European Composite Administration and the Role of European Administrative Law*[1]

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1 European Composite Administration: Data Exchange, Decision-Making and Control

Community Law is, as a rule, implemented by the administrations of the Member States. The Community itself possesses only limited executive powers and instruments of its own. This first common statement on the issue of 'administration and administrative law in the European Community' emphasises the *organisational* aspect of Community law enforcement, distinguishing between the administrative entities involved: either the Member States or the Community. Such an approach reflects only *one* side of the executive challenge, however. In order to establish a complete picture, the functional constituent must be added which is characterised by cooperation rather than separation. Effective enforcement of Community law presupposes a functioning cooperation of national administrations.[2] This is the *second* common statement of undisputed validity. Separation *and* incorporation, exclusive competence *and* cooperation are essential components of Community law implementation.

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[2] Schmidt-Aßmann, *Das allgemeine Verwaltungsrecht als Ordnungsidee*, (2nd ed. 2004), p. 381 et seq.

The cornerstones of this concept are laid down in Articles 5 and 10 ECT: the principles of limited powers and of subsidiarity on the one hand, and the general duty of mutual loyalty among the Member States and the Community institutions on the other. The subjects of the regulation are the numerous interacting national and Community institutions, authorities, offices, bodies and other legal entities that are duly authorised to implement EC law as well as the laws of the individual Member States passed according to EC requirements. Although performing the latter task separately, according to their national competency provisions, they are united by the common aim of effective and uniform administration. All these actors taken together shall be referred to as the *European Composite Administration* (*Europäischer Verwaltungsverbund*) or shortly *European Administration*. This term is not restricted to the administrative entities of the Community, the so called 'direct implementation' or 'EC administration', but rather comprises the Community *and* the Member State administrations, which ought to be regarded as 'co-dependent organisms'.[3]

1.1 Functions of European Administration

Since their very beginnings, the European Communities have to some extent assumed the function of administrative bodies. European administration has taken the shape of manifold activities of national and EC authorities implementing EC Law on a daily basis,[4] involving the administrative tasks inherent to the national law such as in the fields of taxation, public security, the steering of behaviour patterns and granting benefits. A more detailed analysis would require an examination of relations emanating from the interplay of the individual administrative tasks, the character of the law to be implemented and the responsible executive structures. Here, only a brief outline can be drawn:

– *Tax administration* (Abgabenverwaltung) represents a major part of the European administration due to the mere fact that the Community was founded as a customs union, and as such has called for extensive

[3] Cassese, *Der Einfluß des gemeinschaftsrechtlichen Verwaltungsrechts auf die nationalen Verwaltungsrechtssysteme*, (1994) 33 *Der Staat*, p. 25 at 26; likewise v. Bogdandy, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, original Vol. I, Art. 5 ECT, par. 43.

[4] For a demonstrative description, see the contributions on the respective policy fields in Dauses (ed.), *Handbuch des EU-Wirtschaftsrechts* (HbEUWiR), (Loose-leaf-version, last update May 2004); Reich, *Europäisches Verbraucherrecht*, (4th ed. 2003); on environmental law, in particular, Rengeling (ed.), *Handbuch zum europäischen und deutschen Umweltrecht* (EUDUR), 2 Volumes (2nd ed. 2003); on social law Haverkate/Huster, *Europäisches Sozialrecht* (1999). On the political science perspective, see the contributions in Wallace/Wallace (eds.), *Policy-Making in the European Union* (1996).

administrative activities. In this field, European administration is a decentralised administration carried out by national customs authorities.[5] A sufficient level of uniformity has been reached through the application of common implementation rules, the Community Customs Code, and through abidance by the uniform requirements of the Common Customs Tariff according to Article 26 ECT. The extraordinary importance of the cooperation in customs matters is underlined in Article 135 ECT. At the same time, tax administration has had positive effects on the development of further administrative regulatory tasks.[6]

– *Public security administration* (Ordnungsverwaltung) is multifaceted within the Community framework: on the one hand, it serves the purposes of the prevention of specific dangers, with product security being the most important field of action. Harmonised EC law is implemented mainly decentrally, involving self-regulative mechanisms of certification and accreditation over broad areas.[7] In distinct cases, however, such processes may be subject to administrative supervision and special authorisation.[8] European public security administration also serves the purpose of market regulation. In this function it has assumed the shape of competition and state aid supervision, which lie largely or even completely within the competence of the European Commission. The activities of national authorities in the deregulated fields of power supply, telecommunications and rail and air traffic[9] constitute another part of the market regulation administration.

– *Regulatory administration* (Lenkungsverwaltung) exerts its steering function partly through enactment of prohibitive and prescriptive rules and partly by giving financial impetus, that is to say by granting subsidies and levying taxes. The most important area in this respect is the Common Agricultural Policy (Articles 32–38 ECT).[10] The respective executive procedures lie within the competence of the national authorities but each procedure is embedded in a complex network of legal and

[5] Witte/Wolffgang, *Lehrbuch des europäischen Zollrechts* (4th ed. 2003).

[6] Grabitz/v. Bogdandy/Nettesheim, *Europäisches Außenwirtschaftsrecht* (1994).

[7] For basic information, see Röhl, *Akkreditierung und Zertifizierung im Produktsicherheitsrecht* (2000); idem, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 205 et seq.

[8] See e.g. Royla, *Grenzüberschreitende Finanzmarktaufsicht in der EG* (2000); Wagner, *Europäisches Zulassungssystem für Arzneimittel und Parallelhandel* (2000); Schlag, *Grenzüberschreitende Verwaltungsbefugnisse in EG-Binnenmarkt* (1998).

[9] Eifert, *Grundversorgung mit Telekommunikationsleistungen im Gewährleistungsstaat* (1998); Schneider, *Liberalisierung der Stromwirtschaft durch regulative Marktorganisation* (1999).

[10] See Priebe/Mögele, in Dauses, *HbEUWiR* (fn. 5), Section G.

financial regulations. The cooperation between the administrations of the Member States and the Community is particularly close in this field. Joint monitoring of checks and the financial clearance process are among the interesting schemes integrated into this cooperation. A new function of regulatory administration has emerged in the field of the common fisheries policy, a part of CAP, which can be described as 'sustainable development administration'.

– *Grant administration (Leistungsverwaltung)* is a type of European administration which aims at regulating the allocation of budgetary commitments for Structural Funds.[11] Political requirements on the funding criteria and the volume of financial aid are subject to multilateral negotiations, which form the basis, for decisions on the allocation of funds. Concrete budgetary commitments are taken in accordance with a bilateral administrative allocation scheme, which uses the instruments of common programme planning, evaluation and control. This sphere is dominated by the notion of a 'mixed administration'. Research funding, a second sector of European grant administration (Articles 163–173 ECT), can be named as an example of EC direct implementation.[12] Funding decisions are met by the Commission itself following direct communication with the institutions to be funded, often involving private organisations acting as executive agencies.

