

Comparative Section

This Section of the Yearbook offers our readers an overview of the principal administrative, constitutional, legislative and jurisprudential developments of the past year across a selection of legal systems. For this issue, the survey extends to both the national level (France, Germany, Italy, Spain, the United Kingdom and the United States) and the European and global dimensions of administrative law.

EU Administrative Law

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This chronicle provides an overview of the main developments in EU administrative law, highlighting the increasingly close administrative cooperation between Member States and EU authorities. This cooperation has accelerated in the context of the EU integration process, particularly since the launch of the *Green Deal* strategy (which is currently under review) and has become even more necessary in the light of recent global events.

Furthermore, both administrative and judicial review of administrative acts are still highly fragmented. Meanwhile, the role of the preliminary ruling remains crucial to the development and understanding of EU administrative law itself in a global administrative space.

This brief essay focuses on the administrative law principles that guide the actions of Member States within a changing political framework. Equity and solidarity between Member States are essential to ensure that future generations inherit a healthy and sustainable environment. In this context, the four freedoms in the internal market are (also) influenced by sustainability objectives and the need to face the scarcity of some resources. In turn, the balancing of public interests that may conflict with private ones affects the Member States' procedural autonomy. The increasing administrative complexity in composite procedures cannot be overlooked in the functional pursuit of the objectives of the EU integration project.

A. Administrative cooperation as 'a matter of common interest'

This short contribution explores the evolution of EU Administrative Law and its impact on the national laws of Member States. EU administrative law is the law of the executive function and encompasses not only administrative law and procedure, but also the relationship between EU law and national administrative law. Specifically, it concerns how EU law affects the power of EU and national administrations to act. Scholarship currently focuses primarily on EU administrative integration, particularly the interconnections between national and EU legal frameworks in terms of regulation, organisation and procedure. This considers the activity of national and European authorities and bodies, as well as private and semi-private ones, which sets EU administrative law in the global administrative space.

Since the Lisbon Treaty, Article 4 TEU clearly requires the duty of sincere cooperation for both the Member States and the Union. Therefore '*From the specific perspective of EU administrative law, the principle of sincere cooperation implies a precise duty of mutual assistance between public administrations in the fulfilment of tasks arising from EU law*'¹ and to refrain from any measure which could jeopardise the attainment of the EU's objectives (Joined Cases C14/21 and C15/21 *Sea Watch*, 1 August 2022, para 156). Along with all the EU administrative law principles involved, the duty of sincere cooperation is a cornerstone for the administrative implementation of the *Green Deal*. Specifically, the Commission's approach involves coordinating the EU's strategy for achieving climate neutrality, while the Union is supposed to be transformed into a '*sustainable, fair and prosperous society*', with the implementation of legislative measures being left to the national administrations.²

1 Ibid, p. 80.

2 Chiti, E., 'Managing the ecological transition of the EU: The European Green Deal as a regulatory process', *CMLR* 2022, vol. 59, issue 1, pp. 19-48.

The *EU Climate Law*,³ setting out a binding objective of climate neutrality in the Union by 2050, calls on the EU and Member States to consider the importance of promoting fairness and solidarity among Member States and cost-effectiveness in achieving this objective (Article 2). Thus, it seems that fairness and solidarity⁴ are overarching principles that must be observed in order to comply with the principle of sincere cooperation.

