European Regulatory Aspects of the Organizational Law of Public Administration

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ABSTRACT

The organization of public administration has traditionally been considered an internal affair of the state. This paper goes beyond the traditional approach to public administration to reveal the interrelationships that today limit the organizational autonomy of individual states. Following an examination of the basic theoretical issues of organizational law, the paper addresses the relationship between administrative organization and sovereignty. In doing so, it examines international law and European Union (EU) norms containing rules directly or indirectly affecting administrative organization. The study particularly highlights the function of international organizations in making best practices available to states. EU primary and secondary legislation appears to respect EU Member States' autonomy, but there are also various rules that oblige EU Member States to shape their administrative organization. There is also a focus on EU agencies, European Groupings of Territorial Cooperation, and other bodies linked to national administrations as specialised EU administrative structures. Overall, the study contributes to an examination of the extent to which EU Member States' autonomy is limited today and by what means.

KEYWORDS

public administration, organization, structure, sovereignty, autonomy, agency, Council of Europe, European Union, secondary legislation, soft law

1. Introductory thoughts from the theory of public organization

1.1. Relationship between organization, association, and public function

Organization is an essential element of public administration, the latter carrying out its functions in and through the first and exercising its powers through it. This organization is, as we shall see, a normatively ordered reality. The administrative organization, like all other organizations in society, is ultimately a specific form of human association, with its own members, hierarchy, and objectives which it seeks

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to achieve.[1] Importantly, and as András Tamás stresses, the organization—and thus the administrative organization—is not a community (*communitas*), but an association (*societas*),[2] the latter presupposing that its 'regularity is based on the idea of contract'.[3] According to Edwin O. Stene, what all social organizations have in common is that (1) they are made up of people, (2) carried out by a collective effort, and (3) for a common purpose.[4] Nonetheless, the most important difference between social association and administrative organization is that the latter's purpose is administration itself (i.e. the functioning of the organs of the state) and its tasks are not determined by its members ('internal'), but rather ordered by law ('external'). Thus, the 'contract' will not be concluded by the members, as would be in the case of a company or an association, but its legitimacy *is* derived from popular sovereignty (democratic legitimacy).

The creation of government bodies, municipalities and autonomous bodies is based on the public function and task entrusted to them by the legislator (i.e. the state itself), implying that the organization and the task are most closely linked. It could also be said that the task will determine the organization's nature, and that, for instance, the purpose of a local government is to ensure local representation, presupposing that the elected representatives exercise their powers as a body. A possible inference here is that a local government's organization will be collegiate in nature because of its purpose. However, the tax authority or public health authority have completely different roles, as one applies the tax law and another decides mostly on health issues of individual cases. The enforcement scheme requires a more concentrated, hierarchical organization.

1.2. Organization, rule of law, legitimacy, and normativity

For the state to be able to carry out the above rational organization activity, it must establish a normative declared organization. The exposition thus far renders clear that the main purpose of public administration is to administer outside its organization and perform public functions, the most specific of which is the exercise of public power. The requirement of the rule of law accepted by democratic systems of government presupposes that not only their functioning but also their organization must be predictable, as follows:

> One of the fundamental requirements of the rule of law is that bodies vested with public authority must carry out their activities within the organizational framework laid down by law, within the limits of a legal framework which is known and predictable by law.[5]

1 Baumgart and Muster, 2023, p. 179.
2 Tamás, 2010, p. 169.
3 Tamás, 2010, p. 169.
4 Stene, 1940, pp. 1124–1137.
5 Decision 56/1991 (XI. 8.) AB of the Constitutional Court of Hungary.

In the above 1991 decision, the Constitutional Court of Hungary emphasises the need for transparency and predictability in public administration, linking the whole of such administration, including its organization, to legality and legal certainty. A similar conclusion is reached by the Venice Commission in its 2011 report on the rule of law, in which the first two substantial or material elements of the rule of law are these two legal principles.[6]

Administrative bodies, and the organizational law governing them, are subject to the same rule of law requirements as substantive and procedural rules. The legitimacy and legality of public authority is determined precisely by a normative command establishing what conduct is to be followed and how it may be enforced in a procedure.[7] There is also interdependence between organizational, substantive, and procedural rules (i.e. they interact continuously), and they have an equal relationship with the rule of law, in that a breach of the rule of law in any one of them affects the whole administration.

1.3. Organization, rationality, order, and structure

The administrative organization is also closely related to rationality.[8] According to Waldo, administration is a 'cooperative human action' implying a high degree of rationality, and two concepts define the essence of public administration, 'organization and management', where organization 'may be defined as the structure of authoritative and habitual personal interrelations in an administrative system'.[9] Waldo also proposes that the conceptual element of organization is that it is organized, therefore rational. According to Tamás, however, this is relative, since it varies in space and time depending on the perspective a person uses to look at rationality.[10] This is why administrative systems can vary so widely worldwide, and yet each be rational in its own reality. Thus, administrative organization is rational because it is organized and structured.

If, based on these delineations, we accept that an administrative organization is created by a normative command and that it lays down the conditions for its operation, then its legitimacy comes from outside (i.e. from the legislator) and the rule of law principle applies. From this normativity follows the orderliness and systematicity of public administration, and from this systematicity items its structuredness.[11] By structure here we mean actual organizational forms, referring to the practical design, depth, composition, and openness/closedness of the administrative organization. As aforementioned, from the correct definition of the public task of the organization we can arrive at its rules of conduct (substantive law), which then a

6 Report on the Rule of Law, Adopted by the Venice Commission at its 86th plenary session (Venice, March 25–26, 2011) CDL-AD(2011)003rev, para. 41.
7 Tamás, 2010, p. 308.
8 Waldo, 1948, p. 41.
9 Waldo, 1955, pp. 5–6.
10 Tamás, 2010, p. 39.
11 Tamás, 2010, p. 60.

reasonably structured organization (organizational law) will implement in a bound procedural order (procedural law). Thus, the organization requires a structure which, as described, is closely adapted to the nature of its task, and the rationality of this structure is represented by internal principles of order (e.g. management, leadership/supervision, and control).

This implies that, first, the legal environment is the basis of the rule of law, on which the public administration can firstly build its powers and subsequently its procedures and its organization.

Second, the staff are the guarantee that the structure works. Whether the public administration is a public authority, service, institution, or anything else, the actual performance of its tasks is carried out by its staff, irrespective of their relationship with the organization. This legal relationship can of course vary considerably depending on the nature of the task and the organization—ranging from the strict civil service regime, to the general employment relationship, and to the contract of employment—and so can there be a difference between the legal relationship of a head of a ministry, a public health inspector, a teacher, a police officer, or an information technology specialist working for public administration.

Third, the structure also requires material means. Tangible and intangible assets (e.g. from buildings and infrastructure to computer hardware and software) are elements of the organization that guarantee the elementary conditions for its operation. In this context, public administrations rely heavily on technology, especially when considering the digitisation of workflows or data security.