As a result, the scope of tasks to be carried out by the European administration reaches far beyond the matters that are usually attributed to direct implementation.[13] However, they are not quite identical with the field of the much discussed 'Europeanisation of Administrative Law' either.[14] Europeanisation even covers some areas that are almost exclusively executed by national authorities, without any involvement in cooperation networks. This applies, for example, to public procurement law. Environmental policy, too, emerged initially as a policy for harmonisation of national rules, without developing its own administrative dimension.

[11] See Oppermann, *Europarecht* (2nd ed. 1999), section 968 et seq.; Schöndorf-Haubold, *Die Strukturfonds der EG* (2005); idem, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 25 et seq.; generally on grant administration Schenk, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 389 et seq.

[12] See Oppermann, *Europarecht* (fn. 12), section 1941 et seq.; Spannowsky, in: Rengeling, *EUDUR* (fn. 5), §86; in detail Pfeiffer, *Die Forschungs- und Technologiepolitik der Europäischen Gemeinschaft als Referenzgebiet für das europäische Verwaltungsrecht* (2003).

[13] Cf. Schwarze, *Europäisches Verwaltungsrecht* (Vol. 1, 1988), p. 25 et seq.

[14] For a basic treatise on this topic, see v. Danwitz, *Verwaltungsrechtliches System und Europäische Integration* (1996); Kadelbach, *Allgemeines Verwaltungsrecht unter europäischem Einfluß* (1999); Schoch, (2000) *DV* supplement 2, p. 135 et seq.

This changed recently with the creation of the European Environment Agency.[15] Nowadays, manifold tasks of administrative cooperation pervade environment law.[16]

1.2 'Co-Dependent' Administrative Action

A specific trait of European administration constitutes the embedding of its activities in joint information, support and coordination processes between the administrations involved.[17] Such cooperation is a prerequisite for an effective 'administration of the Community territory'. Numerous examples prove this assumption. If the EC Commission had to dispense with the assistance of national administrations, it would be unable to fulfil its supervisory function as regards compliance with EC competition and State aid laws by the Member States. National authorities would lack the necessary information if they had no EC-wide accessible centralised system of environment or product information data at their disposal. Uniform implementation of EC law on external trade and customs over the entire Community territory can be achieved only through uniform action of the national administrations.

The structure of the cooperation processes is partly *vertical*, between the EC authorities and the Member States and partly *horizontal*, between the Member States' administrations. In some cases, the cooperation ceases after a single contact, but, often, it evolves into permanent ties. Bilateral cooperations are just as common as tri- and multilateral forms. Occasionally, the cooperation has been extended to an EC-wide structure of high complexity that connects information, coordination and decision-making processes, individual and joint decisions and executive acts and control schemes with each other. One example of this is EC pharmaceutical legislation, comprising different forms of local and central marketing authorisation and supervision.[18]

Cooperation fulfils several tasks in EC law, its major function being to provide the national administrations involved with the necessary

[15] Ladeur, (1997) NuR, p. 7 et seq.

[16] Cf. Sommer, *Verwaltungskooperation am Beispiel administrativer Informationsverfahren im Europäischen Umweltrecht* (2001); idem, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 55 et seq.

[17] Cf.Schmidt-Aßmann/Hoffmann-Riem (eds.), *Strukturen des Europäischen Verwaltungsrechts* (1999); cf. also Scheuing, in Hoffmann-Riem/Schmidt-Aßmann (eds.), *Innovation und Flexibilität des Verwaltungshandelns* (1994), p. 289 at 331 et seq.; Kahl, (1996) 29 *DV*, p. 341 at 373 and 379 et seq.; Sydow, *Verwaltungskooperation in der Europäischen Union* (2004).

[18] Wagner, *Europäisches Zulassungssystem* (fn. 9), esp. at p. 169 et seq. and 233 et seq.

information (*informational cooperation*). This includes the cases of one-off and occasional data exchange as well as the creation of central networks, with the composition and submission of reports and statistics being its special forms (Article 285 ECT). Second, cooperation has assumed the manifold shapes of the mutual provision of information, coordination of action and the joint conduct of proceedings (*procedural cooperation*). Such duties as the mutual recognition of diplomas and the certification of new products, for example, can be practically imposed only if relevant procedures are available that provide for flexible solution schemes in cases of urgency or dispute. Finally, cooperation can be also carried out by agencies set up for that very purpose (*institutional cooperation*). As examples, one can name the management boards of European agencies and the highly developed network of committees at EC level, with the comitology system in particular (see also 3.3.). In its entirety, European Administration can be described as a network of administrations on data exchange, decision-making and control.

2 Shaping European Administration: Between Cooperation and Hierachy

2.1 Introduction

Administrative law fulfils *two* regulatory tasks: first, it regulates citizen-state relations, and, second, inter-administrative relations.[19] In national administrative law, the emphasis has traditionally laid on the first objective since, historically, this had developed from efforts to enhance the accountability of an existing administration for infringements of civic liberties according to the rule of law. The evolution of European administration has been a different one: the 'Administration of Community territory' was only established gradually, after some resistance on the side of the Member States had been overcome. This phenomenon led to the emergence of the effet-utile case law aiming at a uniform implementation of EC law.[20] With the growing integration and increasing executive activity in relation to EU citizens and companies, it has become essential to accomplish this jurisdiction by (even) stricter application of administrative procedures according to the rule of law. Nonetheless, solving *inter-administrative* conflicts will remain an outstanding challenge to be coped

[19] Schmidt-Aßmann, *Ordnungsidee* (fn. 3), p. 1 et seq.; on European administrative law *ibid*. at p. 377 et seq.
[20] For its interpretation cf. Ladeur, (1995) *EuR*, p. 227 at 236 et seq.

with by means of European Administrative Law in the future also. The legal structures of this novel administrative system have only just begun to evolve.