When it comes to fairness in the *Green Deal* strategy, flexibility and adaptability are key. This is because programmes and measures for protecting and managing the environment need to be flexible and adaptive. For some time now, this feature has been the premise for many legislative acts concerning the environment (see Recital 34 of Directive 2008/56), but fairness is a very versatile principle, as in equality law,⁵ collective bargaining,⁶ competition law,⁷ sports law,⁸ to name a few. Even if it is quite difficult to define the content of this principle, fairness is often linked with the principle of solidarity and the common understanding that efforts are to be shared between Member States. Along these lines, *Renewable energy communities* introducing provisions on self-consumption not only fairly empower citizens in the clean energy transition, but also may also help increase the local acceptance of renewable energy projects in a solidaristic idea of the community.⁹ Also, the *RePower EU Plan*¹⁰—staking its strategy on renewable energy as a tool to endeavour energy autonomy in the EU—is aiming to promote fair and affordable prices for citizens in the EU energy field.¹¹ Moreover, access to incentives intended to support energy policies may be subject to conditionality measures. Although EU funds in general have become marked by the massive use of conditionality,¹² *Next Generation EU* encompasses a functionalisation of the funding mechanism approved in the emergency context of the pandemic crisis towards both the ecological and the digital transition.¹³

3 Regulation (EU) 2021/1119.

4 Conclusions of the European Council of 10-11 Dec. 2020.

5 See Directive (EU) 2023/970, to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

6 On this purpose see Directive (EU) 2022/2041 on adequate minimum wages in the European Union. It's still pending an action for annulment, C-19/23, *Kingdom of Denmark v European Parliament and Council* brought on 18th January 2023, where Denmark assumed that the contested directive interferes directly with the determination of the level of pay in the Member States and concerns the right of association, which is excluded from the competence of the EU legislature pursuant to Article 153(5) TFEU. The recent Opinion of Advocate General N. Emiliou, delivered on 14 Jan. 2025, is embracing this thesis.

7 European Commission, 'Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons', 30th Sept. 2022.

8 CJEU, 21st Dec. 2023, C-333/21, *European Superleague Company SL*, ECLI:EU:C:2023:1011, para 97. See also *infra* para. I. 2.

9 Fleming, R., Huhta, K., Reins, L. (eds.), *Sustainable Energy Democracy and the Law*, 2021, Brill, Leiden; Frans, H. J., Coenen, M., Hoppe, T. (eds.), *Renewable Energy Communities and the Low Carbon Energy Transition in Europe*, 2021, Springer.

10 European Commission, 'RePower EU Plan', 18th May 2022, COM(2022) 230 final.

11 Directive (EU) 2023/2413, Recital 4.

12 De Witte, B., 'The European Union's COVID-19 recovery plan: The legal engineering of an economic policy shift', *Common Market Law Review*, No. 3, 2021, pp. 635-682.

13 De Bellis, M., 'Il ruolo di indirizzo e controllo della Commissione europea nel dispositivo per la ripresa e la resilienza: la trasformazione della condizionalità', *Diritto costituzionale: rivista quadrimestrale*, 2022, No. 2, p. 47.

Generally speaking, conditionality is also linked to respect for the rule of law,¹⁴ as established in Regulation (EU) 2020/2092, which makes it possible to strengthen the oversight of the practice and law in Member States¹⁵, as in the case of Hungary¹⁶. Therefore, the rule of law has a strong impact on EU administrative law (and its execution).¹⁷ From this perspective, the execution of EU law functionalised to realise the objectives set in Article 3 TEU can no longer be separated from environmental issues, as well as the fairness and the effectiveness of administrative action.

B. Freedom in the internal market, environment, consumers

If it is true that domestic administrative law is an instrument of the EU's executive function, then it is also true that EU law directly affecting national administrative procedure restricts the procedural autonomy of Member States and obliges administrations to adapt their procedures. Therefore, administrations must not only deal with regulatory issues but also manage several procedural phases influenced by EU law, often seeking to strike a balance between all the interests at stake *ex post*.