2. International law and the administrative organization

2.1. A thought on sovereignty

Public administration, and in particular its organization, is traditionally determined by the states themselves. It is also said that state administration is a matter of its internal affairs, namely, an *internal* question of its sovereignty. Regarding sovereignty, its simplest formulation is afforded by Varga, saying that 'the (principal) power exercised in fact and in principle exclusively over a given territory and a given group of peoples, and recognised as such by other similarly situated power-holders'.[12] As we have seen in the previous chapter, democratic legitimacy traces sovereign power back to the people and not to international law. Therefore, to recognise an act of public authority by an administrative body, it must be traceable to the people alone. Nevertheless, the exclusivity of public administration—or, as international law more broadly puts it, of 'internal affairs' (i.e. activities falling within the scope of internal jurisdiction)—has been interpreted within an increasingly narrow range over the last hundred years or so.[13]

12 Varga, 2020, p. 259.
13 Ádány, 2020, p. 237.

Article 2 paragraph 7 of the United Nations (UN) Charter clearly states that international law cannot interfere in matters 'which are essentially within the domestic jurisdiction of any state (...)'. The question of sovereignty must hence begin with an examination of its internal features. Again, using Varga's terminology, the internal aspect of sovereignty comprises 'the depositary of the supreme power and the rules which it makes. Hence the so-called (internal) sovereign rights are the right to command and the obligation to submit (obey)'.[14] Among the external features of sovereignty, the notion of independence (alongside the principle of equality of states)[15] is correct until we reach the notion of interdependence, which has significantly weakened the traditional view of the internal autonomy of states and created the external features of our present-day view of sovereignty.[16] Indeed, in the 20th century, and especially after 1945, the accelerating codification of international law (normative expansion) has transformed the system of relations between sovereigns in such a way that it created a complex system of diverse international commitments, in which the limitation of sovereignty is no longer necessarily based on the direct will of the sovereign.[17] Striking examples can be seen in the economic, financial, and security policy areas, as areas where various external sovereignty-limiting acts are taking place.[18] An instance would be the legislative obligation imposed on European Union (EU) Member States by the United Nations Security Council with regard to the combat of international terrorism and its financing.[19]

Although EU Member States are mostly given (or rather, assume) actions and obligations in the field of substantive law, organizational law is not immune to external influences.[20] Consider, for example, that under an international treaty[21] or under EU

14 Varga, 2020, p. 259.
15 Kardos, 2018, paragraphs 5–24.
16 Jennings and Watts, 2008, pp. 339–379; Crawford, 2012, pp. 448.
17 Ádány, 2020, p. 233.
18 Ádány, 2020, p. 237.
19 S/RES/2462 (2019): 'all States shall – in a manner consistent with their obligations under international law – ensure that their laws and regulations make it possible to prosecute and punish, as serious criminal offenses, the provision or collection of funds, resources and services intended to be used for the benefit of terrorist organizations or individual terrorists'.
20 Koopmans, 2011, pp. 394–395.
21 As an example, see Article 6(1) of the Prüm Treaty on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime, and illegal migration, which states that 'For the purposes of the provision of the information referred to in Articles 3 and 4, each Contracting Party shall designate a national contact point. The status of the contact point shall be governed by the relevant national law'. In Hungary, this was promulgated by Act CXII of 2007. We note that a much stronger implementation of the limitation of European Union (EU) Member States' sovereignty can be seen in criminal law: the 2015 Additional Protocol to the Convention on the Prevention of Terrorism (CETS 196) lists the offenses that EU Member States must include in substantive criminal law.

law,[22] EU Member States are required to designate contact persons (so-called 'contact points') or departments for a specific purpose. This is an organizational legal act that the EU Member State has not decided as a sovereign, but has had to take to apply a positive international legal rule. An international treaty may also, albeit rarely, establish an additional organizational legal obligation, such as the 1989 Convention on the Rights of the Child, which stipulates that signatory states shall contribute by 'establishing organizations' for the protection of the child.[23]

In conclusion, the sovereignty of states is far from being unlimited, and so the question that is left is who limits their sovereignty, for what reason, in what way, and to what extent. To understand further, we will consider two ways of limiting sovereignty that influence organizational law as follows: (1) directly, referring to when the state itself undertakes the limitation; (2) indirectly, describing when an international or supranational body, in connection with a previously undertaken international obligation, decides to limit the sovereignty of the state. Illustrative cases of the indirect limitation of sovereignty include the Convention on the Rights of the Child, the UNSC Resolution on the Legislative Obligation, and the secondary law created by the EU legislative bodies established by the Treaties that gave rise to the European Communities and later the EU.

2.2. The Council of Europe: multilateral stricti iuris norms

It is rather rare for formulations by public international law to have an influence on organizational law. This is due to the principle of sovereignty (i.e. states are free to determine the internal structure of the state) and the continued respect for this principle worldwide. As our analysis focuses on the European legal environment, first we will present examples of the impact of the Council of Europe's documents on the organizational law of EU Member States.

22 Article 47(1) of the International Treaty of 14 June 1985 implementing the Schengen Agreement provides that Contracting Parties may conclude bilateral agreements under which one Contracting Party assigns liaison officers to the police authorities of another Contracting Party for a limited or unlimited period. This is common practice among EU Member States. See Craig, 2011, pp. 101–105; Polt, 2019, p. 76.
Another example is Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, 'amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU', which provides in point 30 that EU Member States shall act as a contact point for competent authorities of other EU Member States with equivalent powers. In Hungary, this was implemented, inter alia, by paragraph 49(6) of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing, which provides that 'the financial intelligence unit shall designate a contact person responsible for receiving requests for information from foreign financial intelligence units'.

23 The Convention on the Rights of the Child, signed in New York on 20 November 1989, Article 40(3) of which states that 'States Parties to the Convention shall use their best endeavors to promote the adoption of special laws and procedures, authorities and institutions for children suspected, accused or found guilty of offenses (...)'.

There are few Council of Europe conventions that are expressly administrative in nature, the most important of which is perhaps the Convention on the European Charter of Local Self-Government (hereinafter referred to as the Charter of Local Self-Government), signed in Strasbourg on 15 October 1985. Article 6(1) of this Charter declares the internal (organizational) autonomy of local authorities by allowing them to determine own internal administrative organization, adapted to local needs, to ensure more efficient administration. The next paragraph makes a statement on qualified staff. Importantly, although this Charter is an international treaty, it is more of a guideline for local governments rather than, in principle, a directly enforceable norm.[24] This feature is important here because it supports our earlier finding that public international law mostly avoids interfering with the internal rules of the organization of sovereigns. This organization is seen as an element that can help the administration to function properly from the background. This is particularly striking in the Additional Protocol to the Charter of Local Self-Government on the Right to Participate,[25] which refers to categories of procedures, measures, and mechanisms, but describes that these categories can only be achieved if the organization is able to accommodate them. Inclusiveness is therefore also an organizational rule. It should be noted that the underlying role of the organization is reflected not only in substantive (or procedural) rule but also in soft law documents, which will be discussed later.

There are no other international treaties that directly concern administrative organizational law, but there are many that concern substantive administrative law. Among these, there occasionally are rules of organization, but all avoid direct interventions and tend towards recommendations. An example is the European Social Charter, which sets out in its preamble the objective to be achieved by EU Member States of improving the standard of living and promoting social well-being of both urban and rural populations, in particular through appropriate institutions and measures. Article 17, which provides for the right of mothers and children to social and economic protection, is more specific. Accordingly, EU Member States undertake to take appropriate and necessary measures to this end, including the establishment or maintenance of appropriate institutions and services. Although the Treaty still does not provide for a specific organizational mandate, it does provide targeted guidance which the EU Member State will give substance to (i.e. it is for the state to decide to which body it will entrust the implementation of this task).

2.3. Council of Europe: soft law standards

The notion of 'soft law' is difficult to define, especially because of its malleability.[26] It is therefore worth starting from its counterpart, the term 'hard law', even if scholars currently dispute this binary division and, especially in EU law, argue for a more

24 Varga, 2021, p. 131. Hoffmann goes further and describes the impact of the Local Government Charter as soft law. Hoffmann, 2015, pp. 55–56.