2.2 The Concept of Composite Administration ("Verwaltungsverbund")

It is not easy to categorise administrations integrated into multilevel systems, by using the typical state and administrative law schemes and mechanisms. Terms like *Weisung* (instruction), *Fachaufsicht* (supervision of a given sector) or *Selbsteintrittsrecht* (the right of a superordinate authority to step into/take over the execution process carried out by a subordinate authority) do not fit into the existing European administrative structures: similarly the terms *Staatenbund* (Federation of Nation States) and *Bundesstaat* (Federal State) do not express the true nature of the Community in its entirety. That is not to say that the analytic and explanatory potential of the traditional theories should be left unused. Law enforcement in multilevel systems is by no means a product of spontaneous, accidental or irregular actions, but rather a result of regular processes which must be put into relation with each other and be given a legal framework. The term *Composite Administration* will make this possible. *Verbund* expresses a systemic notion which creates the necessary entity through interlinking with each other the two organisational principles – the principle of cooperation and the principle of hierarchy. The '*Verbund*'-concept implies likewise the notions of sovereignty, respect and the ability to undertake joint action. The meaning of the term varies depending on the context: the Federal Constitutional Court has used it in the creation of the term *Staatenverbund* (Federation of Nation States), clearly stressing the legitimation of the Nation States.[21] Legal scholars have meanwhile used the term *Verfassungsverbund* (European Constitutional Order) and thus laid greater emphasis on the integrative component.[22]

Both forms indicate a rather unstable state which – if a one-way solution is to be avoided – should be regulated and stabilised by applying contradictory systemic approaches.[23] The most valuable source

[21] Bundeserfassungsgericht, Judgement of 12. October 1993, E 89, p. 155 at 182 et seq.; Kirchhof, in: Isensee/Kirchhof (eds.), *Handbuch des Staatsrechts*, Vol. 7 (1992), §183 para. 39 et seq.

[22] Pernice (1999) 48 *JöR*, p. 205 et seq.; for a recent polemic view, see Jestaedt, in: *GS für W. Blomeyer* (2004), p. 637 et seq.

[23] See v. Bogdandy, *Supranationaler Föderalismus als Wirklichkeit und Idee einer neuen Herrschaftsform* (1999); Badura, in: *Festschrift für Leisner* (1999), p. 695 et seq.

in this respect undoubtedly is the federal state doctrine that adopts a comparative method. Its results, once again, cannot be applied to a European Administration without adjustment. However, its approaches can facilitate the analysis of emerging problems, and its structures and methods can help in finding novel 'federative' regulatory instruments since the major issues remain the same:[24] the gaining momentum of differing interests, the existence of centrifugal and centripetal forces and the relation between 'integration and subsidiarity'.[25]

At EC level, law must tackle the singular trias of roles performed by the Member States - as 'Masters of the Treaties', 'Partners of the Commission' and 'Addressees of supervisory measures subject to control'. The tensions arising out of this functional interplay can be shown in the example of state aid supervision according to Articles 87–89 ECT. This finding makes quite clear that any simplifying legal concept would be misplaced. Taken together, the regulatory mechanisms of European Administrative Law must aim at combining the following three elements:

– The *intergovernmental* element is represented by the Council of Ministers whose political opinion is formed along federal negotiation patterns targeted at reaching a compromise or balance of interests.[26] This element constitutes the framework of the European Administration and specifies the tasks to be executed. However, some traits of intergovernmental decision-making can be found even in individual actions of extraordinary political importance. Occasionally, the Council also performs executive functions. The comitology system, in particular, shows a tendency towards a weakened intergovernmental steering of executive processes at the middle level.

– The *integrative* element guarantees a centrally defined state of 'common welfare' throughout the Community as far as EC legislature and effective implementation of EC law are concerned. The Council's policy of negotiation is therefore opposed by an approach aiming at effective decision-making. As far as European Administration is concerned this approach is taken by the Commission and the highly specialised European agencies and bureaus. The European Court of Justice had also assumed

[24] Cf. Giegerich, *Europäische Verfassung und deutsche Verfassung im transnationalen Konstitutionalisierungsprozeß: Wechselseitige Rezeption, konstitutionelle Evolution und föderale Verflechtung* (2003), esp. p. 304 et seq.

[25] Cf. Oeter, *Integration und Subsidiarität im deutschen Bundesstaatsrecht* (1998).

[26] For an example from the regional structural policy, see Benz, in: Schmidt-Aßmann/Hoffmann-Riem (eds.), *Strukturen* (fn. 18), p. 45 et seq.

this position for a considerable period of time and acted as a 'driving force of integration'. In its recent judgements, however, the Court has outlined a more distinct division of powers within the Community, thus indicating that it will assume a rather neutral position between the two options in future.

– The *Nation-State* element avoids the cumulative action of the Member States being mistaken for the interests of the individual Nation States. This has been stated accurately for the purposes of the federal state doctrine.[27] It applies at least with the same force in the field of European Administration. The individual Member States, which provide major parts of the administrative apparatus, still differ considerably in their organisational structures, administrative traditions and conception of themselves.[28] Owing to this very fact, the 'Nation-State' element has gained extraordinary importance. In addition, it has been confirmed by law in a series of protection clauses and reserved rights.[29] The effectiveness of decision-making is also the leading principle here; the decision based on the isolated Nation-State perception needs to be transferred into the Community system by means of cooperation schemes.

2.3 Instruments of Separation of Powers

2.3.1 Introduction

Is it at all possible to speak of an 'Administration' at EC level considering that the Community does not follow the rules of the traditional separation of powers?[30] In national administrative law, the principle of separation has proven to be the major cornerstone of structure building regardless of its manifold variations in individual constitutional orders.[31] By differentiating between law making (*Gesetzgebung*) and law execution (*Gesetzesvollzug*), it guarantees the steering role of the parliament as well as parliamentary accountability according to the rule of law, and makes both subject to judicial control. In this way, it remodels the requirements of the rule of law and the principle of democracy into a form manageable by the instruments of administrative law. The picture is more complex in the

[27] Lerche, *Aktuelle föderalistische Verfassungsfragen* (1968).

[28] Cf. Schwarze, *Europäisches Verwaltungsrecht* (fn. 14), p. 33 et seq.; Stettner, in: Dauses, *HbEUWiR* (fn. 5), Section B III.

[29] See Pühs, *Der Vollzug von Gemeinschaftsrecht* (1997), p. 186 et seq.

[30] Cf. Steinberger, (1991) 50 *VVDStRL*, p. 9 at 29 et seq.; Möllers, *Gewaltengliederung. Legitimation und Dogmatik im nationalen und übernationalen Rechtsvergleich*, Heidelberger Habilitationsschrift (2004), §7.

