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**THE CURRENT SITUATION OF THE REGULATION  
OF EU ADMINISTRATIVE PROCEDURE LAW  
IN THE LIGHT OF EUROPEAN PARLIAMENT  
RESOLUTIONS**

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## 1. EUROPEAN PARLIAMENT RESOLUTION NO. 1

On 23 March 2010, the European Parliament Committee on Legal Affairs set up a Working Group on EU Administrative Law to take stock of the panorama of existing EU administrative law and, as a second step, to propose the interventions which it deems appropriate.

The European Parliament Committee on Legal Affairs adopted the working document prepared by the Working Group at its session of 21 November 2012.

According to the European Parliament Committee on Legal Affairs, during the evaluation of the administrative procedures of the institutions, bodies and agencies of the EU:

- *internal inconsistencies* were found which may result in *overcomplicated administrative procedures and formalities*;
- these may also result in *deficiencies* which pose a risk of maladministration or improvisation;
- these mistakes are undoubtedly due to the fact that rules *have evolved very rapidly* over the last half century;
- they are also due to the fact that most of the EU administrative rules are based on *sector-specific* set of rules.

The Committee's findings can be summarised as follows:

- The EU *had a number of procedural rules even in 2012*: there is a kind of procedural codification methodology behind the elaboration of these procedural rules. Due to the specificities of the different sectors, there is still a need for sectoral administrative procedures. However, the rules for these procedures shall not go below the generally defined minimum standards and shall not impose unnecessary procedural burdens.
- The institutions concerned may, in most cases, unilaterally modify the various administrative procedural rules (if available) under *soft law*, therefore they shall not be regarded as providing adequate legal protection and guarantee scheme for client rights.
- *Client (procedural) rights* not properly defined at EU level may lead to different practical solutions and to different judgments of similar facts.
- Over the years, the EU administrative law has evolved due to the work of various actors, i.e. the jurisprudence of the bodies involved in EU administration, the Court of Justice of the European Union and the European Ombudsman, as well as discussions initiated by the actors of scientific public life and the citizens themselves. However, the most serious problem is that the concept of *EU administration and administrative law* has not been established at the legislative level.
- For EU administrative procedures, *consistency, transparency and legal certainty* are essential requirements. To this end, it is necessary to have general administrative regulation, which is binding on the EU bodies and institutions, and which provides a guarantee net for the citizens.

- Establishing a general procedural regulation would give greater legitimacy to the decisions of EU administration, thereby increasing the citizens' confidence in the functioning of the Union.
- Several administrative procedures are closely linked to certain *IT systems* (e.g. EU PILOT), therefore it seems practical to develop appropriate IT systems to ensure the simplicity and efficiency of the procedure.

The European Parliament resolution of 15 January 2013<sup>1</sup> consists of two parts: on one hand it defines the goals and the areas to be regulated which should be examined by the Commission during the legislative procedure, on the other hand, it also makes some recommendations as regards the areas to be regulated.

According to Parliament, the regulation should:

- Codify the fundamental principles of *good administration* and
- should regulate the procedure to be followed by the Union's administration when handling individual cases where the involved party has *personal contact* with the Union's administration.
- The regulation should apply to the *Union's institutions*, bodies, offices and agencies in their relations with the public. Its scope should therefore be limited to direct administration.
- The regulation also should include a universal set of principles and should lay down a procedure applicable as a *de minimis rule* where no *lex specialis* exists.
- Certain parts of the Parliament recommendations encourage the Commission to formulate *definite provisions of principle*, while other parts provide essential and guiding rules for certain procedural actions.

## 2. THE RN STUDY

In 2014 the Research Network on EU Administrative Law ('ReNEUAL') drafted the Model Rules<sup>2</sup> on EU Administrative Procedure also containing draft legislation and related explanation. The purpose of the Model Rules is primarily to incorporate in a document

<sup>1</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 [INL]). Available at: [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0004+0+DOC+XML+V0//HU#BKMD-4](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0004+0+DOC+XML+V0//HU#BKMD-4) (Downloaded: 07.08.2017.)