25 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

26 Terpan, 2014, p. 73.

diverse normative system.[27] Abbott and Snydal define *hard law* as 'referring to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law'.[28] All other rules of an international normative nature weaker in their binding force, precision, or delegation are considered *soft law.*[29] The UN Special Rapporteur on Human Rights uses the following definition in his 2019 report:

> >>soft law<<< constitutes those international norms, principles and procedures that are outside the formal sources of Article 38 (1) of the Statute of the International Court of Justice and lack the requisite degree of normative content to create enforceable rights and obligations but are still capable to produce certain legal effects.[30]

In EU law, we also talk about hard and soft normative rules, but their conceptualisations differ from those outlined above regarding international law. The Grand Chamber of the European Court of Justice ruled in a preliminary ruling in Case C-911/19 that soft law documents (e.g. the recommendations and guidelines examined in this judgment) are generally not binding, are addressed to a limited number of parties who are not obliged to comply with them, and that these parties even have the possibility to derogate from the guidelines, in which case they must justify their position. In the hands of EU legislature, these instruments are intended to provide it with powers of encouragement and persuasion (pp. 41–48), but the validity of these acts can be reviewed by the Court of Justice (p. 55). The Court also underlined that the bodies have the power to issue soft law instruments to the extent expressly provided for (i.e. that their adoption could be said to be delegated and legislative in nature). Snyder summarised the concept of soft law in the following definition: 'rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain – indirect – legal effects, and that are aimed at and may produce practical effects'.[31]

27 Chain, 2022, p. 15.
28 Abbott and Snidal, 2000, p. 421.
29 Abbott and Snidal, 2000, p. 422.
30 A/74/335 (29 August 2019): Promotion and protection of human rights and fundamental freedoms while countering terrorism, under Article 38 of the Statute of the International Court of Justice:
1. The Court, whose function is to decide in accordance with international law such disputes as they are submitted to it, shall apply:
a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
b) international custom, as evidence of a general practice accepted as law;
c) the general principles of law recognised by civilised nations;
d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
31 Snyder, 1993, p. 32.

After this greater focus placed on EU, let us return to international law. The Council of Europe often uses soft law as a source of law. In general, the adoption of such law is politically easier than that of international treaties, as it has no legal binding force. An important difference between international and EU soft law is that, unlike EU law, there is no constitutional review of the validity of international soft law by a court, only a review of the applicability (i.e. formal limits).[32] However, international soft law also has its value, as being 'only' a political responsibility of EU Member States allows for much more freedom in the formulation of issues in a soft law instrument that would be too sensitive or controversial to be present in a treaty.

Among the soft law documents of the Council of Europe, the Recommendation on Good Governance is the first to be mentioned, which is one of the documents *expressis verbis* applicable to public administration.[33] In the Recommendation, EU Member States adopted a 'Code of Good Governance' that basically sets out procedural legal requirements for good governance implementation, including the principles described hereinafter: legality, independence, proportionality, time-boundness, protection of privacy, transparency, and guaranteeing the legality of decision-making and judicial review. Regarding organization, a provision is included in the preamble to the Recommendation, describing that good administration is promoted by the organization and functioning of public authorities, such that it ensures efficiency, effectiveness, and cost-effectiveness. These principles require EU Member States to set targets, develop performance indicators, measure and monitor, regularly review the price and value of their services, seek the best available means, and monitor the performance of public administration and civil servants.

The vast and rich soft law documents of the Council of Europe basically avoid the issue of administrative organization. Instead, these documents propose mainly procedural and, to a lesser extent, substantive rules. For example, regarding public service, which is a part of organizational law, the Recommendation No. R(2000)6 of the Committee of Ministers on the status of public officials in Europe summarises the basic guarantees of civil service law. Similarly, the Recommendation No. R(2000)10 of the Committee of Ministers to Member States focuses on codes of conduct for public officials. Meanwhile, the Recommendation Rec(2004)15 of the Committee of Ministers on electronic governance ('e-governance') has a specific, indirect impact on public administrations. In point 2 of the Recommendation, it encourages EU Member States to work with international, national, regional, and local stakeholders to make public administrations accessible, transparent, accountable, responsive, open, and inclusive. This, of course, presupposes that the organizational law of the Member States can appropriately interpret these principles, in particular openness and cooperativeness.

32 Sand and McGee, 2022, p. 272. The authors refer to recent International Commission of Jurists' decisions on 'hardening' international environment soft law by declaring it as a part of international binding law.

33 Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration.

2.4. Other Council of Europe documents and opinions

In addition to international treaties and soft law, the Council of Europe also carries out considerable analytical and evaluative work. This is done by its various advisory and consultative bodies, which usually are specialised departments responsible for a particular area such as the Consultative Council of European Judges (CCJE), Consultative Council of European Prosecutors (CCPE), and the Commission for the Efficiency of Justice (CEPEJ). Regarding criminal law, there is the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Committee on Counter-Terrorism (CDCT), among others.

Of all these bodies, we would like to focus here on the European Commission for Democracy through Law, better known as the *Venice Commission*. The role of the Venice Commission is to provide legal advice to EU Member States, and help other states wishing to bring their legal and institutional structures into line with European and international standards in the fields of democracy, human rights, and the rule of law. In its opinions, it deals with the democratic functioning of various government bodies and, in particular, with their procedures and powers. While organizational law is not directly covered by the Commission, it does make some indirectly relevant observations, especially in the context of the rule of law. One example is the Venice Commission having issued opinions in recent years on procedural and organizational rules in the Ukrainian,[34] the French,[35] the Romanian,[36] and the Hungarian[37] judicial administration regarding the processes of appointing judges and leaders. The Commission has also previously expressed opinions in the context of administrative organization, specifically regarding the organization of the self-governments of national minorities in Hungary,[38] of the Hungarian media administration,[39] and

34 CDL-PI(2023)016-bil Ukraine – Information on the follow-up to the Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the HCJ and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068).

35 CDL-AD(2023)015-e France – Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9–10 June 2023).

36 CDL-AD(2022)045-e Romania – Urgent Opinion on three Laws concerning the justice system, issued on 18 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure. Endorsed by the Venice Commission at its 133rd Plenary Session (Venice, 16–17 December 2022).

37 CDL-AD(2021)036-e Hungary – Opinion on the amendments to the Act on the organization and administration of the Courts and the Act on the legal status and remuneration of judges adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15–16 October 2021).

38 CDL-AD(2012)011-e Opinion on the Act on the Rights of Nationalities of Hungary adopted by the Venice Commission at its 91st Plenary Session (Venice, 15–16 June 2012), paragraph 50.

39 CDL-AD(2015)015-e Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19–20 June 2015).

regarding the practice of leader appointment—all along the lines of the rule of law principle. As regards structure, the Venice Commission did not publish a detailed report on government administrations in general, but did publish a report on the organizational models and different structures of prosecutors.[40] On the organization of the prosecution service, the Consultative Council of European Prosecutors (i.e. comprising the chief prosecutors of EU Member States) has also issued opinions which, by collecting good practices, are aimed more at shaping the internal management of prosecution services rather than legislation.[41]

Consultative bodies are not entitled to issue soft law. Therefore, their documents are usually referred to as 'opinions', 'studies', and even 'reports'. The specificity here is that these documents reflect only the opinion of the body and the bodies themselves do not have a mandate—not even an implicit one—from the sovereigns. This entails that these bodies and their documents do not require EU Member States to be proactively involved in document adoption, and do not and cannot have a normative content. Nevertheless, their actions are extremely important for being able to provide an external point of view and a synthesis of best practices to support EU Member States. The Council of Europe's monitoring committees[42] and consultative bodies also have an exceptionally large knowledge base that enables them to formulate focused opinions and serve as a basis for comparative law research.

2.5. International best practices: lessons learned

Finally, we would like to draw attention to a specific international cooperation phenomenon, which is the supporting and informing function of international forums. International bodies, or more precisely the networks they create in their holdings, can create informal networks of contacts particularly well suited for knowledge sharing. Data collection, analyses, methodologies, and standards regarding public administration emerge from these contacts, which are therefore the furthest removed from normative relations. It can be said that such relations are more than scientific cooperation in so far as the participants are the governments or government bodies themselves. One example that operates as a global public administration-methodology network within the UN is the Public Administration Network (UNPAN). This body features a close partnership among a group of international, regional, and subregional institutions, along with prominent experts, devoted to public administration and in support of sustainable development. The members of this connection network

40 CDL-AD(2010)040 Report on European Standards As Regards The Independence of the Judicial System: Part II – The Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17–18 December 2010).

41 For example Opinion (2012) No. 7 of The Consultative Council of European Prosecutors on the Management of the Means of Prosecution Services.