[31] See Schmidt-Aßmann, *Ordnungsidee* (fn. 3), p. 179 et seq.

multilevel system of the European Union: a number of legislative bodies at Community and national level stand *vis-à-vis* numerous institutions that fulfil executive tasks, at least to some extent. On abstract examination, it is undeniable that here lies a considerable potential for steering and control. However, the questions to be dealt with are the following. Is it possible to make a clear differentiation between the various functions in the concrete power relations? Can the individual functions be attributed to the respective bodies in charge, which are sufficiently independent in order to prevail over the *Verbund*-schemes and their negotiation patterns with the necessary distance and transparency? This question can be answered in the positive with some certainty, with regard to the supervision function (2.3.2.). The major difficulties concern the legislation and concomitantly the differentiation of the executive functions (2.3.3.).

2.3.2 Supervisory Tasks

'Among all structural elements of the Community it is the judiciary that differs the least in its nature compared to judiciaries of constitutional states'.[32] *Judiciary control* is carried out by the European Court of Justice and the national courts which insofar act as 'Community courts'.[33] The European Court of Justice is on the one hand 'Administrative Court' insofar as it is (also) authorised to supervise the executive decisions of the Community organs, judging on actions for annulment and for failure to act according to Articles 230 and 232 ECT. The supervision of national administrations is carried out by the national administrative courts that assess the lawfulness of administrative action according to the standards of national and EC law. By referring a case under the preliminary ruling procedure laid down in Article 234 ECT, the national courts can make an indirect contribution to securing the legality of EC legal acts.[34]

The European Court of Justice also plays an important role in the settlement of conflicts concerning supervision arising between the EC organs and the Member States. Such a settlement, also found in federal state law, is achieved mainly by means of infringement proceedings initiated by the Commission against a Member State under Article 226

[32] Steinberger, (1991) 50 *VVDStRL*, p. 9 at 37.

[33] Burgi, *Verwaltungsprozeß und Europarecht* (1996), p. 58 et seq.; Kadelbach, in: Schmidt-Aßmann/Hoffmann-Riem (eds.), *Verwaltungskontrolle* (2001), p. 205 et seq.

[34] For a detailed treatise on 'Legal protection in European Administrative Law', see Dörr, in: Sodan/Ziekow (eds.), *Nomos-Kommentar zur Verwaltungsgerichtsodnung* (Loose-leaf-coll., last update January 2003), Vol. 1.

ECT.[35] So far, these extensive proceedings have been primarily triggered against national legislatives, particularly upon their failure to implement a directive. However, it is also available for the purposes of supervising administrative procedures, e.g. highly interesting cases on public procurement and the location of enterprises as well as discriminatory decisions in permit procedures in the domain of telecommunications.[36] In full compliance with the entwined-competency model, Article 227 ECT provides for a parallel type of infringement procedure which allows a Member State to sue another Member State. From this point of view, the judicial control system shows the complexity of EC administrative structures. The reoccurring deficiencies of legal protection[37] do not indicate the unsuitability of the system as such. These are caused more by the swift changes of the executive action schemes in the Community Administration. What is still lacking are satisfying structural solutions in matters of legal protection at horizontal administrative level. National courts, which have been held solely responsible so far, have adopted a principle of separation which, however, has not quite met all the challenges resulting from the horizontal cooperation between the national administrations.[38]

Budget and cost effectiveness supervision rest with audit courts and institutions of a comparable status in terms of autonomy. This supervisory function has been enhanced recently, resulting in the present recognition of the Court of Auditors as an organ of the Community according to Article 7 in conjunction with Articles 246–248 ECT.[39] The new budget laws make additional provisions to be applied in a series of internal control and budget revision procedures.[40] Conferring independent status on the European Anti-Fraud Office (OLAF) is also part of this same context. This act has demonstrated the essential importance of an autonomous supervisory authority transcending the administrative levels

[35] Pühs, *Vollzug* (fn. 30), p. 220 et seq.

[36] Cf. Seventeenth annual report on monitoring the application of Community law - 1999, [2001] OJ C30/01 at 23 et seq.; for breaches of contract in general, see ibid. p. 67 et seq.; Twentieth annual report on monitoring the application of Community law – 2002, of 21.11.2003, COM(2003)669 final.

[37] Cf. just the divergent decisions on legal protection against regulations, Case T-177/01, *Jégo-Quéré* [2002] ECR II-2635; Case C-50/00 P, *Unión de Pequeños Agricultores* [2002] ECR I-6677; Case C-263/02 P, *Jégo-Quéré*, (2004) *NJW*, p. 2006; Röhl, (2003) *Jura*, p. 830 et seq.; idem, (2004) *GPR*, p. 178.

[38] See Schmidt-Aßmann, in: *Festschrift für Bernhardt* (1995), p. 1238 et seq.; Burgi, *Verwaltungsprozeß* (fn. 34), p. 55 et seq.; Ehlers, *Die Europäisierung des Verwaltungsprozeßrechts* (1999), p. 8 et seq., 14 et seq.; in detail now Jens Hofmann, *Rechtsschutz und Haftung im Europäischen Verwaltungsverbund* (2004); Cf. also idem, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 447 et seq.

[39] Cf. Declaration No 21 on the Maastricht Treaty.

[40] Cf. Schöndorf-Haubold, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 25 et seq.

and being capable of exerting influence on the interlinked administrative procedures.[41]

One issue which still remains is that of *parliamentary control*. Its weakening on the national level has only been compensated by the enhanced supervisory powers of the European Parliament over Community actions to a limited extent but it would be false to claim that parliamentary control has been worn away by EC administrative structures. Recently, the establishment of temporary committees under Article 193 ECT has proven to be a perfectly effective instrument in various cases, since it has actually been applied for purposes of supervision, rather than as a means in the struggle for political power, which was the case in the misguided German political scene. The resignation of the Santer Commission has shown that the Parliament is capable of effective administrative control. This crisis was not so much one of high politics but was more one of an 'administrative' character.

2.3.3 Executive Tasks

The differentiation between executive and legislative tasks has caused greater difficulties.[42] Even at national level a simple solution to this issue has not been found yet. The dual function of the administrative regulation as a means of constitutive law and of administrative law serves as the best example. It shows that 'executive power' means more than carrying out strict statutory instructions or effecting administrative acts by applying the juristic techniques of subsumption.[43] The traditional administrative law doctrine has nonetheless been founded on such a *basic notion* of a simplistic and hierarchical implementation, since attributing administrative actions to general laws makes them politically acceptable, and shaping administrative decisions into the form of individual acts guarantees their assessment according to rule of law.

