks, it is necessary for each European country to understand, receive and process the impacts affecting its internal functioning. That attention to external influences may thus also shape the administration.

In terms of their legal binding force, these external influences on public administration can be examined from two different aspects: either as a *normative* influence, as exemplified by the Convention on the Rights of the Child adopted by the UN in 1989, which has shaped the participating states' child protection legislation. In Hungary, this is expressed by imposing a legislative obligation in order to comply with a mandatory international standard. However, the external influence on administration may also be of a *cooperative nature*, as exemplified by the services of the UNPAN (United Nations Public Administration Network) or the supportive functions of the OECD, to stay within the realm of international public law (Heidbreder, 2011, pp. 709–727).

The rest of this paper will focus on normative influences on public administration from the perspective of the European Union.

### 1.3. The Europeanisation of administration and administrative law

The Europeanisation of public administration has been discussed repeatedly and extensively. From the point of view of the analysis presented in this paper, Europeanisation includes, in a broader sense, any influence exerted by the European Union on administration and administrative law (Grabbe, 2003, pp. 319–320). On the whole, it is a process that includes activities to set up institutions, create norms, develop procedures

for managing conflicts and resolving problems and to establish formal and informal networks at Union level in order to address the challenges posed by integration. On the other hand, it encompasses the changes in national policies, legislation and institutional structures as a result of Union policies and legislation and the rearrangement of the interests of various Member States (Láncos & Gerencsér, 2015, p. 121).

Closely related to Europeanisation is the concept of ‘European (public) administration’, which has been defined by Union law in very general, one might say ‘foggy’, terms only (ReNEUAL, 2014, p. 17. para. 43). Article 9(3) of the Treaty of Amsterdam and the first indent of Article 24(1) of the Treaty of 1965 were replaced by Article 298(1) of the TFEU. This provision refers to ‘an open, efficient and independent European administration’. In the primary (narrowest) interpretation of the term, European (public) administration means the administrative dimension of Union law, meaning any piece of Union legislation that is applicable to the implementation of EU decisions by Union bodies (institutions, offices and agencies) and the organisation and functioning of such bodies (Balázs, 2020a, [12]–[19]; Torma, 2011, p. 201). It is not by accident that the term ‘public’ is absent in the TFEU, given that EU executive bodies lack the kind of sovereignty and authority vested in the bodies of Member States. Therefore, the EU relies on the efficient implementation of its decisions by the public administrations of Member States.

In its secondary (broad) interpretation, ‘European (public) administration’ therefore presupposes the active participation of administrative bodies of the Member States in the implementation of Union decisions (Balázs, 2020b, 86–87). Given that the implementation of EU decisions, particularly in matters of exclusive or joint EU competence, greatly relies on the administrative bodies of Member States, such a broader approach is considered more relevant by the research of EU procedural law discussed below (ReNEUAL).<sup>1</sup>

The implementation of EU decisions thus creates a direct link between EU law and Member State administrative law, which is no longer ‘vague’ but manifests itself in a tangible legal form.<sup>2</sup> As administrative norms are traditionally understood on the basis of substantive, organisational and procedural provisions, it is worth examining the administrative law links between the Union and the Member State on the basis of these guiding principles.

It is evident from the Treaty on the Functioning of the European Union (TFEU) that the primary form of the relationship concerns *substantive law*. As far as the exclusive, shared and supportive functions of the EU are of an administrative nature, they clearly have a substantive law dimension: see in particular competition rules for the single market among exclusive competences [Article 3(1)(b) TFEU], agricultural law, environmental protection, consumer protection, transport and energy among shared competences [Article 4(2) TFEU], or any of the supportive, coordinating or supplementary functions under Article 6. Such substantive law cooperations between the EU and the Member State are provided for in the Treaties, while their actual provisions are determined by secondary

<sup>1</sup> Paragraph I-1(2) of the Model Rules clearly states that national bodies must also apply the EU procedural rules where they are obliged to do so by EU law (provided, obviously, that they apply EU law).

<sup>2</sup> For the purposes of this paper, ‘legal form’ should be understood as referring to both the provisions of an administrative nature in secondary EU legislation and decisions of the CJEU that affect public administration.

legislation, often as a combination of substantive and procedural rules, similarly to Member State law.