42 See, for example, the Advisory Committee of the Framework Convention for the Protection of National Minorities or the Committee of Experts of the European Charter for Regional or Minority Languages. Both committees have been collecting data on normative rules and their implementation in European states for more than 20 years.

of the UN are mainly global and regional public administrations, which may also be referred to as knowledge centres.

The OECD uses a different approach, as it does not provide links to external knowledge bases but builds its own. It is important in this context that both the providers and the users of the data are the government agencies themselves. The OECD's has the most explicit delineation of organizational rules among all international organizations and organizations in the EU. The OECD can do this because it is not creating legal documents but building a dataset of good practices in management tools, implying that its documents do not intend to substitute a good normative regulatory environment but rather attempt to provide significant support for good functioning. That is, the OECD's focus on 'public governance', rather than public administration or public law, is mostly placed on operational/management and policy issues affecting governance (e.g. in education, budget, digitisation, integrity, public procurement, and regulation). Therefore, the OECD emphasises process examination along with data collection and analysis, and even its biannual Government-at-a-glance analysis only features one issue associated with organization, which is the public employment and managing human resources.[43]

3. Organizational rules in EU primary law

The EU can be regarded not only as a form of state cooperation but also as an administrative system that takes decisions and implements them in some way. Accordingly, the major difference between the EU and the (public) administrative systems of EU Member States is that it does not have sovereignty (statehood) without the Member States.

Although the intent here is not to provide a major deviation from the original trajectory of thought, we see the need to expound to some extent on our understanding of the relationship between (state) sovereignty and the EU. One of the first landmark decisions of the CJE/CJEU is the case *Van Gend en Loos*.[44] Sixty years have passed since its publication, so there is the danger of retrospective misinterpretation in light of the historical memory of the political and legal nature and environment of the decision. Legal scholars of the time, like Edwards[45] and more recently Weiler,[46] argued that the ECJ already established several of the core doctrines before 1963, and:

43 OECD – Governance [Online] Available at: https://www.oecd.org/governance/ (Accessed: 12 February 2024); OECD, 2023.

44 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Judgment of the Court of 5 February 1963. Case 26–62.

45 Edwards, 1996, pp. 34–38.

46 Weiler, 2003, p. 151; speech by Joseph Weiler made at the ECJ's 50 years' celebration of Van Gend, 12 May 2013.

> that the decision would, or at least could, be the same under the traditional rule of interpretation of public international law. (...) The key step towards establishing what the court would term »a new legal order of inter-national law« in the judgment had already been made by the member states when they ratified the Treaties of Rome, due to the treaties' special legal and institutional nature.[47]

In the 1960s, which configured the early beginnings of the European Economic Community, peace and economic (and social) prosperity among the EU Member States was the leading principle and force of political cohesion. Notwithstanding, the arguments in the 2020s go even further and almost detach the autonomy of the EU from the theory of sovereignty. Bobek, for example, argues that a double-hatted Dutch government official is a national and EU official at the same time, and that the hat depends on the law he/she is applying.[48] It remains that even today the sovereign powers of the EU derive from the state-sovereignty of EU Member States; if it was otherwise, Article 50 of the Treaty on European Union (TEU; withdrawal from the Union) would not be a political possibility. The rhetoric arguing for the already existing EU sovereignty without the state sovereignty of EU Member States is just boosting the EU's regulatory creep.

The most important rule for the implementation, or administration, of the EU's decisions is Article 298 of the Treaty on the Functioning of the European Union (TFEU), which states that 'In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration'. The text emphatically speaks not of 'public administration' but of 'administration', reflecting the absence of statehood on the one hand and the need for an organized system of authority as a prerequisite for implementing decisions on the other hand. This article defines the decision-making and implementation of the EU's decisions as being carried out by the 'institutions, bodies, offices and agencies of the Union'. The EU's organizational law therefore primarily applies to its own bodies, which in turn are governed by the rules of organization laid down in the TEU,[49] of which Article 13(1) sets out the EU's own institutional framework, establishing the primary institutions and bodies of the Union.[50]

These founding treaties also provide for other bodies to carry out specialised tasks, either in an advisory capacity,[51] by operating compliance mechanisms,[52] and/

47 Rasmussen, 2014, p. 139.
48 Bobek, 2017, p. 144.
49 Official Journal C 326, 26 October 2012, pp. 1–390.
50 According to Article 13 of the TEU, these are the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank, and the Court of Auditors.
51 The European Economic and Social Committee and the European Committee of the Regions.
52 The European Ombudsman, the European Data Protection Supervisor, and the European Data Protection Board.

or supporting EU policy.[53] Furthermore, the organizational rules in the founding treaties first and foremost establish (statute) the aforementioned bodies, as described in Article 13 of the TEU: '[t]he Union shall have its own institutional framework'. The constitutive act also entails the definition of the main rules of competence (i.e. the main purpose of the body) and puts the body in context. For instance, the Council and the Parliament jointly exercise legislative and budgetary functions (TEU 14.1 and 16.1), the Commission supervises, manages, and implements EU law (TEU 17.1), the European Council proposes its President to the Parliament (TEU 17.7), and the Court of Justice of the European Union is composed of the Court of Justice, the General Court, and specialised courts, which together ensure respect for EU law (TEU 19.1). Similarly, for the other bodies, 'in order to promote the fullest possible coordination of the policies of the Member States to ensure the functioning of the internal market, an Economic and Financial Committee is established' (TFEU 134.1), or 'a European Voluntary Humanitarian Aid Corps is hereby set up to provide a framework for the joint participation of young Europeans in the Union's humanitarian aid operations' (TFEU 214.5). Further organizational rules (e.g. body composition, the election or appointment of the head of the body, the term of office) are laid down in the founding treaties in compliance with the specific nature of the bodies.

Importantly, the primary bodies and additional bodies established in the founding treaties have varying degrees of autonomy, but they concomitantly have their own autonomy. Moreover, this specific autonomy does not recognise the deconcentrated administration—that is, administration run, at least at the level of primary law (as the secondary law is more differentiated), from a single centre but implemented by hierarchically subordinate territorial bodies—common in EU Member States.

4. Organizational rules in EU secondary law

4.1. EU enforcement bodies

The aforementioned Treaties in the EU, like national law and based on the principle of the rule of law, clearly distinguish between decision-making (legislative) and executive powers. The European Commission is the primary body of EU administration, and its executive functions are laid down in primary law, as follows: '[the Commission] shall exercise coordinating, executive and administrative functions under the conditions laid down in the Treaties'. (TEU 17.1) Nonetheless, EU law implementation is done not only by the Commission but also by other 'EU institutions, bodies, offices or agencies', as can be inferred from Article 23 of Protocol No 3 on the Statute of the Court of Justice of the EU. These other bodies are also capable of adopting 'acts' and have powers whose exercise can be reviewed by the Court of Justice.

53 The European External Action Service and the European Investment Bank.

4.2. About EU agencies in general

After probing into EU enforcement bodies, space should be reserved now for discussions about EU agencies, which are governed by secondary law—except for the 'European Defence Agency' established by Article 42.3 of the TFEU. This article also established the EU Member States' obligation to develop their armed forces and defence. As Paul Craig notes, 'many [of the agencies] (…) developed from bodies whose principal function was to oversee the Commission (…)'.[54] To support the Commission's executive powers, the EU has used, especially since the 1970s, the agency organizational model, which is based on the principle of the division of powers.[55] The first two agencies, the European Centre for the Development of Vocational Training (Cedefop)[56] and Eurofound,[57] were created in 1975. Craig further notes that the existing agencies were created in several waves across the 1990s and 2000s.[58] Regarding the legislative basis for the statute of these agencies, it is generally Article 352 of the TFEU (former Article 308 of the TEC), albeit there are agencies with other legal bases (e.g. Eurojust, set up under Article 85 of the TFEU).