The dividing lines are even less distinguishable at EC level.[44] The Council, being the legislative organ, also takes individual decisions (although just occasionally); the Commission as the executive organ participates intensively in the legislative process; and the national executives even

[41] Mager, (2000) *ZEuS*, p. 177 et seq.; Uerpmann, (2000) 125 *AöR*, p. 551 at 566 et seq.; also Wolffgang/Ulrich, (1998) *EuR*, p. 616 et seq.
[42] See Winter (ed.), *Sources and Categories of European Union Law* (1996), p. 38 et seq.
[43] See Schmidt-Aßmann, *Ordungsidee* (fn. 3), p. 198 et seq.
[44] Steinberger, (1991) 50 VVDStRL, p. 9 at 31 et seq.

create through their involvement in the Council the legal bases that are actually to provide them the legitimation necessary for their executive activity. Finally, the intransparency is increased by the fact that the range of legal forms available at EC level, according to Article 249 ECT, bears little resemblance to the clear distinction to be found between a national legislative act and a national administrative act. The apparent mixture of power positions and institutional functions at EC level influences the entire Community territory, and hence, affects the national administrative level, too. Therefore, working out the structures of the separation of powers and the specific administrative function, in particular, constitutes a real challenge.[45] It shall nevertheless be attempted as far as the following three aspects are concerned.

– An individual examination of the various fields of European administrative action described above shows clearly that, despite unclear border lines, it is undoubtedly possible to discern administrative procedures of traditional executive character in large fields of activity. This applies to national customs authorities implementing the Community Customs Code and the Customs Tariff, as well as to decisions of the Commission in matters of state aid and competition law, for example. The application of legal terms that require extensive interpretation and involve definition margins has been common to national administrative law as well and hence the fact that they occur at Community level cannot lead to the activities mentioned being classified as executive measures.

– A further major field of action is made up of intra-administrative relations, which include, in particular, the multifaceted activities of cooperation on data exchange. These activities can also be classified as executive measures in a broader sense, provided that they possess a minimum procedural determination and that their adoption is not subject to the proceedings according to Article 249 (4) ECT, which are determined mainly by the principle of the rule of law.

– Lastly, the existing complexities have been simplified by the increase in competence of the European Parliament. The *basic legal acts of secondary EC law*, basic regulations and framework directives, have hereby assumed an independent political profile and have continually evolved into a European 'legislature'[46] capable of effecting the legitimation

[45] In detail Möllers, *Gewaltengliederung* (fn. 31).
[46] Winter, *Sources* (fn. 43), p. 22 et seq.

achieved in essence by the rule of separation of powers. According to the European Court of Justice, basic legal acts concern the 'basic elements of the matter to be dealt with'.[47] The only provisions that can be classified as essential are those 'which are intended to give concrete shape to the fundamental guidelines of Community policy'.[48] Such an approach differs from the German *Wesentlichkeitslehre* - a constitutional doctrine saying that any essential (*wesentliche*) decisions, that is, decisions relevant in terms of fundamental rights and freedoms, must be taken by parliament. The Court's understanding allows for *implementing powers* to be conferred on the Commission according to Article 202 ECT.[49] "The concept of implementation for the purposes of that article comprises both the drawing up of implementing rules and the application of rules to specific cases by means of acts of individual application'.[50] Among the implementation rules applied by the Commission, there are numerous regulations and directives which would, from the point of view of German administrative law, classify as *Allgemeinverfügung* (administrative act directed at a discernible group of addressees) rather than as legislative acts. At any rate, a considerable part of the implementation legislation belongs to administrative sphere.[51] However, there still remain implementation rules that fill in broad definition margins and thus resemble in effect legislation rather than executive acts. It is these very acts, in fact, that constitute a real challenge under the principles of democracy and rule of law, and hence require further legal concretion.

2.4 Linking Divergent Structural Principles

European administration in its function as a network for data exchange, decision-making and control rests upon the same interconnection of hierarchical and cooperative elements like the concept of composite administration ("*Verbund*") 'in its entirety.[52] Since it acts within a given framework and on the basis of preset implementation rules, it might be referred to as a 'hierarchy with a cooperative cushioning', in which

[47] Case C-25/70, *Einfuhr- und Vorratsstelle für Futtermittel v. Köster*, [1970] ECR 1161, para. 6.
[48] Case C-240/90, Germany v. Commission [1992] ECR I-5383, par. 37.
[49] Cf. Möllers, in: Schmidt-Aßmann/Schöndorf-Haubold (eds.), *Der Europäische Verwaltungsverbund* (2005), p. 293 et seq.
[50] Case 16/88, Commission v. Council [1989] ECR 3457, para.11.
[51] Cf. the statistical figures on legal acts published in the Official Journal provided by Falke, in: Joerges/Falke (eds.), *Das Ausschußwesen der Europäischen Union* (2000), p. 43 et seq.
[52] For similar considerations on a 'fusion administration' from the perspective of political science, see Wessels, in: Jachtenfuchs/Kohler-Koch (eds.), *Europäische Integration* (2. ed. 2003), p. 353 et seq.

the core function of the Commission becomes apparent. Although the Commission has only few direct executive powers, it controls the switch-points of the EC executive system. An extensive cooperative cushioning is necessary in order to respond to the demands at intergovernmental as well as at national level, as a result of which all regulatory mechanisms and procedures of European administration have been structured as *combinations* of the two principles. The core, consisting of hierarchical and cooperative implementation, is surrounded by a wide range of further elements following contradictory principles. Individual decisions are embedded into communication structures; negotiation rounds are combined with reservations of rights to final decisions. Consequently, it is not possible to transfer the legal forms which are known in national administrative law into European administrative law on a 'one-to-one' basis nor is it necessary to develop them completely anew. The basic guidelines remain the same, since even as far as administrations in multilevel systems are concerned the applicable legal principles must follow a certain order, the mutual confidence of the authorities involved must be secured and the expenditure of common financial means must be dealt with prudently. Legal rules of a *European administrative law* are needed at least in respect of the following points:

- hierarchy of legal sources,
- autonomy and involvement modes for participation in the establishment of executive structures,
- informational cooperation and mutual control of the administrative authorities involved,
- schemes and procedures for formation of common political opinions and joint decision-making,
- reservations of rights to decision in cases of urgency and emergency as well as of rights to a final decision,
- accountability for matters of legal protection and liability issues.

European administrative law as a law of codependent administrations in a European multilevel system aims mainly at decision-making and establishment of organisational structures.[53] Therefore, it must provide a range of solutions for these issues, define the elements which, according to the requirements of EC and national constitutional laws, shape the European administration and arrange them in accordance with the

[53] Cf. Hoffmann-Riem, in: Schmidt-Aßmann/Hoffmann-Riem (eds.), *Strukturen* (fn. 18), p. 317 at 331 et seq.

necessities of the latter. In the process, it will become apparent that the solutions provided by federal state law, such as those regarding the German administration laid down in the *Grundgesetz* (Federal Constitution), do not necessarily constitute the utmost possible limit of the influence exercised by the central authority. Showing a lower degree of federalisation in its foundations, the concept of composite administration requires stricter steering and control mechanisms in individual spheres as a means of compensation for its flexible structure.