The EU does not have significant influence on *organisational law*, given that this field is determined primarily by the characteristics of Member State sovereignty as referred to above. Similarly, it is obvious that, since the EU strives for efficiency through specific cooperations, it tends to leave the shaping of the organisational framework to the Member States. In other words, it does not provide for an explicit organisational norm that would be binding for both Union and Member State law. The initial distance and respect for Member State autonomy have, however, changed and it can now be observed that EU law is capable of transforming the organisational rules of Member States. This is exemplified by the increasing prominence of autonomous bodies within central administration, as the independence of those bodies from the government does not fall into the (exclusive) discretion of the Member States. For example, Recital (8) of the ECN+ Directive<sup>3</sup> states that “there is a need to *put in place fundamental guarantees of independence*, adequate financial, human, technical and technological resources and minimum enforcement and fining powers [...] for applying national competition law [...] so that national administrative competition authorities can be fully effective”. Similarly, Recital (37) of the European Electronic Communications Code<sup>4</sup> provides that the “*independence of the national regulatory authorities was strengthened* in the review of the electronic communications regulatory framework completed in 2009 in order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions”. The secondary legislation is thus capable of formulating requirements that Member States are only able to fulfil by also harmonising their organisational rules.<sup>5</sup>

As far as the provisions of EU organisational law are concerned, territorial administration is the only area where the organisational framework can only be filled by an EU administrative institution and by the explicit cooperation by the Member States. These are called European Groupings of Territorial Cooperation (EGTC), which were developed with a view to facilitating cross-border, transnational and interregional cooperation between Member States and regional and local authorities. EGTCs enable partners to carry out joint projects, share expertise and improve coordination in territorial development. An EGTC may be set up by partners established in at least two Member States (or a Member State and one or more non-EU countries). Apart from businesses, however, the parties involved in the cooperation may include national authorities (i.e. administrative bodies), as well as regional and local authorities. The EGTCs thus provide an organisation framework for cross-border cooperation, which is able to adapt flexibly to the administrative structure of the Member States concerned.

<sup>3</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (italics added).

<sup>4</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (italics added).

<sup>5</sup> It should be noted that the authorities under the two examples cited above were identified by the Hungarian Parliament as autonomous administrative bodies more than a decade before the publication of the aforementioned EU norms. That said, the obligation for harmonisation with EU law still affects an organisational issue.

Finally, mention must be made of the EU and Member State cooperation on *procedural rules*. The current rules governing administrative procedures (or procedures of an administrative nature) in the EU are fragmented (i.e. there is no uniform norm) and tend to be industry-specific (della Cananea & Bussani, 2019). As part of the substantive law cooperation referred to above, the various industries have developed their procedural guarantees, which have been adopted by both EU bodies and Member State administrative bodies applying EU law. The fragmented nature of industry-specific rules has led to a situation where “it is not always possible to have a coherent interpretation of the rules that apply in different sectors, even though they are intended to be similar”.<sup>6</sup> However, the harmony and readiness to cooperate between the procedural regimes also draw our attention to an important aspect: while the definition of procedural rules also lies within the exclusive competence of the Member State owing to its sovereignty, all procedural rules are based on identical or similar patterns, while public administration is based on similar conditions, the entirety of which may be termed the *convergence of fundamental principles*.

As the following chapters reveal, since the 1990s, procedural law principles have become the driving force for EU convergence, establishing a common denominator for European countries with diverse legal traditions. In particular, the criteria of legality, equality and fair procedure serve as the basis for the functioning of all types of democratic administrative regimes, the mutual recognition of which facilitates cooperation between the Member States as well as between EU bodies and the Member States. However, how can one get to know what the fundamental principles are? The difficulty lies in the fact that no positive legislation provides for the content of fundamental principles, while each law-enforcement decision of a judicial body (e.g. the CJEU, Member State courts and constitutional courts) relates to an individual case. In order for a fundamental principle to be truly applicable and be a tool capable of measuring convergence, its content should be properly understood. The content of the principles applied by EU law can be found primarily in EU administrative law and its more general rules on public administration<sup>7</sup> (ReNEUAL, 2014, p. 9).