<sup>2</sup> HOFMANN, Herwig C. H. – SCHNEIDER, Jens Peter – ZILLER, Jacques – AUBY, Jean-Bernard – CRAIG, Paul – CURTIN, Deirdre – DELLA CANANEA, Giacinto – GALETTA, Diana-Urania – MENDES, Joana – MIR, Oriol – STELKENS, Ulrich – WIERZBOWSKI, Marek (2017): *ReNEUAL Model Rules on EU Administrative Procedure*. Oxford University Press. Available at: [www.reneual.eu/images/Home/ReNEUAL-Model-Rules-update-2015\\_rules-only-2017.PDF](http://www.reneual.eu/images/Home/ReNEUAL-Model-Rules-update-2015_rules-only-2017.PDF) (Downloaded: 07.08.2017.)

the already existing constitutional principles and values of the European Union relevant to administration.

The Model Rules were drafted as follows:

- firstly, the policies of the legal systems of the EU and the Member States were compared;
- secondly, a preliminary version of the possible rules was outlined, together with explanations of each decision;
- thirdly, jurists and legal practitioners were involved in the negotiation and commenting of the Model Rules.

The Model Rules are organised in six ‘books’ as follows:

- Book I – General Provisions
- Book II – Administrative Rulemaking
- Book III – Single Case Decision-Making
- Book IV – Contracts
- Book V – Mutual Assistance
- Book VI – Administrative Information Management

### 3. THE EVALUATION OF RN RULES BY HUNGARIAN RESEARCHERS

In the period of 2015 and 2016, Hungarian researchers reviewed the proposals of the RN Model Rules.<sup>3</sup> As a result of the research, it can be concluded that:

- the RN’s *quick scientific response* to the Parliament’s proposal made in 2013 is outstanding,
- the *Model Rules* drafted by the RN deserve recognition,
- *a significant portion* of the Model Rules drafted by the RN *can be supported* in an EU Code on Administrative Procedures; however, several supportive proposals were also formulated for consideration during the research:
  - Hungarian researchers propose to draft the rules of the EU Code on Administrative Procedures *in a different structure and along different priorities*, since the RN books sometimes reflect disproportion, e.g. the book entitled Single Case Decision-Making is less detailed than the book entitled Contracts;
  - in conjunction with the above, *it is not necessary to create normative rules as detailed as the RN recommends*, as the aim is to create simple, transparent, understandable and easily applicable laws;

<sup>3</sup> PATYI András – BOROS Anita (2017): Közigazgatási eljárásjog az Európai Unióban – a ReNEUAL Modell Szabályok értékelése. (Administrative Procedure Law of the European Union – Evaluation of the ReNEUAL Model Rules). *Pro Publico Bono*, Special Edition No. 2. Available at: [www.uni-nke.hu/kutatas/egyetemifolyoiratok/pro-publico-bono-magyar-kozigazgatas/2017-2-special-edition](http://www.uni-nke.hu/kutatas/egyetemifolyoiratok/pro-publico-bono-magyar-kozigazgatas/2017-2-special-edition) (Downloaded: 07.08.2017.)