I. Authorisation schemes and procedures and the implementation of the *Services Directive*

In CJEU case C-348/22 *Comune di Ginosa*, the focus is on the compatibility of the Italian regime for the renewal of state-owned maritime concessions with EU law. The case addresses the issue of service activities exploiting natural resources in cases of scarcity.¹⁸ The Services Directive 2006/123/EC has clearly had a significant impact on national administrative law institutions, as evidenced by the infringement procedures opened by the EU Commission in Italy, Spain and Portugal. The Directive has also impacted the duration and renewal of numerous authorisation schemes (Article 13). Obviously, when a scarce resource is involved, the selection process takes place at an upstream stage. This means that the selection procedure must be conducted even if the authority considers that the number of available candidates is less than the number of authorisations to be issued. Public administration will evaluate the characteristics and requirements of those who have applied. Indeed, the determining factor for falling within the scope of a procedure pursuant to Article 12 of Directive 2006/123/EC is not the number of applicants,

14 Regulation (EU) 2020/2092 establishes that the EU can suspend funding to Member States if they are found to be violating the fundamental principles of the rule of law.

15 Sadurski, W., 'How is Constitutional Breakdown Possible in an EU Member States', in Gromek-Broc, K., Monica, A., (eds.), *Quo vadis ius publicum Europaeum. Liber amicorum in onore del prof. Jacques Ziller*, 2023, Editoriale Scientifica, Napoli, p. 154.

16 Council Implementing Decision (EU) 2022/2506 of 15 Dec. 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.

17 See article 4 and article 6 of Regulation (EU) 2020/2092.

18 Monica, A., 'Squaring the circle: why the *Comune di Ginosa* case C-348/22 matters for other Member States', Realaw blog, 23th Feb. 2024.

but rather the limited number of authorisations available.¹⁹ The *Comune di Ginosa* judgment has established the direct effect of Article 12 of the Services Directive (para 69), which means that selection procedures are to be carried out according to transparency and non-discrimination principle. However, the CJEU highlighted the existence, for the Member States, of ‘a certain margin of discretion in the choice of criteria applicable to the evaluation of natural resources’ which could lead them to prefer an evaluation valid for the whole territory, rather than a case-by-case approach that enhances the local territory, or even to combine these two approaches (C-348/22, para 46).

In any case, whenever a selection procedure is required, Article 12 (1) and (2) could attribute positive legal positions to ‘third parties’ (potential service providers, consumers) who are excluded from entering the specific service market, because there are no areas available for public selection procedures. This is the most interesting aspect stemming from this case according to the exploitation of activities falling under the scope of the Services Directive, particularly from a comparative perspective among Member States. For instance, in Italy this judgment had immediately a direct impact on access to local markets;²⁰ in France, however, it may present challenges, particularly with regard to the automatic renewal of hydroelectric concessions (which are not detached from environmental issues), their expiration, and their reopening.²¹

1. *Gambling and consumer protection: C-517/20 OL*

It is well known that Member States’ implementation of EU law is based on autonomous choices regarding methods, means, procedures and competent authorities,²² and this is also the case for gambling. In this field, Member States are free to set the objectives and precisely define the level of protection sought, however, they must fulfil the conditions set by the EU Court for proportionality in compliance with EU Treaty provisions on freedom of movement.

In case C-517/20 *OL*²³ the CJEU addresses the issue of the extension of concessions in the gambling sector by national law²⁴ and the real purpose of ensuring the continuity of control over the operators as to guarantee consumer protection. The case originates from a criminal proceeding, as the Italian operator collected bets on behalf of an Austri-

19 Hissanuer, D., ‘Auswirkungen der Dienstleistungsrichtlinie auf das deutsche Genehmigungsverfahrenrecht’, *Nomos-Verl.-Ges*, 2009, Baden, p. 206.

20 C. Stato (VII section), 19 Oct. 2023, n. 9104.

21 Cour de Comptes, ‘Le renouvellement des concessions hydroélectriques’, 2 Dec. 2022. Available at: <https://www.ccomptes.fr/fr/documents/63106>. Garnier, C., ‘L’hydroélectricité et la loi du 16 octobre 1919 relative à l’utilisation de l’énergie hydraulique : que reste-t-il aujourd’hui d’une autorisation sectorielle au sein du droit global de l’eau ?’, *Revue juridique de l’environnement*, 2019, No. 3, 459-474.