3 Structural Elements of European

3.1 Introduction

An analysis of EC secondary legislation in various policy fields, for example, environmental and agricultural law as well as product liability and tax law, shows that numerous structures have been applied in several cases. At first sight, their features are determined by the material issues of the respective policy areas. Upon a closer look, however, far-reaching similarities appear/are revealed so that these structures can be considered as a general expression of typical functional mechanisms inherent to the concept of composite administration. Three types of such structural elements shall be analysed: the informational networks (3.2.), the comitology procedures (3.3.) and some EC supervision schemes (3.4.).

3.2 Informational Networks

The administration of the Community territory has been in the first place an administration of data-exchange processes. It is hardly possible to assess the number of provisions of secondary EC law conferring on the Member States duties to submit reports and transmit information to the Commission as well as to supply each other with information, and on the EC organs to provide information to the Member States.[54] In this respect, European law outdoes by far the degree of regulation regarded as necessary in German federal law. Herein, the major conceptual challenge of European Administration is expressed, namely, that uniformity must first be created and uniformity means primarily a uniform level of information. The basic notion of European administrative informational

[54] For a systematic analysis on environmental law, see Sommer, *Verwaltungskooperation* (fn. 17), p. 73 et seq.; idem, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 55 et seq.

law lies in the mutual dependency of all executive authorities involved in the accessibility of information throughout the whole EC territory. Its basic structure, therefore, relies on the principle of *reciprocity*. Considering the critical importance of the informational system, it is not surprising that, in this field, spontaneous and punctual forms of data exchange have been subject to increasing institutionalisation. Here, one can distinguish between two forms: the highly integrated information agencies and the informational cooperations established on the horizontal level.[55]

Information agencies are, for example, the Copenhagen-based European Environment Agency (EEA) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in Lisbon.[56] Being independent administrative units endowed with legal personality, these agencies collect and process data in order to provide the policy-makers with sound and evidence-based information. They have been conferred a certain degree of autonomy in order to grant objectivity of data acquisition. From the structural point of view, they make up a part of the EC direct administration, but they are not subordinate organs. As far as their inner structure is concerned, it is the Member States who exert the decisive influence in the administrative boards while the role of the Commission has decreased. Nonetheless, information agencies are considered to be highly aggregate institutions. The major structural feature characteristic of these agencies is centralisation, which has been put into effect by establishing a system of data networks. The system follows uniform procedures and the respective national informational networks are a priori integrated therein.

A looser form of Europeanisation is represented by the *trans-European networks for the interchange of data* (*Informationsverbünde*) between administrations. By way of example, one can name the Integrated Administration and Control System, IACS, established in the course of the agricultural reform in 1992 for the purposes of recording and assessing data obtained on the basis of the aid applications, and the Customs Information System, CIS. IACS does not fulfil the function of a common data acquisition system, but rather confers on the Member States the duty to collect and transfer data whilst via CIS data gathered by

[55] For an in-depth analysis, see v. Bogdandy, in: Hoffmann-Riem/Schmidt-Aßmann (eds.), *Verwaltungsrecht in der Informationsgesellschaft* (2000), p. 133 at 172-193.

[56] On agencies in general, see Fischer-Appelt, *Agenturen der Europäischen Gemeinschaft* (1999), on informational agencies q.v. p. 55 et seq. On EEA, see also Brenner, in: Rengeling, *EUDUR* (fn. 5), vol. 1, §20 par. 7 et seq.; Kahl, (1996) 36 *JbUTR*, p. 119 et seq.; On European Aviation Safety Agency, see Riedel, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 157 et seq.

the Member States are saved on a central computer. The organisational issues lie within the competence of the EC Commission. Legal matters, however, are decided by an executive committee consisting of Member States representatives.[57] Matters of liability and judicial review are subject solely to national law.

3.3 Committee System: Comitology and Boards of Experts

3.3.1 Introduction

The widely structured system of committees constitutes a characteristic feature of European administration.[58] Committees are institutionalised forms of data exchange and communication processes that require constant reshaping at EC level, while those at national level have developed gradually, which has given them a more permanent character. The committee system allows for activation of information and data resources that could not be maintained by the EC institutions due to their limited manpower. Comitology also serves the specific purpose of providing a discussion forum for intergovernmental negotiations. Committees consist largely of public servants, but there are also expert boards and mixed bodies involving both, public officers and experts. Recently, it has been justly pointed out that the committee system, which was initially given little attention from the legal perspective, to some extent bears a constitutional dimension in relation to European administration.[59] In its context, major issues concerning legitimacy, transparency and accountability can be shown with particular clarity.

3.3.2 Comitology Procedure

Comitology plays the most important role in the system of committees.[60] It is connected to conferring executive tasks on the Commission according to Article 202 ECT. For a long time, it has been the regular practice of the Council to reserve the right to exert some influence on the measures implementing the basic legal acts it had passed for itself. This influence has been secured through committees provided for in the relevant legal acts, and which consist of Member States' representatives

[57] Cf. Harings, *Grenzüberschreitende Zusammenarbeit der Polizei- und Zollverwaltungen und Rechtsschutz in Deutschland* (1998), p. 100 et seq.

[58] For basic information, see Joerges/Falke, *Ausschußwesen* (fn. 52), providing statistical figures at p. 76 et seq.; Winter, *Sources* (fn. 43), p. 541 et seq.

[59] Joerges, in: Joerges/Falke, *Ausschußwesen* (fn. 52), p. 349 et seq.

[60] See Falke, in: Joerges/Falke, *Ausschußwesen* (fn. 52), p. 5 et seq.

and a Commission representative who presides over the committee. Since the ruling of the European Court of Justice in the *Köster* case, this practice has been acknowledged as lawful.[61] Committees as such have no consenting powers, but they have considerable procedural importance. Their negative vote on a proposal brought forward by the Commission triggers, according to the three procedures available, diverse participation modes of the Council in the legislative process. Nonetheless, the political weight lies with the committees as such. The figures from the agricultural sector show that in the period between 1973 and 1994 statements were requested from the 'comitology' committees in more than 50,000 cases, 90 % of which had a successful outcome. In total, the Council made use of its decision-making powers in as few as 47 cases.[62] Even allowing for a higher number of conflict cases in other spheres, such as in environmental law, comitology must be still regarded as a major factor in amicable decision-making. However, despite this fact, comitology has become subject to criticism founded on the assumption that the Commission formulates its proposals a priori in a 'committee-friendly' way. In general, legal doctrine had long regarded comitology as an intransparent and bureaucratic-technocratic form of governance.[63] Recent studies have, however, pointed out its positive functions.