The specificity of EU agencies is that they are modelled on existing public administrations in the EU Member States, although Craig underlines that these agencies have a separate meaning from the term 'agency' used in the Member States.[59] Among the reasons for this is that, in Europe, we find a variety of valid models that range from common law authorities with regulatory powers but under government control to autonomous bodies with only individual decision-making powers but completely independent of government (i.e. the latter mostly common in continental legal systems). This administrative diversity has influenced EU agencies such that they cannot be considered as a single concept, rendering it useful to briefly review the types of agencies.

4.3. Types of agencies

According to Craig,[60] the EU's agencies were previously divided until 2012 into either regulatory or executive agencies, the first having limited regulatory powers (i.e. the power to issue normative acts of general application) and the latter being created because they guaranteed (according to the Commission's reasoning) specific

54 Craig, 2012, p. 143.
55 Kálmán, 2013, p. 5.
56 Founding document: Regulation (Eec) No. 337/75 Of The Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training. This was renewed by Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019 establishing a European Centre for the Development of Vocational Training and repealing Council Regulation (EEC) No 337/75.
57 The founding document is Regulation (EEC) No. 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions, renewed by Regulation (EU) 2019/127 of the European Parliament and of the Council of 16 January 2019 establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75.
58 Craig, 2012, p. 146.
59 Craig, 2012, p. 149.
60 Craig, 2012, p. 148.

expertise and relieved the Commission of the burden on technical issues.[61] To date, the Commission has set up six executive agencies to carry out administrative tasks under the Commission's authority,[62] a process which Kálmán calls a vertical (executive) and horizontal (regulatory) delegation of powers.[63] In 2012, Craig creates a much more complex division[64] encompassing the following four categories: (1) regulatory agency, which can issue normative acts in addition to individual decisions; (2) decision-making agency, which can issue individual acts that are binding on third parties; (3) quasi-regulatory agency, which can issue specific documents not legally normative but that have binding force;[65] (4) information and coordination agency, which are agencies that have their primary function associated with information and coordination, which is a necessary consideration because most other agencies also play such function to some extent. The information and coordination function is capable of achieving the most rapid cooperation between the authorities of EU Member States cooperating on matters of the EU community.

Currently, the Commission uses two general and two specific categories of agencies. In addition to the six executive agencies created previously, there are 35 decentralised agencies that are independent of the Commission, have their own budgets, and are controlled by the Court of Justice. Some of these decentralised agencies also function as regulators, such is, for example, the Euratom Supply Agency (ESA), created in 1960 to take care of the implementation of the Euratom Convention. Three other agencies support the tasks related to the Common foreign and security policy, namely the European Defence Agency (also known as EDA), European Union Institute for Security Studies (EUISS), and the European Union Satellite Centre (SatCen).

The legal basis for today's agency types was first laid down in the EU's 2002 Financial Regulation, before the Lisbon Treaty.[66] Furthermore, the EU's growing administrative activity is supported by an increasingly complex network of organizations, of which agencies are an increasingly valuable instrument. Bastos identifies this phenomenon in EU administrative law as confronting the touch of stateness.[67] These decentralised agencies do not have a central organizational rule but are defined by their statutes individually, and Article 70 of the Financial Regulation merely refers to them as follows:

61 The Operating Framework for the European Regulatory Agencies, COM (2002) 718 final, 5.
62 The European Climate, Infrastructure and Environment Executive Agency (CINEA), the European Education and Culture Executive Agency (EACEA), the European Health and Digital Executive Agency (HADEA), the European Innovation Council and Small and Medium-sized Enterprises Executive Agency (EISMEA), the European Research Council Executive Agency (ERCEA), and the European Research Executive Agency (REA).
63 Kálmán, 2013, p. 6.
64 Craig, 2012, pp. 149–153.
65 Craig considers, for example, the European Union Aviation Safety Agency (EASA) aviation safety procedures (certification) as such. Craig, 2012, p. 150.
66 Regulation 1605/2005 (n 2) Article 53(a).
67 Bastos, 2021, pp. 593–624.

> The Commission is empowered to adopt delegated acts in accordance with Article 269 of this Regulation to supplement this Regulation with a framework financial regulation for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.[68]

The organizational legal basis for the executive agencies is also set out in Article 69 of this same Financial Regulation, as described herein:

> The Commission may delegate powers to executive agencies to implement all or part of a Union programme or project, including pilot projects and preparatory actions and the implementation of administrative expenditure, on its behalf and under its responsibility, in accordance with Council Regulation (EC) No 58/2003 (40). Executive agencies shall be created by means of a Commission decision and shall have legal personality under Union law.

The real EU organizational norm is Regulation 58/2003,[69] which gives the Commission the power to establish the organization (Article 3) and sets out the basic framework of the organization (Steering Committee and a director; Articles 7–11). The preamble stresses that the Commission must therefore 'be able closely to circumscribe the action of each executive agency and maintain real control over its operation, and in particular its governing bodies'. (para 9)

4.4. The evergreen issue of rulemaking

Although the power to coordinate information can be found in the statutes of almost all EU agencies, it is their regulatory power that has been the most controversial. Early on, specifically in the *Meroni v. High Authority* case in the late 1950s,[70] the Court of Justice applied the principle *'nemo iuris transfere potest quam ipse habet'*, and held that agencies could not take over the powers of the EU's legislative institutions. With this ruling, the Court put a long stop to the creation of 'genuine' regulatory agencies on the Anglo-Saxon model. This delineation brings us to the most important difference between the types of agencies found in Europe: there is a fundamental difference between common law and continental law when we ask the question as to whether an authority's role is to create a normative act or to implement and administer the law.[71] The latter is the general model in continental European law, even if administrative authorities independent of the government are sometimes vested with some limited

68 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.
69 Council Regulation (EC) No. 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes.
70 *Meroni v. High Authority Case* 9/56 (1958) ECR 133.
71 Fox is critical of what he calls the 'greatest invention' to give agencies regulatory powers in the United States of America. Fox, 2012, p. 163.

legislative powers (e.g. in the field of media and communications),[72] going beyond the powers of the executive and pointing towards legislation.

Accordingly, it is understandable that Craig argues at length, building on common law foundations, that the regulatory role of agencies has many advantages in terms of professionalism and precision. In his view, a normative act by an agency is more credible because of its professional input and because it avoids the political legislative process.[73] Of course, all this would be workable if the courts were able to perform a significantly expanded review in addition to the current multi-sided control. Saurer notes that the basic activities of the agencies are already subject to supranational scrutiny by the Council, the Commission, and the Parliament, as well as the European Ombudsman and the Court of Auditors, and that EU Member States also 'seek to control agency activities'.[74]

At present, the founding treaties only give legislative powers to specific primary bodies of the EU (i.e. Council, Parliament, and Commission), and Article 288 of the TFEU is clear that only the EU institutions may issue regulations, directives, decisions, recommendations, and opinions in the exercise of their powers. The regulatory activity of the agencies, where they exist, is divorced from the normal legislative functions and is only limited.

5. Organizational rules applicable to Member States

This section describes EU law and other processes that directly or indirectly influence the organizational rules of national administrative law. The public administrations of 'older' EU Member States gradually evolve in a common direction, consistently taking each other's traditions and legal system into consideration, which in turn leads them towards a common journey, step-by-step, over decades of continuous cooperation. However, 'new' EU Member States get the results of this decade-long partnership usually in a non-negotiable package that has its effects on the Member States' administration.[75] Examples of the outcomes of this process are presented below, first in the order of the hierarchy of sources of law, then in the order of creation, and a summary table at the end of the chapter provides a legal overview of the material effects of the referenced sources of law.

5.1. European Grouping of Territorial Cooperation

The European Grouping of Territorial Cooperation (EGTC) is not only the first in the list but also slightly out of the ordinary, as it does not directly affect the separate administrations of EU Member States, but does so indirectly through its operation.

72 Rose-Ackerman and Perroud, 2013, pp. 277–282.
73 Craig, 2012, p. 175.
74 Saurer, 2010, p. 620.
75 Jakab, 2020, pp. 48–61.