The following is a discussion of two well-known European or partly European tools affecting public administration, which include fundamental principles pertaining to administration in all Member States. However, these two document systems that generally support administration, differ from each other mainly in their methods and their attention to understanding the content of fundamental administrative principles. For simplicity, the first is referred to below as a system of ‘declared principles’. As will be seen, in this system, concepts are not individually justified; their content is taken for granted and is only communicated to recipients in the form of a catalogue. The second is referred to as ‘systematic principles’. It consists of well-founded, thoroughly explained and interpreted information that was collected according to a systematic methodology using transparent

<sup>6</sup> ReNEUAL 1.0 Model Rules Book I Definitions.

<sup>7</sup> For example, the European Code of Good Administrative Behaviour issued by the European Ombudsman (<https://www.ombudsman.europa.eu/hu/publication/en/3510>), and the Charter of Fundamental Rights of the European Union [2007] OJ C 303/1.

research. Both methods' starting point is procedural law, which reveals the true face and guarantees of public administration as a functioning tool.

## 2. Declared fundamental principles in the SIGMA program

### 2.1. The first phase of SIGMA

The accession process, which started in 1994, posed political, economic and legal challenges for the ten candidate countries.<sup>8</sup> The first of these challenges was addressed by the PHARE programme of the European Union, which served as one of the main facilitating measures in the accession of Central and Eastern European countries.<sup>9</sup> It ran in parallel with the SIGMA program,<sup>10</sup> designed to provide administrative (mainly government) and state management support, established within the OECD in 1992.

SIGMA's original goal was to provide information and expert analysis on public administration to policy-makers and to facilitate communication between and pooling experience among leaders in the public sector. The countries were provided support with a view to improving good governance and the efficiency of public administration and developing the public sector, putting the emphasis on democratic values, ethics and the rule of law. To achieve these objectives, it provided knowledge support to the participating governments through the provision of expert networks, information and technical expertise (SIGMA, 1999, p. 2).

To this day, the program has been providing practical knowledge.<sup>11</sup> While support has been country-specific, it is based on uniform principles: from the beginning, the EU and the OECD have been aware that the *acquis communautaire* is unable to support government reforms adequately, and there are no Union norms or practices that could be adopted by the candidate countries. Therefore, they gathered the principles that the program organisers considered necessary in order to achieve good governance and gave them a common name: it became the European Administrative Space.<sup>12</sup>

Four types of principles are named in the 1999 SIGMA paper: reliability and predictability; openness and transparency; accountability and efficiency; and effectiveness (SIGMA, 1999, p. 9–14). As far as those principles are concerned, the paper only says that they “can be found in administrative law across all European countries” (SIGMA, 1999, p. 14). Apart from some excellent studies, it cites the case law of the Court of Justice of the European Union in general among its sources. Importantly, the paper states, however,

<sup>8</sup> Cyprus, the Czech Republic, Estonia, Poland, Latvia, Lithuania, Hungary, Malta, Slovakia and Slovenia.

<sup>9</sup> PHARE was a supporting tool to facilitate accession, one of the tools helping candidate countries to fulfil the accession criteria. It was replaced by the Instrument for Pre-accession Assistance (IPA) during the 2007–2014 cycle.

<sup>10</sup> Originally: Support for Improvement in Governance and Management in Central and Eastern European Countries. Since the focus shifted towards the Balkans and Eastern Europe following the 2004 round of accession, the former geographical reference to Central and Eastern Europe was subsequently removed. The first group of countries receiving support: Albania, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Macedonia (FYROM at that time), Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia (SIGMA 1999, p. 2).

<sup>11</sup> See in particular the ‘SIGMA Papers’ series published by SIGMA (<https://doi.org/10.1787/20786581>).

<sup>12</sup> “European Administrative Space” (SIGMA, 1999, p. 14).

that these principles tend to appear scattered among different pieces of legislation, from the constitutional level to acts of Parliament and delegated legislation as well as the case law of courts. It specifically emphasises the significance of administrative procedural rules, whether they are contained in codified law or otherwise (SIGMA, 1999, p. 8). For us, this may carry the message that the most comprehensive principles defining public administration may focus on the functioning and actions of public administration and, in particular, specific acts of the authorities.