22 Becker, F., ‘Application of Community Law by Member States’ Public Authorities: Between Autonomy and Effectiveness’, *CMLR* 2007, No. 4, p. 1037.

23 CJEU, 16 March 2023, C-517/20, *OL*, ECLI:EU:C:2023:219.

24 See the circular of the Italian Customs and Monopolies Agency (ADM) dated 09 June 2016, which confirms that, notwithstanding art.1, c. 933, Law 208/2015 setting the expiry date for all concessions at 30 June 2016, all concessions are extended *sine die* pending the call for tenders. <https://www.adm.gov.it/portale/documents/20182/2874759/Proroga+Concessionari.pdf/7de14f2b-1b6d-45a5-9faf-c2f424ab6b6d>. Finally, the calls for tenders have been published only on March 2024, with Italian Decree Law n. 41 (see article 6).

an bookmaker without having the concession and police licence required by Italian law.²⁵ Even though the EU Court has no evidence that the gambling contract falls within the meaning of Article 5(1)(b) of Directive 2014/23—which concerns agreements relating to the right of an economic operator to carry out activities in that sector—public authorities are still required to comply with the TFEU and the principle of non-discrimination of providers.²⁶ Overall, it is self-evident that this specific case presents striking cross-border elements. Furthermore, according to Article 49 TFEU and 56 TFEU, such extensions may restrict the fundamental freedoms of establishment and freedom to provide services, thereby closing the domestic market. Incidentally, the CJEU recognised that these restrictions may be justified by overriding reasons of public interest, such as consumer protection and the prevention of fraud or gambling excesses.²⁷ However, it is for the national court to assess whether the extension of the concessions is suitable to ensure these objectives and proportionate to achieve them.²⁸ Apart from the social order issues, it is worth noting the Court’s clarification that the issuing of new calls for tenders for the award of gambling concessions would represent a less restrictive measure of fundamental freedoms than the extension of existing concessions. Meanwhile, the interpretation provided by the Court clearly impacts the procedural autonomy²⁹ of public administration in Member States and its discretionary power regarding the discriminatory effects of an extension.

2. *The EU sport model and the Super League*

According to Article 165 TFEU, sport goes far beyond its economic dimension, and it is a pillar of the EU’s identity and culture.³⁰ Overall, in professional football, sports federations play a leading role.³¹ But, as the Court has claimed in judgment C-333/21 *European Super League Company*, the rules of the *Fédération internationale de football association* (FIFA) and the *Union of European Football Associations* (UEFA)—requiring prior authorisation for the organisation of new football competitions such as the Super League—can be declared contrary to EU law. Specifically, the conduct of FIFA and UEFA ‘where there is no framework for (...) various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position’ *ex* Article 102 TFE, or can prevent the competition, *ex* Article 101 TFEU. As such, rules on prior approval, participation and sanctions can affect competition. Not least, the restrictions imposed must also be proportionate under Article 56 TFEU on the freedom to provide services. This is because FIFA and UEFA simultaneously carry out various economic activities linked to organising competitions,

25 Article 88 of Italian Regio Decree No. 773/1931.

26 Joined cases C-458/14 and C-67/15, *Promoimpresa and others*, para 64.

27 *Ibid*, para 51.

28 CJEU, 16 March 2023, C375/17, *Stanley International Betting e Stanleybet Malta*, EU:C:2018:1026, para 46.

29 Lottini, M., *Principio di autonomia istituzionale e pubbliche amministrazioni nel diritto dell’Unione Europea*, 2020, Torino, Giappichelli, 142.

30 ‘The EU shall not only recognise but also promote the European Sport Model’, da Cruz Vilaça, J. L., ‘Safeguarding the European Sport Model in Professional Football: The EU Court of Justice’s Delicate Task in Case European Super League Company (C-333/21)’, *Ceridap Journal*, 2022, No. 4, p. 165.