Each EGTC brings together actors from at least two EU Member States or third-party countries (e.g. local authorities, regional authorities, or the State) in a single organization with full legal capacity, legal personality, own budget, organization, and contractual capacity (i.e. it can acquire movable and immovable property and can act before the courts). The members shall jointly elect the director and set up a general assembly comprising representatives of the members, and Article 10 of *Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)* lays down minimum requirements for the organizational structure of an EGTC. Accordingly, it is mandatory to establish an assembly comprising representatives of EGTC members and to appoint a director to represent and act on behalf of the EGTC.

5.2. Audit body for European Funds

The *Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget* proposed measures for EU Member States to establish an institutional system to safeguard a more effective control of the use of EU budgetary resources, and to lay down general criteria for protecting the EU budget. In compliance with the proposed criteria, an EU Member State may set up a so-called audit authority, which in Hungary is the Directorate General for Audit of European Funds (DGAEF). This public administration body is autonomous and thus acts independently, in its professional activities, from the managing authorities, the intermediate bodies, the certifying authorities, and the beneficiaries; its main rules regarding status, organization, tasks, and procedures are laid down in Act XLIV of 2022. The DGAEF was established ten years earlier, in 2010, by a government decree.[76]

5.3. National media and communication authorities

The Article 3(2) (National regulatory authorities) of *Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)* requires EU Member States to guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from, and functionally independent of, organizations providing electronic communication networks, equipment, or services. Furthermore, where an EU Member State has retained ownership or control of such undertakings, it shall ensure effective structural separation of the regulatory function. The National Media and Infocommunications Authority (NMHH) of Hungary was created by the Parliament on August 11, 2010 by Act LXXXII of 2010 amending certain laws regulating media and communications and merging the National Radio

76 Government decree no. 210/2010. (VI. 30.) on the Directorate General for Audit of European Funds, in compliance with Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999.

and Television Authority (ORTT; i.e. responsible for media regulation) with the National Communications Authority (i.e. supervised the communications sector). The Authority (and its predecessors) is guaranteed independence by law, with organizational and operational autonomy, a budget, and revenue in the form of a supervision fee.

5.4. National regulatory authorities under the Directive on the internal market in electricity

The establishment of the national regulatory authorities (NRAs) is uniformly required by EU law for EU Member States, based mainly on market regulation and consumer protection considerations. *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC* sets out the requirements for the role, powers, and quality of the national regulatory authority in Articles 35 et seq. Under the Directive, the establishment and independence of the national regulatory authority is mandatory, meaning that the authority must exercise its powers impartially and transparently, legally distinct and functionally independent from any other legal entity or market interest, and cannot seek or take instructions from any other authority. One of the most striking examples of independence is that the term of office of the chairman, which ranges from 5 to 7 years, is set independently from the parliamentary term. In Hungary, this national regulatory authority is the Hungarian Energy and Public Utilities Regulatory Authority,[77] established in 2013 as the successor to the former Hungarian Energy Office. In Hungary, the term of office for the president of the authority is 7 years.

5.5. Case analysis: specific recommendations for the EU Member State of Hungary in 2022

This section discusses the effects of the *Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary* (hereinafter referred to as Proposal).[78] It specifically explores Component I.9: Governance and Public Administration, which includes measures to establish, among others, a new Directorate for Internal Audit and Integrity (DIAI), a new Integrity Authority, and a new Anti-Corruption Task Force (ATF). The institutional changes are presented starting from within the governmental organization system and moving towards autonomous public administration bodies.

77 Examples of other authorities in EU Member States are Konkurentsiamet (Estonian Competition Authority) in Estonia, Sabiedrisko pakalpojumu regulēšanas komisija (Public Utilities Commission) in Latvia, Nationalacde Reglementari in domeniul Energiei (Energy Regulatory Authority) in Romania, and Agencija za energijo (Energy Agency) in Slovenia.

78 COM/2022/686 final [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0686 (Accessed: 12 February 2024).

5.5.1. Directorate of Internal Audit and Integrity

In compliance with the Proposal milestone sequential number 224, Act XXVIII of 2022 established the Directorate of Internal Audit and Integrity within the Ministry responsible for the implementation of EU funds in Hungary.[79] This Directorate is responsible for the assessment and management of potential conflict of interest situations in relation to development projects implemented with EU funds for the programming periods 2014–2020 and 2021–2027. Its organizational requirements include full staffing in accordance with the selection methodology defined for the Integrity Authority, and the definition of the length of the mandate of senior officials, excluding the possibility of their dismissal. The Directorate for Internal Audit and Integrity has a broad remit to prevent, detect, and correct fraud, conflicts of interest, and corruption, as well as other irregularities and infringements in the implementation of EU funds, and it reports annually on its activities to the Integrity Authority.

5.5.2. Integrity Authority

The establishment of the Integrity Authority of Hungary in 2022 was unique in several ways. On the one hand, the necessity for a new authority is not so common as a first solution but rather serves as an alternative for the strengthening of pre-existing authorities, like in the case of Hungary, where there were—just to mention a few—the State Audit Office, the Government Control Office, and the DGAEF, which we already discussed. On the other hand, Hungary's corruption index decreased in recent years according to OECD,[80] stagnating around Bulgaria's numbers. Another perspective on this topic would be the extraordinary effectiveness of the use of directive-like recommendations, which in most cases give the national legislator a considerable margin of legislative manoeuvre.[81] In this case, however, we see that the Proposal milestone sequential number 160 was formulated with peculiar detail.

The work of the Authority is organized and managed by a Management Board comprising a President and two Vice-Presidents. These three Board members are in turn appointed by the President of the Republic of Hungary, based on the recommendation of the President of the State Audit Office of Hungary, for a non-renewable term of six years, without the countersignature of any member of the Government. Their professional qualities, qualifications, broad and undisputed experience in legal and financial matters relating to public procurement and the fight against corruption, their internationally recognised reputation, and their proven expertise in these fields are also considered. The members of the Management Board will be selected following an open call for applications based on a binding opinion on the fulfilment of the candidates' qualifications by the Eligibility Committee established

79 As of 2023, the Directorate of Internal Audit and Integrity is established within the Ministry of Regional Development under the State Secretary of European Union Development. See §148/A. of 5/2022. (VI. 17.) MvM ministerial order.

80 OECD – Hungary [Online]. Available at: https://oecd-public-integrity-indicators.org/countries/HUN (Accessed: 12 February 2024).

81 Láncos, 2022, pp. 89–92.

for this purpose. The Eligibility Committee shall be chaired by the Director-General of the DGAEF, and is convened by this Director-General following an open call for applications. The Committee shall be composed of three independent persons with recognised experience in international institutions, with a sufficiently long, proven, and relevant experience in the field of public procurement and/or fight against corruption. Members of the selection panel must not have held an elected political office or a political position in government, have worked for a political party or political foundation, nor have performed voluntary or paid activities for such organizations within the last five years.

Conflicts of interest rules in line with the principles set out in Article 61 of Regulation (EU, Euratom) 2018/1046 shall apply to members of the selection panel for a period of five years after the issuance of the binding opinion. Members of the Eligibility Committee shall, before taking up their duties on the Committee, disclose their interests and assets and declare that they have no conflict of interest. In addition, members of the Board may not, during their term of office, engage in any remunerated activity (except for academic activities and related publications) in the course of their work for the Integrity Authority, hold a controlling interest in a company, or be a member of a political party or political foundation. A member of the Management Board may be removed from office only if, following his or her appointment, he or she has a conflict of interest or if he or she has been convicted of a criminal offense by a final judgment in a criminal case relating to the work of the Integrity Board or affecting the independence and impartiality of the member concerned. The president of the Integrity Authority is an *ex officio* member of the Public Procurement Board under Proposal milestone sequential number 166 and also chairs the ATF. The president of the Integrity Authority shall exercise its rights as an employer over the staff of the Authority, which shall comprise at least 50 full-time employees, and be selected by the Management Board on the basis of merit.