SIGMA did not come to an end with the accession of the originally supported countries in 2004. Relying on the experiences of the first decade, the program has been further developed and has now become a support for knowledge in general and a tool for measuring ‘development’ for countries aspiring for accession to the European Union and other countries in the EU’s Neighbourhood Policy Area (SIGMA–OECD, 2019).

## 2.2. The reform of SIGMA and its separation from procedural rules

The enlargement process continues to place emphasis on each candidate country’s public administration, which plays a key role in achieving economic growth, competitiveness and a better quality of life. According to the 2021 monitoring documents, “democratic governance and the rule of law require capable, accountable and effective public administrations” (SIGMA–OECD, 2021, p. 4). In its 2018 Enlargement Strategy, the Commission emphasised three fundamental areas: “the rule of law, fundamental rights and good governance” (European Commission, 2018, p. 4). In addition to being a recommendation, these three areas, which are all based on the reform of public administration, also constitute a benchmark, on the basis of which candidate countries are examined and assessed by the EU. Apart from taking the goals of the enlargement strategy of the Union into consideration, the OECD is actively interested in taking part in the accession process, in particular given that, in addition to the EU, the United States also pays significant attention to the West Balkans and the supported regions of the Middle East and North Africa.<sup>13</sup>

In 2014 and 2017, SIGMA further improved its now approximately one hundred-page document entitled *The Principles of Public Administration* (SIGMA–OECD, 2017). SIGMA’s transformed and thoroughly reconsidered goal is to achieve stability, security, prosperity and democracy by furthering policies that enhance economic prosperity and social well-being. The program has measured and evaluated (by monitoring) progress in the public administration reform in six areas: 1. the strategic framework of public administration reform (Sántha, 2021, p. 57); 2. legislation, policy development and coordination; 3. civil service and human resource management; 4. accountability; 5. services; and 6. public finance, public procurement and external audit.

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<sup>13</sup> List of the countries supported in 2022: Albania, Algeria, Azerbaijan, Armenia, Bosnia and Herzegovina, Egypt, Georgia, Jordan, Kosovo, Lebanon, Moldova, Montenegro, Morocco, North Macedonia, Serbia, Tunisia, Turkey and Ukraine (<https://www.sigmaweb.org/countries/>).



This expanded and edited publication has retained the formal characteristics of the previous document in terms of not being an academic document, in that it does not explain the reasons for imposing a regulatory condition, does not cite arguments or provide evidence. However, the title and the content of the document now differs from that of its 1999 counterpart: instead of ‘European’ principles, it now talks about public administration principles in general, abandoning (or rather transforming) the former categories of principles (including the concept of the European Administrative Space), focusing on the six areas referred to above. Rather than being legal principles,<sup>14</sup> some of them are associated with the toolkit of governance (management). It uses concepts (e.g. responsibility, transparency, efficiency) without defining them but refers to them as ‘main requirements’, in other words ‘criteria’ that will later be assessed by a body of the EU.<sup>15</sup> It is thus a management tool supported by a legal framework.

SIGMA monitors the Balkans region, for example, by assessing the state of affairs in the six focus areas in 2017 and then monitoring progress in 2019 and 2021. The three sets of data recorded are comparable and a certain trajectory can be described in each country.<sup>16</sup> The program, however, has not lost sight of its fundamental objective, of preparing these countries for accession: it states that “the EU enlargement criteria recognise and emphasize the need for countries to build a strong national public administration with the capacity to pursue the Principles of good public administration, and effectively transpose and implement the EU *acquis*” (SIGMA–OECD, 2017, p. 6). The principles have transcended the procedural framework established in the 1999 version. In their current form, they specify what good governance entails in practice and outline the main requirements with which countries are expected to comply throughout the integration process. They also include a monitoring framework, which enables progress in implementing the principles to be analysed regularly and the reference values for each country to be determined.