- in terms of *fundamental principles and general provisions*, unlike those proposed in the Model Rules, the following is recommended:
  - *more precise* definition of procedural rights and obligations and fundamental principles, given that this is the most detailed area of the case law of the Court of Justice of the European Union;
  - the principles already laid down in the *EU Charter of Fundamental Rights* or in the founding treaty should not be repeated, in this respect, the EU Code on Administrative Procedures should appear as the next level of legal source;
  - it is also advisable to place these principles and, in some cases, general provisions (e.g. interpretative provisions, the question of scope) into one section, mainly at the beginning of the Code;
- I do not consider that the details of *EU legislative issues* should be put in the EU Code on Procedures. Although it is undeniable that the legislative activity of public administration is of utmost importance, however, in my view, it should be individually stated in another EU law.
- the purpose of the *main procedure* is to adopt and properly prepare the EU decision. The following can be noted as regards Book III of the RN:
  - some of its provisions are extremely detailed, while others are vague;
  - in the course of drafting the EU Code on Procedures, it is advisable to create *basic definitions* which influence the direction of the whole process (client, EU administrative body, reference to only EU administrative bodies) and examine which part of the sector-specific regulation already drafted can be included in the general regulation;
  - certain elements of the *support of decision-making* have to be clarified: a) the initiation of the procedure; b) the phase of the preparation of the decision and the clarification of the facts; c) the rules related to the decision.
- the RN study essentially extends *the scope of the administrative contracts* to any contract which the Union's administration comes into contact with. In our view, the EU Code on Procedures should only deal with contract law issues that can be referred to as administrative authority contracts so that substantive regulatory requirements can be excluded from the Code;
- The regulation for the legal institution of *mutual assistance* is also quite extensive in the RN study, however, in some respects, it falls into the category of 'overregulation', as well as the information flow rules described in book VI. Creating conditions for broad interoperability is likely to broaden cooperation opportunities as well, and it is inevitable to define certain general rules in this context in a Code on Procedures, but not necessarily in the General Code on Procedures and certainly not in as much depth as in the RN study.

## 4. EUROPEAN PARLIAMENT RESOLUTION NO. 2

On 9 June 2016, the European Parliament adopted a resolution<sup>4</sup> on an open, efficient and independent European Union administration.

### 4.1. Question to the Commission

In this resolution, Parliament recalls that, in its resolution of 15 January 2013, Parliament called, pursuant to Article 225 TFEU, for the adoption of a regulation for an open, efficient and independent European Union administration on the basis of Article 298 TFEU. However, despite the fact that the motion for a resolution was adopted in plenary by an overwhelming majority, Parliament's request was not followed up by a Commission proposal.

On behalf of the Committee on Legal Affairs, in the parliamentary section, *as a reminder* from the Parliament to the Commission, Pavel Svoboda and Heidi Hautala, under "question for oral answer", asked the Commission the following:<sup>5</sup>

- Has the Commission analysed the suggestion for a regulation so as to be in a position to reply to its content?
- What are the reasons that have prevented the Commission from putting forward a proposal such as the suggested regulation, and
- when can a proposal be expected?

The Committee on Legal Affairs made the following points in the Parliamentary debate:

- In order for the European Parliament Committee to provide assistance to the Commission in this matter, the most important task of the Working Group was to create a *regulatory model*. This model was developed with the involvement of legal experts and contains rules which the Parliament wishes to include in the future proposal.
- The purpose of the proposed regulation is *not* to replace existing EU legislation but to fill its gaps, as well as to provide clearer and more coherent interpretation of existing rules for the citizens, the businesses, the administration and for its officials.
- Increased openness, transparency and accessibility of EU administration increase trust between citizens and institutions, and in that sense, offer an opportunity to restore the legitimacy of the EU.
- Over the years, EU administration has become more and more complex. New offices and agencies have been established and the number of tasks that are under the EU's responsibility has increased steadily. This also means that citizens and entrepreneurs are directly involved in these administrative processes. (For example, tenders for EU

<sup>4</sup> Resolution on an open, efficient and independent European Union administration (2016/2610 [RSP]). Available at: [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2016-0685+0+DOC+XML+V0//HU](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2016-0685+0+DOC+XML+V0//HU) (Downloaded: 07.08.2017.)

<sup>5</sup> Available at: [www.europarl.europa.eu/sides/getDoc.do?type=OQ&reference=O-2016-000079&language=HU](http://www.europarl.europa.eu/sides/getDoc.do?type=OQ&reference=O-2016-000079&language=HU) (Downloaded: 03.08.2017.)

funds/grants or when an appeal is filed against a disadvantageous decision). Despite the fact that professionals working in the European Union are talented and dedicated, they are associated with an *incomprehensible and distant administrative system*. The scattered nature of rules, the “gaps” and uncertainties only reinforce this image.