5.5.3. ATF

Under the Commission's country-specific recommendations addressed to Hungary's recovery and resilience plan in accordance with *Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility*, the ATF was established. The members of the ATF, representing non-governmental actors, shall be selected by the Board of the Integrity Authority following an open call for applications and a binding opinion of the aforementioned Eligibility Committee on applicant eligibility. It should be ensured that the number of members representing non-governmental actors is half of the number of ATF members excluding the chairperson; if this cannot be ensured, the voting percentage of members representing non-governmental actors should be adjusted to half of the number of votes excluding the chairperson. The ATF chairperson shall be the president of the Integrity Authority, but the ATF shall not interfere in the activities of the Integrity Authority and shall not have access to its activities. The ATF meets at least twice a year and takes its decisions by simple majority. The members representing

non-governmental actors have the additional possibility to adopt a 'shadow report', which must be published together with the annual report of the ATF, even if the members representing non-governmental actors have voted in favour of the annual report of the ATF.

An interesting addition to the commitments that Hungary undertook in line with the Proposal milestone sequential number 169 was to ensure the creation of two additional judge positions and two court secretaries at the Central District Court of Buda no later than December 31, 2022. This is connected with the introduction of a special procedure for major offenses regarding the exercise of public power or public property management. Although this is not part of the changes to the administrative organization, it is so specific and unusual that it is worth mentioning.

It can be seen that most of the previous actual or quasi-legislation, which primarily concerned the organizational system, has retained the general formulation of the independence criterion. However, to find a satisfactory solution, the political measures taken in the form of the directive-like recommendations are very direct, clear, firm (vs. previous proposals), and do not shy away from political innovation of this kind.

6. Conclusions

This paper conducted and in-depth review of the international and EU legal environment for the organization of public administrations. It may be concluded that, although at first sight organizational matters seem to be the exclusive competence of states because of sovereignty, the range of influences on the organization of public administrations is so wide that it is difficult to speak of a 'complete' autonomy of sovereigns.

We specifically examined both international law and EU *stricti iuris* normative rules, as well as soft law documents. The examined international documents avoid administrative organizational rules and are careful to avoid even the appearance of interfering with the internal rules of the organization of EU Member States. The rules referring to organizational law are usually of an underlying nature (i.e. are hidden behind a substantive or procedural rule), as an EU Member State must also have an appropriate organization to comply with a substantive legal condition. Nevertheless, the international and EU rules examined suggest that, to a limited extent, direct administrative organizational rules also appear in international and EU law, implying that the sovereignty of states is limited—even in organizational law terms.

An important question that may be brought up at this point is how is this sovereignty limitation created? In attempting to answer to this question, this study finds that one category of actions that create such limitations is (a) voluntary limiting acts, coming in the format of treaties wherein EU Member States undertake to limit their organizational sovereignty to a certain extent, with examples including the contact point networks under consideration or the soft agency obligations of the

UN Convention on the Rights of the Child to protect children. The other category of actions is (b) external sovereignty limiting acts, where a multilateral treaty creates an institution empowered to impose obligations on EU Member States. Examples of the latter include the legislative obligation established by the UN Security Council, or the secondary legislation of the EU itself.

In the case of a sovereignty-limiting act coming from an external actor, it is particularly important that there is a limit in the content (i.e. limited authority) and adequate control over the issuer's activities. This is less likely to be the case in international law, which is why we have seen that orders of an organizational nature in international law are much 'softer'. The organizational law provisions of EU secondary legislation are more specific, but are limited in both content and form, and there is a possibility of judicial control.

Among the normative orders, which also concern organizational rules from external actors, EU regulatory agencies have a very special place. The EU, on the basis of the *Meroni* doctrine referred to above, avoids the creation of genuine Anglo-Saxon-type regulatory agencies and grants them only limited powers of rule-making. In our view, this issue points to a fundamental difference in legal understanding between common law and continental law from a comparative legal perspective. Moreover, the only organizational rules directly reflected in both legal and non-legal sources, such as opinions, studies, and reports, are the civil service (public personnel) and related labour law issues, as well as the appointment of organizational leaders (procedural law) and their legal relationship.

Overall, this study shows that international rules on organizational law are rarely binding. When they do, they do so to provide guarantees (e.g. the Charter of Local Self-Government) or to achieve uniformity (e.g. the organizational rule on autonomy in the ECN+ Directive under analysis) along with guarantees. However, in most cases both international law and EU law provide support, information, and coordination to ensure the interoperability of EU Member States organizational systems. The collection and sharing of good practices are consistently an evergreen theme, and also as the world becomes more globalised.

Overview of Organizational Rules Applicable to Member States				
	Affected Member State organization	**Source of law/document having legal effect**	**Organizational definition and changes in organization**	**Temporal scope**
1.	European Grouping of Territorial Cooperation (EGTC)	*Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)*	Independent budget, organization, director (elected by members), and general assembly of members' delegates.	2020-
2.	Audit body for European Funds	*Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget*	Autonomous public administration body, independent in its professional activities from the managing authorities, intermediate bodies, certifying authorities, and beneficiaries.	2020- (2010-)
3.	National media and communication authorities	*Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)*	Legally distinct from and functionally independent of organizations providing electronic communications networks, equipment, or services.	2002-
4.	National regulatory authorities under the Directive on the internal market in electricity	*Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC*	Must be established and independent, must be legally distinct and functionally independent from any other legal entity or market interest, the term of office of the president is determined independently of the parliamentary cycle: 5–7 years.	2009-
5.	Directorate of Internal Audit and Integrity (DIAI)	*Annex to the Proposal for a Council Implementing the Decision on the approval of the assessment of the recovery and resilience plan for Hungary (milestone sequential number 224)*	Full staffing according to the selection methodology defined for the Integrity Authority, and the predetermined length of the mandate of senior officials, excluding the possibility of their dismissal.	2022-

6.	Integrity Authority (IA)	*Annex to the Proposal for a Council Implementing the Decision on the approval of the assessment of the recovery and resilience plan for Hungary (milestone sequential number 160)*	– Organized and managed by a Governing Board comprising a President and two Vice-Presidents. – Members of the Board are appointed by the President of the Republic of Hungary, on the recommendation of the President of the State Audit Office of Hungary, for a non-renewable term of six years, without the countersignature of any member of the Government. – The President of the Integrity Authority is an ex-officio member of the Procurement Council and chairs the Anti-Corruption Task Force. The President of the Integrity Authority shall exercise the rights of the employer over the staff of the Authority, which shall comprise at least 50 full-time staff.	2022-
7.	Anti-Corruption Task Force (ATF)	*Country-specific recommendations addressed to Hungary's recovery and resilience plan in accordance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility*	– Members of ATF, representing non-governmental actors, are selected by the managing board of the IA. – Half of the actual number (or voting percentage) of members represent non-governmental stakeholders, excluding the chairperson. – Chairperson of ATF is the president of the IA, and there is no interference nor access from ATF into IA activities. – The ATF meets twice a year, with a simple majority decision-making. – Members representing non-governmental actors can adopt a so-called shadow report, which has the same publicity as the official ATF report.	2022-

Bibliography

Abbott, K.W., Snidal, D. (2000) 'Hard and Soft Law in International Governance', *International Organization*, 54(3), pp. 421–456 [Online]. Available at: https://doi.org/10.1162/002081800551280 (Accessed: 11 February 2024).

Ádány, T. (2020) 'A szuverenitás gyakorlásának nemzetközi jogi keretei' in Csink, L., Schanda, B., Varga, Zs. A. (eds.) *A Magyar közjog alapintézményei*. 1st edn. Budapest: Pázmány Press, pp. 229–256.

Bastos, F. B. (2021) 'Doctrinal Methodology in EU Administrative Law: Confronting the "Touch of Stateness"', *German Law Journal,* 22, pp. 593–624 [Online]. Available at: https://doi.org/10.1017/glj.2021.20 (Accessed: 11 February 2024).