Based on the individual country assessments,<sup>17</sup> I specifically examined the *accountability* principle which, unlike the other criteria, is both present in the 1999 and 2017 SIGMA system as a genuine principle of public administration. My review focused on the specific meaning attributed to that principle by the OECD. Each monitoring report breaks down the accountability principle into five sub-principles (review criteria):

1. The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.
2. The right to access public information is enacted in legislation and consistently applied in practice.
3. Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

<sup>14</sup> Compared to the previous version, the principle of ‘transparency’ has retained most of its former legal relevance in the OECD document.

<sup>15</sup> Similar phrases appear in each monitoring report (e.g. SIGMA–OECD, 2021, p. 6).

<sup>16</sup> See the SIGMA–OECD data portal (<https://par-portal.sigmaxweb.org/>).

<sup>17</sup> The Country Reports are available on the SIGMA website (<https://www.sigmaxweb.org/publications/monitoring-reports.htm>).

4. Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation. Further ‘indicators’ are added to each review criterion, the fulfilment of which is rated using a five-point scale. Regarding review criterion 1, the indicators have the same title for each country under review:

*I. Policy and legal framework for the central government organisation*

1. Clarity and comprehensiveness of the official typology of central government bodies
2. Adequacy of the policy and regulatory framework for managing central government institutions
3. Strength of basic accountability mechanisms between ministries and subordinated bodies
4. Managerial accountability mechanisms in the regulatory framework

*II. Central government’s organisation and accountability mechanisms in practice*

5. Consistency between practice and policy in government reorganisation
6. Number of public bodies subordinated to parliament
7. Accountability in reporting between central government bodies and parent ministries
8. Effectiveness of basic managerial accountability mechanisms for central government bodies
9. Delegation of decision-making competence within ministries

Each of the above indicators is individually assessed by the monitoring reports. However, they are not analysed using a comparative legal methodology. In fact, there are no benchmarks associated with any findings in the report,<sup>18</sup> against which to compare the mechanisms of the country under review. As countries are not compared with each other in the explanation of indicators, there is no way to tell whether a piece of legislation, or the lack of it, should be attributed to a factor in the regional legal culture or whether it should be regarded as a general and fundamental legal or administrative deficiency. Rather than statistical codes, the fulfilment of indicators is shown by assessment along a scale of 1 to 5, the reference points for which are not specified. The absence of a comparative toolkit entails that the social and legal characteristics of the region under review are omitted.

<sup>18</sup> For example, the 2021 Serbia Report declares that the “organisation of public administration lacks clear policy direction” (SIGMA–OECD, 2021, p. 95) without specifying a relevant benchmark.

### 3. Systematic principles in ReNEUAL projects

#### 3.1. Innovative codification

A completely different method is outlined in the study by the Research Network on EU Administrative Law,<sup>19</sup> which was set up in 2009 under the leadership of Herwig C. H. Hofmann, Jens-Peter Schneider and Jacques Ziller (ReNEUAL, 2014, III). The Research Network covers the entire European Union and has included researchers from all Member States. Five years of research, conducted in cooperation with the Commission, resulted in the ‘Model Rules’ document, first published in 2014 (ReNEUAL, 2014), and designed primarily to promote the improvement of implementing EU law and policies while ensuring that the constitutional values of the EU should be enforced in the course of exercising public power. The Model Rules, published as an academic paper rather than as part of the legislative process, demonstrated that, from a legal point of view, it is possible to draft a standard text for public administration procedure, “adapted to the sometimes complex realities of implementing EU law by Union bodies and Member States in cooperation. According to ReNEUAL, the evolution of the European legal system has reached a point where such codification is not only possible but also necessary for the EU’s future development as a regulatory system” (Ziller, 2015, p. 247).

The authors of the ReNEUAL Model Rules have made a proposal for ‘innovative codification’. The draft is therefore intentionally not limited to ‘consolidation’ (‘codification à droit constant’), norms and jurisprudence. According to Schindler, at first sight, the draft is different from *Verwaltungs-Vollstreckungsgesetz* (VwVG), which aimed at achieving ‘minimum codification’ in order to harmonise existing legislation. In a speech before the Association of German Constitutional Law Professors (*Vereinigung der Deutschen Staatsrechtslehrer*) prior to the VwVG, the author of the preliminary draft (Max Imboden) described that effort as a “modest legislative programme” (Schindler, 2017).