Setting up rules for comitology is a major issue of administrative law. At least as far as organisational matters and issues of accountability are concerned, today, there is unanimity concerning the attribution of the committees to the sphere of the Commission[64] rather than classifying them as bodies assisting the Council or being EC institutions of their own. Whenever basic legal acts require involvement of the Council in the executive process, the respective procedures must be, according to Article 202 ECT, 'consonant with the principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament'. The Council Decision on Comitology of 28 June 1999 was a reaction to a part of this criticism.[65] It reduced the number of procedures

[61] Case Case C-25/70, *Einfuhr- und Vorratsstelle für Futtermittel v. Köster*, [1970] ECR 1161, paras. 9, 13 et seq.
[62] Cf. Demmke/Haibach, (1997) *DÖV*, p. 710 at 712 et seq.
[63] Demmke/Haibach, (1997) *DÖV*, p. 710 at 712 et seq.; Mensching, (2000) *EuZW*, p. 268 at 269 et seq. with further references; Hofmann/Töller, (1998) StaatsWiss. und StaatsPr., p. 209 et seq.
[64] On access to documents, see Case T-188/97, *Rothmans International BV v. Commission* [1999] ECR II-2463, par. 58 et seq.
[65] Council Decision 1999/468 [1999] OJ L 184/23. Cf. the comments by Falke, in: Joerges/Falke, *Ausschußwesen* (fn. 52), p. 101 et seq.

available for adoption of basic legal acts to just three: the advisory, the management and the regulatory procedure. To this extent, the legislative bodies are free, but are also obliged to choose one of these procedures. Moreover, Article 2 of the Decision sets up guidelines for the choice of a procedure. Accordingly, the management procedure is envisaged for adoption of measures implementing the Common Agricultural and the Common Fisheries Policy as well as for implementing programmes of substantial budgetary implications, while the regulatory procedure is regarded as appropriate for measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of health or safety of humans, animals or plants. This implies that the regulatory procedure is especially applicable for the adoption of implementation measures that belong, as stated above, in the border area between legislative and administrative law-making. It is quite understandable, therefore, that the Council has the ambition to secure itself a lasting influence in this area. However, such competency splitting and involvement of intergovernmental negotiation practices exert negative effects on a clear separation of powers. A positive view should, therefore, be taken of the strengthening of the role played by the Commission in the regulatory procedure, as effected by the Council Decision.[66] The previous criticism concerning the lack of transparency of procedure is now countered by making the 'comitology' committees subject to Community rules on free access to documents applicable to the Commission.[67] All in all, the 'comitology' committees have proven to be a constitutive part of the above mentioned concept of 'hierarchical administration with cooperational cushioning'.

3.3.3 Scientific Committees

This part of the committee system possesses a weaker legal structure. Experts in this area are leading scientists as well as representatives of interest groups. The European Court of Justice has repeatedly underlined the significance of decision-making founded on scientific data and classified a due consultation of a scientific committee as a mandatory procedural requirement.[68] Expert committees play an essential role, especially in

[66] Cf. Mensching, (2000) *EuZW*, p. 268 at 270.

[67] The same Art. 7(2) of the Council Decision 1999/468; ECJ arriving at the same result already in: Case T-188/97, *Rothmans International BV v. Commission* [1999] ECR II-2463, par. 62 et seq.

[68] Case C-212/91, *Angelopharm GmbH v Freie Hansestadt Hamburg* [1994] ECR I-171 (par. 31 et seq.); Cf. also Case C-269/90, *Technische Universität München v. Hauptzollamt München-Mitte* [1991] ECR I-5469, paras. 14 et seq.

the sphere of risk management.[69] At the same time, even these spheres have shown the weak points of the older committee practice, which was almost entirely lacking in provisions on personnel and procedural issues, in particular. The BSE crisis revealed the seriousness of the then situation.[70] In the aftermath of this crisis, significant improvements have been undertaken. Legal scholars have spurred on the development of legal structures[71] by requesting that legal provisions are established, stating the criteria for appointment of committee members, selection procedures, formation of opinions within the committees (involving the right to dissenting opinion) and grants of autonomy. The comitology system is the best indicator of the critical importance of a systematically developed European administrative law, which must in the first place cope with organisational and procedural issues.

3.4 Community Supervision

Supervision and control have always been issues of EC law.[72] Major topics have concerned, on the one hand, the control of national legislation implementing EC directives and, on the other, the control of EC direct implementation carried out by the European Parliament, the Court of Auditors and the European Courts. While it has been increasingly accepted that the *Administration of the Community territory* is a common task to be dealt with by the administrations on the EC *and* on the national level,[73] it has also become even more obvious that the great variety of novel cooperative relations between the administrations would inevitably bear consequences on the control concept of EC law.

The supervision of EC administration cannot be arranged in advance following a preset hierarchical supervision system, such as might

[69] Cf. Knipschild, (2000) *ZLR*, p. 693 et seq.; Schlacke, *Risikoentscheidungen im europäischen Lebensmittelrecht* (1998); Neyer, in: Joerges/Falke, *Ausschußwesen* (fn. 52), p. 257 et seq.

[70] Cf. Falke, in: Joerges/Falke, *Ausschußwesen* (fn. 52), p. 108 et seq., 117: 'The BSE crisis is at the same time a crisis of the European comitology system.'

[71] For basic information, see Knipschild, (2000) *ZLR*, p. 693 at 706 et seq.; Joerges, in: Joerges/Falke, *Ausschußwesen* (fn. 52), esp. p. 363 et seq.

[72] Ipsen, *Europäisches Gemeinschaftsrecht* (1972), p. 220 et seq., 677 et seq.; Hatje, *Die gemeinschaftsrechtliche Steuerung der Wirtschaftsverwaltung: Grundlagen, Erscheinungsformen, verfassungsrechtliche Grenzen am Beispiel der Bundesrepublik Deutschland* (1998), p. 154 et seq.; Pühs, *Vollzug* (fn. 30), p. 307 et seq.; Scheuing, in: Hoffmann-Riem/Schmidt-Aßmann, *Innovation* (fn. 18), p. 335; Kahl, (1996) 29 DV, p. 341 at 361 et seq.; Albin, *Die Vollzugskontrolle des europäischen Umweltrechts* (1999), esp. p. 237 et seq.; Suerbaum, *Die Kompetenzverteilung beim Verwaltungsvollzug des Europäischen Verwaltungsrechts in Deutschland* (1998), p. 184 et seq.; cf. also the contributions in Streinz (ed.), *Die Kontrolle der Anwendung des europäischen Wirtschaftsrechts in den Mitgliedstaaten* (1998).

