

# Europeanisation and the nation state - some key concepts

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## Question:

- What role for European and national authorities in the "European administrative space"?
- Is there a need for a comprehensive regulatory regime for administrative cooperation in individual matters within the EU administrative space?
  - Focus on the principle of good administration, data protection and the right to an effective remedy in cross-border administrative matters.

# Commission proposal for a regulation on additional procedural rules under the GDPR, COM/2023/348 final

Procedural rules in cross-border matters:

- Legal standing of complainants before data protection authorities
  - Complainants have the right to some participation vis-à-vis the Data Protection Authority in their own country
  - Right to notification of remedies
- Procedural rights for parties
  - Right to be heard vis-à-vis the lead authority
- Co-operation and dispute resolution between data protection authorities

## Public administration in a democracy based on the rule of law

- The democratically enacted law is to be executed in an efficient manner.
- The exercise of public power is to be limited, applied in a law-bound and predictable manner, and within a framework of constitutional rules which ensure the protection of fundamental rights.

# Globalisation, Europeanisation and the role of the administration

- Anne-Marie Slaughter 2004, Sovereignty and Power in a Networked World Order
  - Sovereignty, self-determination and territoriality as challenged concepts in a networked world order
- Sabino Cassese, 2005, Nico Krisch & Benedict Kingsbury 2006: Towards a Global Administrative Law, GAL?

# Globalisation, Europeanisation and the role of the administration, cont

Giocinto della Cananea, Matthias Ruffert:

- Globalisation and Europeanisation have transformed administrative law, but also that the new role for administrative law is yet to be defined.

# EU: executive federalism

## Procedural autonomy under Rewe/Comet

- In the absence of EU law, including general principles, Member States may apply national law, taking into account:
- The principle of effectiveness:
  - the rules must not make it impossible in practice for individuals to exercise the rights that it is incumbent on national courts to protect
- the principle of equivalence:
  - the rules must not be less favourable than those applicable to a similar action of a national nature

# EU ways to affect national administrative procedures

- Article 6, 197 TFEU administrative co-operation
  - Supporting, coordinating and coordinating actions only
- Procedural rules are adopted via substantive legal basis, e.g. free movement, data protection
- Article 51 of the EU Charter and the right to data protection, good administration and an effective remedy at the national level



## C-349/07 Sopropé, recovery of customs debts

- "Observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual".
- This applies even though the EU legislation does not expressly provide for such a procedural requirement.

## C-617/10 Åkerberg Fransson, ne bis in idem

“...in a situation where action of the Member States is not entirely determined by EU law,  
national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised”

# C-276/12 Sabou, Exchange of Information among Tax Authorities

Directive 77/799 and the fundamental right to be heard does not confer on a taxpayer of a Member State participatory rights

- to be informed of a request for assistance
- the right to take part in formulating the request
- the right to take part in examinations of witnesses

# C-245/19 and C-246/19 État luxembourgeois v. B (F.C.-case), Exchange of Information among Tax Authorities

- A taxpayer whose information is being requested by a Member State as part of a tax investigation does not have an unequivocal right to challenge the request directly himself.
- Limitations to the right to an effective remedy may apply, if the national law of the Member State explicitly provides for it and the said limitation is proportionate.

## **C-496/17 Deutsche Post, personal data and the status of authorised economic operator**

The right to information under the GDPR could be relevant:

- “Further, it must be borne in mind that the requirement that processing of personal data be fair, [...], entails an obligation to inform the data subjects of the transfer of that data by customs authorities for the purposes of its subsequent processing.”

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# Is there a need for a comprehensive regulatory regime for administrative cooperation?

- Yes
  - The EU administrative space continues to grow in an ad hoc and fragmented manner, which is incompatible with rule of law ideals of a law-bound and predictable decision-making, ensuring fundamental rights.
- No
  - Sovereignty, self-determination and territoriality remains relevant. It remains difficult for constitutionally independent Member States to command and control a common administration.

# Europeanisation and the nation state – what way forward?

- There is no common concept of the right to good administration, transparency and effective remedies - data protection as the lead principle?
- Can a common administrative stage consist of both democratic and semi-authoritative states?
- High time to discuss these issues, before new Member States are admitted!