The document itself was drafted on the basis of ‘innovative’ practices, as is reiterated in the text. The Model Rules comprise a uniform document, combining existing principles scattered in various pieces of legislation and the jurisprudence of the courts (ReNEUAL, 2014, p. 2). In my opinion, however, in addition to the compilation effort, the really forward-looking aspect of the project was that no time and energy was spared by the large number of contributing researchers, who worked in several working groups conducting systematic and transparent analyses, on the basis of which the six books of the Model Rules could subsequently be drawn up (Ziller, 2014, p. 248).

The document, however, was not created for scientific purposes alone. The real purpose was to enable the European Union to draft a regulation on procedures if policy-makers decided to do so. To that end, the document also includes a draft standard. As European Ombudsman Emily O’Reilly put it, “the Model Rules make sense both as a basis for possible future legislation and as a persuasive synthesis of principles to be found in the existing law” (ReNEUAL, 2017, IV). That twofold objective, namely drawing up draft

<sup>19</sup> Research Network on EU Administrative Law (ReNEUAL).

legislation and, at the same time, conducting a detailed analysis of content, can be detected throughout the document.

In 2015, the year following its first publication, the Model Rules were revised. Hereinafter, all literal citations from the document will be based on that second edition (ReNEUAL, 2017).

### 3.2. The awakening of EU Administrative Law: ReNEUAL 1.0 (2009–2015)

Throughout its activities, the Research Network on EU Administrative Law has focused primarily on EU legislation, intending to reveal the intersections of administration that are identical when implementing the rules falling under any kind of EU administration, regardless of whether the rule is implemented by an EU body or a body of a Member State.

Only a narrow range of the principles applied in public administration are specified in the Treaties of the Union. Such principles include Article 298(1) TFEU, which was referred to above and which invokes the principle of *openness, efficiency and independence* as the – perhaps, from an EU perspective, most important – attributes of administration. Lower-level EU sources may also include procedural aspects, particularly in the field of substantive law.

Another important international source in addition to the above is the Council of Europe's Recommendation on Good Administration.<sup>20</sup> As a general principle, the Recommendation invokes the *rule of law* as one essentially consisting of procedural principles such as *lawfulness, equality, impartiality, proportionality, legal certainty*, taking action within a *reasonable time* limit, *participation*, respect for *privacy* and *transparency*.<sup>21</sup> As observed below, these principles will reappear later in the Model Rules as common values in European public administration.

While the drafting of the Model Rules in 2014 did not lead to new EU legislation, two *soft law* documents were published in that context, providing general guidance for EU administration. These include the 2013 Recommendations for Commission procedures, which is in fact a call for drafting a regulation on the basis of the Model Rules in the form of a European Parliament resolution,<sup>22</sup> or the Resolution on an open, efficient and independent European Union administration, adopted in 2016<sup>23</sup> (Boros, 2018, pp. 202–209). According to the EP resolution referred to above, higher value is attached to

<sup>20</sup> Council of Europe Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on Good Administration.

<sup>21</sup> Recommendation (2007)7, Preamble, last paragraph; moreover, these principles are discussed in more detail in Articles 2 to 10.

<sup>22</sup> European Parliament Resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union, 2012/2024(INI).

<sup>23</sup> Resolution on an open, efficient and independent European Union administration, 2016/2610(RSP). Similarly to the Model Rules, this resolution puts forth a legislation initiative, although with a significantly different approach: it sets out laconic provisions on the basic legal requirements for the initiation and conclusion of EU administrative procedures, administrative review and standard administrative decisions. It is, however, less detailed than the Model Rules.

EU administration since, with the development of the competences of the European Union, citizens are increasingly directly affected by the Union's administration, from which they expect *transparency*, *efficiency* and *swift* action. However, the fact that the Union lacks a coherent set of rules and the complexity of legal texts make it difficult for citizens to understand EU law, hinders the application of EU law. According to the resolution, drafting uniform procedural rules is therefore in the interest of both the bodies of the Union and the citizens of the EU. Of the recommendations set out in the resolution (Recommendation 3), it stresses the principles specified in the Council of Europe Recommendation referred to above, almost in the same order and with almost the same wording as in that document.