In his oral answer, *Commission Vice-President Jyrki Kataine* stated the following:

- The Commission is committed to ensuring the right of EU citizens to an open, efficient and independent EU administration. To this end, the Transparency Portal was launched. This portal provides direct access for citizens and helps them better inform themselves and makes it easier to get the citizens involved in the EU decision-making process. The task of this Working Group is to enable national administrations, European companies to take full advantage of the opportunities offered by the internal market, common economic governance and structural funds.
- The Commission examined the proposed regulation for an open, efficient and independent European Union administration. As a result of this analysis, the Commission is not convinced that *the cost of codification would not go beyond its benefits*.
- The Commission must clarify the relationship *between existing and developed regulators*, since codification can lead to problems (separating specific and general rules), which would further complicate litigation and procedures, etc.
- Codification *would reduce the required flexibility*, which is necessary to meet individual needs.
- The proposal does not include/name gaps and inconsistencies with regard to the law in force and what it would specifically address. Furthermore, it does not determine the impact of the measures, therefore the Commission *proposes drafting an impact report*.
- Rather than initiating a very complicated codification process with uncertain outcome (added value), the Commission is of the opinion that *specific problems should be explored*. It should identify the origin of the detected problems and take measures to resolve them. The Commission will investigate all alleged cases as regards ineffective administration and will do everything to remedy them. It also commits itself to make substantial contribution to every initiative of the European Ombudsman.

The Parliament finally adopted the resolution on 9 June 2016 (‘European Parliament Resolution No. 2’) and called on the Commission to *submit a legislative proposal to be included in its Work Programme for 2017*.

#### **4.2. European Parliament Resolution No. 2 and the Proposed Regulation Included in it**

As mentioned, the most significant difference is that the Annex to the European Parliament Resolution No. 1 contains recommendations, while Resolution No. 2 includes a proposed regulation.

The proposed regulation consists of 7 *chapters*, in addition to the detailed preamble, of the following:

1. General provisions
2. Initiation of administrative procedures
3. Management of administrative procedures
4. Completion of administrative procedures
5. Rectification or withdrawal of administrative acts
6. Administrative acts of general scope
7. Information and closing provisions

In the following, we will review the most important rules of the proposed regulation in a way that European Parliament Resolution No. 2 and the proposed regulation will be compared to European Parliament Resolution No. 1. Due to length limitations, we will not be able to analyse specific provisions contained herein; we will be discussing it in another study.

#### 4.2.1. *The Purpose of Regulation*

As regards the purpose of regulation, the preamble of both resolutions and the proposed regulation emphasise in the first place, that the single EU administrative procedure law codification needs to abolish the *fragmented* nature of the legal sources of the existing EU administrative procedure law.<sup>6</sup> Given that, in the Parliament's view, it can achieve the goal that citizens will more easily understand their enforceable procedural rights and the procedural rules to be followed, which increases the *legitimacy, transparency and efficiency* of EU administrative procedures. In addition, a single EU regulation would improve *legal certainty, replace the shortcomings of the EU's legal system and thereby contribute to complying with the principle of rule of law and good administration*.

Recommendation 2 of European Parliament Resolution No. 1 states that the regulation should include a universal set of principles and should lay down a procedure applicable as a *de minimis* rule where no *lex specialis* exists. The guarantees afforded to persons in sectoral instruments must never provide less protection than those provided for in the regulation.

These rules are consistently reflected in the European Parliament Resolution No. 2, since Article 3 of the proposed regulation stipulates that the general regulation shall be applied *without prejudice to other specific administrative procedural acts*, i.e. the General Code on Procedures only completes them, and sectoral acts shall be interpreted *in accordance with the provisions of the General Code on Administrative Procedures*.