[73] On the concept and the structure of this administration, cf. Schmidt-Aßmann, in: Schmidt-Aßmann/Hoffmann-Riem (eds.), *Strukturen* (fn. 18), p. 12 et seq.

be possible in a centralised nation state. EC control systems constitute a pluralistic structure that has to absorb manifold influences. At first sight, this structure looks like a complex mixture of instruments and institutions. However, a closer examination shows that it is the very absence of a hermeutical control scheme which could be helpful even with regard to a review of the national control systems. Concerning all these aspects, the main objective has been first of all to use combined control competencies to create *mutual trust* in the incorruptibility, expertise and efficiency of all the administrations involved. Hence, control relations do not evolve just from the top to the bottom, but rather they make use of the counter-current principle, as well. Moreover, they also embrace the horizontal interconnections among the national administrations. Special attention shall be paid to the following elements:

– *State aid supervision* according to Articles 87–89 ECT is a control scheme designed to monitor the Member States' practice of granting subsidies.[74] From the German perspective, this scheme constitutes a badly needed extension of the so far insufficient regulation of the scope and control of subventions generously granted by the State. Judicial control in this sphere has only seldom proven to be sufficiently effective. The courts are not in a position to provide satisfactory legal assessment of the pending cases, let alone the necessary far-reaching control of effectiveness. This is not only due to the high requirements made of the filing of a complaint, but also due to the lack of willingness of competing undertakings to proceed openly against the State aid administration. Conferring aid supervision powers on the EC Commission puts the competitors into an intermediary position, which allows them to avoid an open conflict with the national administrations and, hence, creates a new control potential.

– The *procedure for the clearance of the accounts* applicable in agricultural law allows the Commission to examine in detail at the end of the year, whether the agricultural subsidies granted by the Member States during that year were in compliance with proper procedure; in this the Commission relies on the material submitted to it. In this way, the Commission is also able to oversee the administrative law enforcement.[75] During this process, dominant hierarchical elements take turns with stages of striving for mutual consent. By assuming a practice of negative

[74] Rodi, *Die Subventionsrechtsordnung* (2000), p. 141 et seq., also 752 et seq.
[75] Mögele, *Die Behandlung fehlerhafter Ausgaben im Finanzierungssystem der gemeinsamen Agrarpolitik* (1997), p. 209 et seq.

corrections (*Anlastungen*), this procedure has turned into effective indirect legal supervision[76] and its application is now being considered for structural funds also.

– *Inspections* (on-site checks) are concrete supervision measures used by the EC Commission for the purposes of risk prevention in food and veterinary legislation, protection of resources in fisheries legislation and protection of budgetary Community interests in agricultural law.[77] They concern both administrative authorities of Member States and private persons. They are often designed as system reviews. In order to utilise external expertise and strengthen mutual trust, these reviews are carried out not only by EC officials, but also by public servants from the Member States.

– *Self-executive control schemes* in the Member States: In view of its extremely limited personnel resources, the EC Commission is keen on promoting the establishment of autonomous supervision schemes in the Member States, which are either activated from an own need for control, or which at least guarantee a sufficient level of independency from the national administrations. This aim has been pursued by creating independent agencies in the Member States which have been provided for in some EC legal acts. The primary target, though, has been to activate the public to become a means for control in EC law enforcement. In environmental law, for example, a cornerstone of self-executing administrative control has been laid with the introduction of 'the model of informed public' (*Modell der informierten Öffentlichkeit*).[78]

3.5 European Administrative Law – Legal Structure for an Institutional Network

European Composite administration is a network which consists of informational, decision-making and control elements, which comprises the activities of EC and Member States' administrative authorities. This structure has no central regulation. However, it is made up not merely of spontaneous cooperative actions, but has rather persistent patterns which combine hierarchical and cooperative elements in themselves. The

[76] Hatje, *Wirtschaftsverwaltung* (fn. 73), p. 167.

[77] See David, *Inspektionen im Europäischen Verwaltungsrecht* (2003), pass.; idem, in: Jansen/Schöndorf-Haubold (Ed.), European Composite Administration (2011), p. 363 et seq.; also Ulrich, *Kontrollen der EG-Kommission bei Wirtschaftsbeteiligten zum Schutz der finanziellen Interessen der Gemeinschaft* (1999).

[78] See Schmidt-Aßmann/Ladenburger, in: Rengeling, *EUDUR* (fn. 5), vol. 1 §18 paras. 4 et seq.; Scherzberg, *Die Öffentlichkeit der Verwaltung* (2000), p. 255 et seq. Cf. also Rossen-Stadtfeldt, in: Schmidt-Aßmann/Hoffmann-Riem (eds.), *Verwaltungskontrolle* (fn. 34), p. 117 et seq.

negotiation practices adopted by the collegiate bodies and the decision-making rationale of central and local executive authorities alternate in the course of the implementation process: decisions agreed on in negotiations pass on requirements to the decision-making process in the following stages. Decisions are embedded into processes of data exchange and mutual consultation. The establishment of a legal structure for the regulatory schemes shaped in this way constitutes the greatest challenge to be dealt with by European administrative law, but shaping this law will require more than taking over the schemes and principles applicable in national administrative law. Nonetheless, legal comparison of the existing administrative law systems constitutes an important stage in its development.[79] The peculiarities of the *Verbund*-administration must also be taken into consideration. The resemblance of the tasks with which the Community has to cope to those facing national administrations (see 1.1. above) is proportionate to the divergences of their organisational structures. Since the organisational arrangements represent, in fact, the most characteristic feature of European Composite Administration, European administrative law must be shaped - to a far greater extent than national administrative law - as a law of organisation and of inter-administrative procedures. Procedural and organisational law have developed to major regulatory tools[80] in the sphere of European administration.

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[79] Cf. just Ladenburger, *Verfahrensfehlerfolgen im französischen und im deutschen Verwaltungsrecht* (1999); Maier, *Befangenheit im Verwaltungsverfahren* (1998); Trantas, *Akteneinsicht und Geheimhaltung im Verwaltungsrecht* (1998); idem, *Die Anwendung der Rechtsvergleichung bei der Untersuchung des öffentlichen Rechts* (1998).

[80] See the contributions in Schmidt-Aßmann/Hoffmann-Riem (eds.), *Verwaltungsorganisationsrecht als Steuerungsressource* (1997).