31 CJEU, 11 April 2000, C-191/97, *Deliège*, ECLI:EU:C:2000:199, paras. 42 and 65.

while subjecting any third-party competition within the Union to their prior authorisation, exercising powers of control and imposing sanctions.

This judgement also focuses on the practical application of some restrictive rules and their justification under Article 165 TFEU, in view of certain objectives ‘*which themselves are contingent on the specific characteristics of the sport concerned*’.³² All these features as, for example, the central role of sports federations and the pyramidal structure of their organisation,³³ have been recognised in the Court’s case law over the years, starting with *Bosman*³⁴ in 1995, as well as in several EU soft law instruments, playing a role both in shaping a sport policy at the EU level and in promoting solidarity for society through football.³⁵ In a nutshell, this case, clarifying the limits of regulatory powers exercised by private bodies with public functions, challenges FIFA and UEFA’s monopoly on organising and managing of the commercial rights of football competitions,³⁶ paving the way for a new regulatory framework for football³⁷ that will promote greater competition in the sector.³⁸

II. Member States foreign investment control in strategic sectors

A Member State may exercise special control over foreign investment operations, especially in strategic sectors such as defence, critical infrastructure, energy, transports, and sensitive technologies. The relevant measures include the right to veto acquisitions or investments that could compromise national security or public order. EU Regulation 2019/452, (grounded on legal basis *ex* Article 207 TFEU) has established a framework for the screening by Member States and a cooperation mechanism between Commission and Member States³⁹ on its exercise.⁴⁰ Member States must comply with information requirements.⁴¹ As a consequence of the Covid-19 pandemic emergency and, more recently, with the risks arising from the conflict in Ukraine, many companies considered strategic had become particularly ‘attractive’ to foreign investors who had seen the pos-

32 C-333/21, *European Superleague Company*, op. cit., para. 106.

33 AG Rantos, Opinion of 15 Dec. 2022, C-333/21, *European Superleague Company*, ECLI:EU:C:2022:993, para. 96, 136; da Cruz Vilaça, J. L., op. cit., p. 145.

34 CJEU, 15 Dec. 1995, Case C-415/93, *Bosman and others*, ECLI:EU:C:1995:463.

35 C-333/21, *European Superleague Company*, op. cit., para. 235.

36 Ibid, para 224.

37 Íñiguez, G., ‘European Super League Company and the (New) Law of European Football’, *European Papers*, 2024, 1, pp. 1–15; Bastianon, F., ‘Una lettura ‘europea’ delle sentenze Superlega, Isu e Sa Royal Antwerp Fc’, *Il Diritto dell’Unione Europea*, 2023, No. 3-4, pp. 375-412; Irurzun Montoro, F., ‘Derecho de La Competencia y Deporte Profesional: Comentario a La Sentencia Del Tribunal de Justicia de La Unión En El Asunto Superliga’, *Revista Española de Derecho Europeo*, 2024, 2, pp. 117–150.

38 See the National decision following the preliminary ruling, Juzgado de lo Mercantil de Madrid, judgment, 24th May 2024. Available at: <https://www.poderjudicial.es/search/AN/openDocument/86e944f904a3d12ba0a8778d75e36f0d/20240530>.

39 EU Regulation 2019/452 Art. 6.

40 See also Communication from the Commission Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe’s strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation) 2020/C 99 I/01.

41 *Ex pluribus*, Sandulli A., ‘La febbre del golden power’, *Riv. trim. dir. pubbl.*, 2022, 743-764.

sibility of acquiring control at bargain prices, as declared in the *European Economic Security Strategy*.⁴² The judgment *Xella* C-106/22, where the Court of Justice ruled for the first time on the scope of application of EU Regulation 2019/452, underlines the increasing monitoring activity at the EU level on the domestic use of screening powers (and consequently on the procedural autonomy linked with national public interest) in order not to jeopardise a fair competition in the market. First, the Court clarified that a foreign investor is only that subject or legal person who is effectively constituted in a third country, while the place of origin of the shareholders is irrelevant, even where there is a non-EU controlling shareholder.⁴³ Therefore, in this case, the judgement excluded the applicability of Regulation 2019/452, not recognising the nature of foreign investor,⁴⁴ even though the activity of the operator *Xella* is to be considered among those classified as strategic by the Hungarian national law. Again, the Court ruled out the possibility that security of supply of gravel, sand and clay resulting from mining activities, could justify a restriction on the freedom of establishment⁴⁵ because they do not represent a '*genuine and sufficiently serious threat*'⁴⁶ for national interests.