<sup>6</sup> CSATLÓS Erzsébet (2016): Az európai közigazgatási eljárásjog kodifikációja és a hatóságok együttműködése. (Codification of EU Administrative Procedure Law and Cooperation of the Authorities.) *Eljárásjogi Szemle*, 2016/2. 14–23. Available at: <http://eljarasjog.hu/2016-evfolyam/az-europai-kozigazgatasi-eljarasi-jog-kodifikacioja-es-a-hatosagok-egyuttmukodese/> (Downloaded: 03.08.2017.)

#### 4.2.2. Scope and Range of Interpretation of the New Code

Following the adoption of the European Parliament Resolution No. 1, the question arose as to whether the scope of the single EU Code on Administrative Procedures should cover the regulation of indirect administrative procedures, i.e. the administrative procedures of the Member States. The RN study itself includes certain common points of rules for procedures of EU and national administrative authorities, and some researchers considered the Regulation on EU administrative procedures a means of unification of both the direct and the indirect EU administration procedure law. In the proposed regulation, Parliament also makes a point in this matter:

the purpose of the proposed regulation is only to establish procedural rules which the *EU administration* shall comply with during the implementation of its administrative activities, in addition, in accordance with Article 298 TFEU, the regulation in question *shall not apply* to the administration of the Member States.

The RN study proposed to state the rules of legislative procedures covered by the EU administrative procedure codification in a separate book. Another peculiarity of the proposed regulation is that it clearly states that its scope should not be extended to *legislative procedures and procedures resulting in adopting non-legislative acts, delegated acts or implementing acts based directly on the Treaties*.

European Parliament Resolution No. 1 provided that the regulation should apply to the Union's institutions, bodies, offices and agencies ('the Union's administration') in their relations with the public. Regarding the scope of interpretation of *EU administrative relationship*, according to the proposed regulation, *administrative procedures* are procedures through which EU administration drafts, adopts, implements and gives effect to administrative acts.<sup>7</sup> *EU authority* is an institution, body or office of the EU or an organisational unit thereof or a person with a position in the EU administration who is responsible for the administrative procedure under the applicable legislation,<sup>8</sup> and the *party* having legal relationship with him/her/it is a natural or legal person whose status may be affected by the outcome of the administrative procedure.<sup>9</sup>

#### 4.2.3. Principles

Both Parliamentary resolutions and the proposed regulation *give a prominent role to laying down the principles of the EU administrative procedure*, given that these principles have become established over a long period of time under the jurisprudence of EU administrative bodies, the case law of the Court of Justice of the European Union, the cooperation

<sup>7</sup> See Article 4(c) of the proposed regulation.

<sup>8</sup> See Article 4(e) of the proposed regulation.

<sup>9</sup> See Article 4(f) of the proposed regulation.

between the EU and the Member States and, last but not least, the traditions of administrative procedures in the Member States. In Recommendation 3 of European Parliament Resolution No. 1, principles which the proposed regulation will have to include are listed and briefly defined. European Parliament Resolution No. 2 *concretizes and clarifies* the content of the above recommendation in the proposed regulation, omitting some of the principles which have been identified by the recommendation (e.g. the principle of service), but they appear in current EU legislation and law implementation with less established minimum standards. In some cases, the proposed regulation addresses issues of principle which appear in the resolution following European Parliament Resolution No. 1 and appear at different stages of the process, such as the right to be heard and the right of access to documents.

In my view, *the provisions of principle of the proposed regulation are very remarkable and to the point*, as the proposed regulation lays down all the relevant EU administrative procedural principles.

#### 4.2.4. Basic Procedural Rules

As regards the basic rules, the rules of Recommendation 4 of European Parliament Resolution No. 1 are now being specified in the form of draft legislation.

Basic provisions set out in European Parliament Resolution No. 1 are reflected in the proposed regulation, in connection with certain procedural issues, however, the proposed regulation sets out very promising rules: inter alia, the initiation of an official procedure, notice on the initiation of procedure, the details of submission of an application, definition of procedural rights, the obligation of careful and impartial scrutiny or cooperation and the conflict of interest clauses.

The proposed regulation also contains valuable findings regarding the definition and calculation of deadlines<sup>10</sup> and failure to comply therewith.