Baumgart, L., Muster, J. (2023) Organization not found: Ein organisationssoziologischer Blick auf die Digitalisierung als Verwaltungsreform. *Gruppe. Interaktion. Organisation. Zeitschrift für Angewandte Organisationspsychologie (GIO),* 54, pp. 177–185 [Online]. Available at: https://doi.org/10.1007/s11612-023-00681-w (Accessed: 11 February 2024).

Bobek, M. (2017) 'The effects of EU law in the national legal systems' in Barnard, C., Peers, S. (eds.) *European Union Law European Union Law.* 2nd edn. Oxford: Oxford University Press, pp. 143–176.

Craig, P. (2011) 'Shared Administration and Networks: Global and EU Perspectives' in Anthony, G., Auby, J-B., Morison, J., Zwart, T. (eds) *Values in Global Administrative Law.* 1st edn. Oxford and Portland: Hart Publishing, pp. 81–116.

Craig, P. (2012) *EU Administrative Law.* 2nd edn. Oxford: Oxford University Press; https://doi.org/10.1093/acprof:oso/9780199568628.001.0001.

Crawford, J. (2012) *Brownlie's Principles of Public International Law.* 8th edn. Oxford: Oxford University Press.

Edwards, D. (1996) 'Judicial Activism—Myth or Reality? Van Gend en Loos, Costa v. ENEL and the Van Duyn Family Revisited' in Campbell, A.I.K., Voyatzi, M. (eds.) *Essays in the Honour Of Lord Mackenzie-Stuart*. Gosport: Trenton, pp. 29–67.

Fox, W.F. (2012) *Understanding Administrative Law.* 6th edn. Durham: Carolina Academic Press – LexisNexis.

Hoffmann, I. (2015) *Gondolatok a 21. századi önkormányzati jog fontosabb intézményeiről és modelljeiről – A nyugati demokráciák és Magyarország szabályozásainak, valamint azok változásainak tükrében*. Budapest: ELTE Eötvös Publishers.

Jakab, R. (2020) 'The Influence of EU Law on Public Administration in New Member States', *Public Governance, Administration and Finances Law Review,* 5(1), pp. 48–61 [Online]. Available at: https://doi.org/10.53116/pgaflr.2020.1.3 (Accessed: 12 February 2024).

Jennings, R., Watts, A. (eds.) (2008) *Oppenheim's International Law.* 9th edn. Oxford: Oxford University Press; https://doi.org/10.1093/law/9780582302457.001.0001.

Kálmán, J. (2013) 'Az európai ügynökségek és a Meroni-doktrína', *De iuris pridention et iuris publico: Jog- és politikatudományi folyóirat,* 8(3), pp. 57–73 [Online]. Available at: https://real.mtak.hu/13841/1/Az%20eur%C3%B3pai%20%C3%BCgyn%C3%B6ks%C3%A9gek%20%C3%A9s%20a%20Meroni%20doktrina.pdf (Accessed: 12 February 2024).

Kardos, G. (2018) 'Az államok szuverén egyenlősége', *Internetes Jogtudományi Enciklopédia*, [Online]. Available at: http://ijoten.hu/szocikk/az-allamok-szuveren-egyenlosege (Accessed: 31 July 2023).

Koopmans, T. (2011) 'Globalisation of Administrative Law – the European Experience' in Anthony, G., Auby, J-B., Morison, J., Zwart, T. (eds.) *Values in Global Administrative Law.* 1st edn. Oxford and Portland: Hart Publishing, pp. 393–406.

Láncos, P. L. (2022) *The Many Facets of EU Soft Law.* Budapest: Pázmány Press.

OECD (2023) 'Government at a Glance 2023', *OECD Publishing*, 30 June. [Online]. Available at: https://doi.org/10.1787/3d5c5d31-en (Accessed: 12 February 2024).

Polt, P. (2019) *A költségvetés büntetőjogi védelmének egyes elméleti és gyakorlati kérdései – Hazai gyakorlat és uniós mechanizmusok*. Budapest: Dialog Campus.

Rasmussen, M. (2014) 'Revolutionizing European Law: The History of the Van Gend en Loos judgment', *European Journal of International Law,* 25(1), pp. 136–163 [Online]. Available at: https://doi.org/10.1093/ejil/chu023 (Accessed: 12 February 2024).

Rose-Ackerman, S., Perroud, T. (2013) 'Policymaking And Public Law In France: Public Participation, Agency Independence, And Impact Assessment', *Columbia Journal of European law,* 19(2), pp. 225–312 [Online]. Available at: https://hal.science/hal-01699022 (Accessed: 31 July 2023).

Sand, P.H., McGee, J. (2022) 'Lessons learnt from two decades of international environmental agreements: law', *International Environmental Agreements: Politics, Law and Economics,* 22, pp. 263–278 [Online]. Available at: https://doi.org/10.1007/s10784-022-09572-9 (Accessed: 12 February 2024).

Saurer J. (2010) 'Supranational governance and networked accountability structures: Member State oversight of EU agencies' in Rose-Ackerman, S., Lindseth P.L. (eds.) *Comparative Administrative Law.* Cheltenham: Edward Elgar, pp. 618–631; https://doi.org/10.4337/9781849808101.00050.

Snyder, F. (1993) 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques', *The Modern Law Review,* 56(1), pp. 19–54 [Online]. Available at: https://doi.org/10.1111/j.1468-2230.1993.tb02852.x (Accessed: 12 February 2024).

Stene, E.O. (1940) 'An Approach to a Science of Administration', *The American Political Science Review,* 34(6), pp. 1124–1137 [Online]. Available at: https://doi.org/10.2307/1948193 (Accessed: 12 February 2024).

Tamás, A. (2010) *A közigazgatási jog elmélete*. Budapest: Szent István Társulat.

Terpan, F. (2014) 'Soft Law in the European Union – The Changing Nature of EU Law', *European Law Journal*, 21(1), pp. 68–96 [Online]. Available at: https://doi.org/10.1111/eulj.12090 (Accessed: 12 February 2024).

Varga, Á. (2021) *A helyi önkormányzáshoz való jog alapvető kérdései*. Budapest: Pázmány Press.

Varga, Zs. A. (2020) 'Magyarország szuverenitása' in Csink, L., Schanda, B., Varga, Zs. A. (eds.) *A Magyar közjog alapintézményei*. 1st edn. Budapest: Pázmány Press, pp. 257–287.

Waldo, D. (1948) *The Administrative State*. New York: Roland.

Waldo, D. (1955) *The Study of Public Administration*. Garden City, NY: Doubbleday and Co. Inc.

Joseph, H.H., Weiler, J.H.H. (2003) 'Rewriting Van Gend en Loos: Towards a Normative Theory of ECJ Hermeneutics' in Wiklund, O. (ed.) *Judicial Discretion in European Perspective.* 1st edn. The Netherlands: Kluwer Law International.

International documents

Report on the Rule of Law, Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011) CDL-AD(2011)003rev.

Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration.

CDL-PI(2023)016-bil Ukraine – Information on the follow-up to the Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the HCJ and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068).

CDL-AD(2023)015-e France – Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023).

CDL-AD(2022)045-e Romania – Urgent Opinion on three Laws concerning the justice system, issued on 18 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure. Endorsed by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022).

CDL-AD(2021)036-e Hungary – Opinion on the amendments to the Act on the organization and administration of the Courts and the Act on the legal status and remuneration of judges adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021).

CDL-AD(2012)011-e Opinion on the Act on the Rights of Nationalities of Hungary adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012).

CDL-AD(2015)015-e Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015).

CDL-AD(2010)040 Report on European Standards As Regards The Independence of the Judicial System: Part II – The Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010).

Opinion (2012) No. 7 of The Consultative Council of European Prosecutors on the Management of the Means of Prosecution Services.

Regulation (Eec) No 337/75 Of The Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training.

Regulation (EEC) No 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions.

The Operating Framework for the European Regulatory Agencies, COM(2002) 718 final, 5.