III. Pesticides authorisation: between precaution and sustainability

Sustainable food production is key to creating a fair food market and protecting the health of ecosystems. The EU *Green Deal* aims to reduce the use and risk of chemical pesticides by 50% by 2030, through the *Farm to Fork* strategy,⁴⁷ promoting more sustainable agricultural practices. Therefore, the goal is an environment free of toxic substances in which chemicals are produced and used in a way which do not damage the planet, as well as current and future generations.⁴⁸

As a preliminary point, according to Regulation 2009/1107, an active substance employed in agriculture and related with the food chain is to be authorised after a risk analysis process. Indeed, the applicant shall apply for an authorisation (or for an amendment) to each of the Member States where he intends to place the product on the market. EFSA is tasked with the drafting of a scientific report outlining the concerns on health and safety.⁴⁹ Anyway, even though Member States and the EU Commission can apply the precautionary principle and, consequently, adopt provisional and adequate measures, if

42 Joint communication to the European Parliament, the European council and the council on 'European Economic Security Strategy', JOIN/2023/20 final.

43 Visconti, G.P., 'Golden power e libertà europee: verso una restrizione delle normative sul controllo degli investimenti esteri?', *Il diritto dell'economia*, 2024, No. 2, pp. 341-367.

44 C-106/22, *Xella*, paras. 54-56.

45 Para 69.

46 Para 71.

47 COM/2020/381 final.

48 EU Commission, Communication 14 Oct. 2020, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment, COM/2020/667 final.

49 Since 2003, EFSA has been responsible for the EU peer review of active substances used in plant protection products.

there is scientific uncertainty it is the EU Commission which is entitled to the final decision power of authorisation (renewal, revision or ban)⁵⁰ at the end of a composite procedure. Besides, the level of risk deemed unacceptable for society, potentially jeopardising the protection of public health, safety and the environment, will depend on the assessment made by the competent public authority of the particular circumstances of each individual case. That being the case, once EFSA identifies certain critical areas of concern, the Commission has longer discretion and any decision on the single case may be both ‘an application of the precautionary principle and a means of complying with the principle of proportionality.’⁵¹ Anyway, the broad discretion the EU Commission enjoys is not excluded from review by the EU Court and the scrutiny of the lawfulness of a decision. Indeed, the CJEU has ruled several times on the use of pesticides, in particular on the use of domestic derogations and compliance with EU law, as recalled in T-536/22 *Pan Europe*: ‘the Commission cannot, as a rule, depart from the results of such an assessment [by EFSA or the RMS], as otherwise it would breach the precautionary principle’.⁵² More interestingly, the aforementioned case, which stemmed from a rejection of a request for an internal review, highlights the increasing use of Article 10(1) of Regulation 2006/1367/EC,⁵³ which allows for an internal review of administrative acts in food safety.⁵⁴ This is possible on the demand of a non-governmental organisation, which is legitimised due to its involvement in food consumption and sustainability,⁵⁵ and which challenges the application of the precautionary principle. In addition to litigating on climate protection, these non-governmental organisations can also invoke the obligations set out in Regulation 1049/2001 on public access to documents. This emphasises the overriding public interest in disclosure, which takes precedence over the protection of the institutions’ decision-making processes.