In the chapter entitled Completion of Administrative Procedures, the proposed regulation lays down the concept of an act, the duty to state reasons, the indication of remedies available and the notification of administrative decisions. These topics are also described in the European Parliament Resolution No. 1.

It is worth pointing out that, according to the proposed regulation, the parties have the right to request administrative review against administrative acts which adversely affect their rights and interests. The application for an administrative review shall be submitted to the superior authority and, if this is not possible, to the same administrative authority which adopted the administrative act.

Administrative acts shall describe the procedure to be followed in case of submitting an application for an administrative review and indicate the name and office address of the

<sup>10</sup> See Article 17 of the proposed regulation.

competent authority or member of staff to whom the review request shall be submitted. The act also contains the deadline for submitting the application.

If no application is submitted within the deadline, the administrative measure shall be deemed final.

In addition, if it is specifically defined by the EU law, administrative acts clearly refer to the possibility of initiating legal proceedings or submitting a complaint to the European Ombudsman.

It should also be noted that the proposed regulation briefly mentions in a separate chapter *the rectification or withdrawal of administrative acts* in accordance with Recommendation 5 of European Parliament Resolution No. 1.

#### 4.2.5. Administrative Acts of General Scope

For a long period of time, in the EU law, the distinction between legislation and individual administrative acts has been difficult to determine, because as a general rule, the EU law uniformly regulates the legislation for individual decisions at present. Therefore, it is sometimes difficult to decide whether it is a legal or administrative act, given that, in some cases, it cannot be clearly defined even based on its designation whether it is a legislative or an administrative act. In the decision, it provides clarification whether the act has been adopted in a legislative procedure or not.

The first group of non-legislative acts is delegated, supplementary and amending non-legislative acts of general scope set out in Article 290 TFEU, which may be adopted by the Commission, if it is delegated to it in a legislative act.

The implementing act is a different type of general non-legislative act. Such act may be adopted by the Commission on the basis of a delegation for implementation.

Although they are not generally set out in the Treaties, non-legislative acts also include other legal acts which are adopted by the Commission or other institutions or bodies of the EU, still they have legal effect and may appear in many forms. There are (non-legislative) acts set out in the Treaties which are not generally referred to but in relation to certain contractual provisions or regulatory areas. They may be adopted by institutions directly under the Treaties through delegation, but not in a legislative procedure. These include for example Commission decisions on certain competition rules according to Article 106(3) TFEU.

According to the 43<sup>rd</sup> preamble of European Parliament Resolution No. 2, in order to ensure the coherence of EU administrative activities, *administrative acts of general scope shall comply with the principles of good administration set out in the General Code*. This is also reflected in the proposed regulation in addition to the fact that such acts shall include their legal basis and the reasons behind their issue and they shall be published in a directly accessible way, since they come into effect on that day.

#### 4.2.6. *Online Information on the Rules of Administrative Procedures*

A part of the proposed regulation also worth mentioning is the *set of rules for online information* described in chapter VII, on the basis of which the EU administration, in possible and reasonable cases, can promote up-to-date online information for existing administrative procedures on an ad hoc website. Application procedures shall be prioritised.

Online information includes the following:

- the reference to the applicable legislation
- the brief explanation and administrative interpretation of the main legal requirements
- a description of the most important procedural steps
- the name of the authority having subject-matter competence to adopt the final act
- the deadline for the adoption of the act
- the available remedies
- a reference to the forms to be used by the parties in their communication with the EU administration in the context of the procedure.

Online information should be clear and simple and should be accessible free of charge.

## 5. CONCLUSION

On the basis of the above, it can be stated that the European Union is on the right path towards a single EU Code on Administrative Procedures: the European Parliament did not wait for the Commission, and after 2013, it adopted political decisions which resolved many issues which had been discussed in the past. We will also monitor the latest versions of the proposed regulation, as they will have an impact on existing EU procedures, on the relationship between general and special procedural rules and also on the procedural rights of the Member States.

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