Having studied the rules of the public administrative procedure of the EU and Member States, the Research Network set out the principles in the Preamble to the Model Rules. While they did not intend to reiterate the principles already articulated in the Founding Treaties, they considered it important to recall them here (ReNEUAL, 2017, p. 32). The draft Model Rules can be interpreted as distinguishing four groups of actors when summarising the principles defining public administration. 1. Public authorities in the EU and, where they apply EU law, in the Member States, are bound by the principles of the *rule of law*, the right to *good administration* and other related principles of EU administrative law. 2. Every person reading and applying the standard provisions of the Model Rules must have regard to *equal treatment* and *non-discrimination*, *legal certainty*, *fairness*, *objectivity* and *impartiality*, *participation*, *proportionality*, protection of *legitimate expectations*, *transparency*, and due access to effective remedies. 3. Public authorities<sup>24</sup> must have regard to *efficiency*, *effectiveness* and *service orientation*. 4. The parties applying European administrative procedures must respect the principles of *subsidiarity*, *sincere cooperation* and a clear allocation of *responsibilities*. According to the Explanations to the Model Rules, the latter are especially important for the design of complex procedures, but are also applicable to other types of European administrative procedures (ReNEUAL, 2017, p. 32). The principle of clear allocation of responsibilities is very important with regard to complex procedures in order to provide appropriate access to effective judicial review and other remedies. Moreover, the responsibilities must be clearly delimited, not only regarding the various public authorities but also within the various institutions, bodies, offices and agencies, in particular in the case of the most influential European authority, the European Commission.

Rather than dividing the principles, the groups of principles draw the attention of the parties applying the law (whether decision-makers or citizens applying the law or seeking remedy in an individual case) to the importance of principles in administration in line with the EP Resolution and the Council of Europe Recommendation referred to above.

<sup>24</sup> In EU law, the category of 'Public Authorities' is broader than authorities that can adopt specific decisions (in the Hungarian law in general: 'államigazgatási szervek'), as they also include bodies authorised to adopt normative decisions (see, for example, local authorities). The NUTS Regulation [Regulation (EC) 1059/2003 on the establishment of a common classification of territorial units for statistics (NUTS)], in particular its Article 3(1) is similarly a regulating Union legislation.

### 3.3. Assessing the situation and diving deeper: ReNEUAL 2.0

The Model Rules have so far not been published in the form of an EU Regulation, which means that they have not become a genuine standard. While one of the twofold objectives, legislation, has not been achieved, the other objective, of a research network bringing to the surface genuine and substantiated scientific results, has been successfully achieved beyond dispute (della Cananea & Bussani, 2019).

Today, the continued existence of the Research Network does not mean drafting a uniform document. Instead, it has defined topical administration-specific research issues. Retaining the earlier working practices, research is still conducted in working groups. Research units have been set up on three topics: 1. ‘Common European Principles of Administrative Law and Good Administration’; 2. Digitalized Public Administration in the EU; and 3. International and transnational administrative law.

Work in the first research group focuses on the principles of administrative law shared by the national administrative law of Member States, the legal system of the European Union and the law of the Council of Europe. The comparative analysis conducted for drafting the Model Rules and the review of supranational rules has been developed in two main directions: on the one hand, it considers administrative standards applied by European legal systems and the content of procedural guarantees on the basis of a factual methodology; in other words, it conducts a comparative analysis of Member State responses to hypothetical cases (vignette research methodology).<sup>25</sup> On the other hand, it reveals the administrative law principles applied in the national administrative law of Member States in the light of the activity of the Council of Europe, including not only the judgments of the Court of Justice of the European Union but also the soft-law documents adopted by the Committee of Ministers.<sup>26</sup> In fact, there are two projects that aim to set up a ‘European Administrative Law Toolkit’, revealing the deeper motives for legal tools considered necessary or at least useful for enforcing the democratic principles in states under the rule of law, including, for example, the right of individuals to administrative protection, transparency and the democratic legitimacy of administrative procedures.<sup>27</sup>

The exploration of the genuine and up-to-date substance of the common European administrative principles and the communication of results are still in progress, as the ReNEUAL 2.0 research project (della Cananea & Caranta, 2020; della Cananea & Andenas, 2021; Conticelli & Perroud, 2022) is currently underway at the date of this paper. It has, however, become clear that the guarantees related to administration as operation can be obtained from the comparative analysis of the various laws of administrative procedure (della Cananea, 2017, p. 2). In the view of Giacinto della Cananea, the concept of administrative procedure is becoming increasingly important in modern public law (della Cananea, 2017, p. 23). Law plays a key role through the procedures in furthering the objectives of the State and protecting individual interests. In addition to the action of the administrative body, the current ReNEUAL 2.0 research also focuses on its judicial

<sup>25</sup> The title of the project is *Common Core of European Administrative Laws* (COCEAL).

<sup>26</sup> The research project, the hub of which is in Germany, is entitled *The Development of Pan-European General Principles of Good Administration by the Council of Europe and Their Impact on the Administrative Law of its Member States*.

<sup>27</sup> For details see the website of ReNEUAL (<http://www.reneual.eu/projects-and-publications/reneual-2-0>).

review, thus treating the jurisprudence of courts as an indispensable source, in addition to positive legislation and providing a truthful picture for the assessment of the validity of administrative acts and actions.

## 4. Conclusions

The goal of the European Union is to strengthen integration in order to ensure common economic and social development for the Member States. The level and extent of integration has been a matter of dispute essentially ever since the founding Member States agreed on cooperation. The internal functioning of Member States and, in particular, the structure of executive power, is indisputably one of the crucial pillars of Member State sovereignty and autonomy. However, with the progress of integration, the expansion of the competences of the Union and the evolution of globalisation processes, national public administrations are facing an increasing number of external influences. That phenomenon need not be assessed here; for the purposes of this study, it seems sufficient to acknowledge it as a fact.

The public administration of the Member State is able to rely on the international network for a number of resources. From digitalisation to statistical activities and the most diverse branches of administration, there is a global pool of expertise available, which would be inaccessible without this type of cooperation. These externalities may, however, also take the form of a legal framework, just as the administrative principles examined above are also reflected in both EU and national legislations.

The increasingly close cooperation between systems of administration within the European Union has become a sort of value synthesis (Józsa, 2003, pp. 724–725). This is a set of public administration principles that are recognised and applied by both the Member States and the bodies of the European Union. One could safely say that ‘unification’ in the Churchillian sense has reached its political zenith and that the administration systems cannot be expected to become more ‘unified’ than that under the current EU policy framework. The issue of uniformity emerges on a theoretical level, in the value synthesis referred to above. In order to achieve at least the coherence (and convergence) of principles, the principles first need to be understood. The SIGMA and ReNEUAL documents, described in the previous pages, also reflect the need for a principle to be interpreted uniformly by all actors. However, this requires a method capable of understanding and processing both written legislation and the law applied by the court. It is a common feature of the two tools referred to above that they are both based on principles of administrative procedure (SIGMA’99 and ReNEUAL 1.0), which indicates that the dynamic characteristics of administration are pivotal for the analysis of good governance. A major difference between the two methods, however, is that SIGMA’17, as a support program related to the EU’s enlargement strategy, has now been ‘disconnected’ from the procedural law environment, vesting management content with legal force (the fulfilment of accession conditions), and thus giving rise to an inconsistency of concepts.

Studies of the ReNEUAL research network (both the Model Rules and the partial publications of current research) have, however, stressed that the internal nature of

Member State laws must be understood in order to achieve a value synthesis in administration. The ReNEUAL research, conducted with a comparative law toolkit, may lead to sound results, given that the methodology is sufficiently transparent to reveal the genuine content of each principle.

Finally, the principal research mechanisms under review have also neatly illustrated why legal concepts must not be used in non-legal contexts. Similarly, SIGMA's evolution has illustrated that while the first version set out an analysis of legal principles, its current version has mainly focused on the description and monitoring of management tools. The major challenge for SIGMA (and ultimately the Union and the OECD) in that context is that legal tools and management tools and the legal and political tool, as well will also have to be distinguished in the future, in the same way as there is a difference between administration and administrative law, management and normativity, structure and system (Tamás, 2010, p. 68).

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