Having said that, EU environmental governance, which is oriented towards the ambitious goal of climate neutrality and enhanced by participation in administrative decision-making processes in the broadest sense, relies on legal rules to comply with Article 11 TFEU. This is clearly shaped not only by Courts, but also by the ‘intricate relationship between climate measures and socio-environmental inequalities’⁵⁶ and the impact these dynamics have on the pursuit of effective equality among citizens to whom administrative action is directed, with increasing complexity.

C. Review of executive action

Administrative acts of EU institutions, bodies, offices, and agencies may be subject to re-

50 Specifically, the authorisation is adopted with an Implementing Regulation, according to articles 20 and 79 of Regulation 2009/1107.

51 CJEU, 21 Feb. 2024, T-536/22, *Pan Europe*, ECLI:EU:T:2024:98.

52 Ibid, para 65.

53 This Regulation has been recently modified by Regulation (EU) 2021/1767.

54 See also, the recent internal review: EFSA, ‘Scientific assistance on the internal review under Regulation EC No 1367/2006 of Commission Implementing Regulation EU 2023 515 renewing the approval of the active substance abamectin in accordance with Regulation EC No 1107/2009’, 1 June 2023.

55 Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030.

56 Armeni, C., ‘What justice? The scope for public participation in the European Union Just Transition’, *CMLR* 2023, No. 4, p. 1031.

view through an internal procedure or under judicial oversight in compliance with Article 47 of the EU Charter, which affirms the right to an effective remedy and to a fair trial. With regard to administrative remedies, in the absence of an EU administrative procedure act,⁵⁷ specific provisions exist in EU sectoral legislation, such as Regulation (EU) 1025/2013, which confers specific tasks on the ECB and allows for the supervision of credit institutions. Some agencies have also been established, in their founding Regulation, with boards of appeal that legal scholars describe as ‘*administrative review bodies*’ or ‘*quasi-judicial bodies*’:⁵⁸ each operates under its own distinct legal regime to adjudicate and decide appeals, yet they share important similarities.⁵⁹ The procedure that they apply can always be annulled by the General Court and, in appeal, by the Court. Recently, the ruling C-46/21 P *ACER v. Aquind Ltd*⁶⁰ seems to define the new standard of review for acts of EU agencies which are applicable to all existing BOAs.⁶¹ In this case, the Court admitted that ‘*BOAs must, in principle, go further, in certain assessments, in their review of the facts and evidence than the courts, and also apply what are, effectively, more stringent tests in determining whether an agency decision should be vitiated*’.⁶² According to its jurisprudential precedents,⁶³ the Court is only entitled to determine whether there has been a manifest error of assessment or a misuse of powers, or whether the relevant authorities have exceeded the limits of their discretion. Undoubtedly, this decision raises interesting questions as to whether EU judges, in carrying out such a thorough review, can ensure effective judicial protection for plaintiffs in cases where disparities in assessment could compromise the rights of certain individuals.

Turning again to the internal review of administrative acts, Regulation (EU) 2006/1367, whose legal basis is Article 175 TCE,⁶⁴ provides for a specific request for internal review of administrative acts ‘*to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act*’.⁶⁵ This possibility, to be examined within the broader context of access to justice according to Article 9 of Aarhus Convention⁶⁶ (and its transposition in the EU),⁶⁷

57 See the attempt of ReNEUAL network to codify the Eu administrative procedure setting some ‘model rules’ as a draft proposal for a binding legislation. Craig, P., Hofmann, H., Schneider, J. P., Ziller, J. (eds.), *ReNEUAL Model Rules on EU Administrative Procedure*, 2017, Oxford, OUP.

58 Chamon, M., *EU Agencies*, 2016, Oxford, OUP, 338-346.

59 AG., para 41.

60 CJEU, 9 March 2023, Case C-46/21 P, *ACER v. Aquind Ltd*, ECLI:EU:C:2023:182.

61 Tovo, C., ‘Sindacato sulla discrezionalità tecnica e obbligo di motivazione delle Commissioni di ricorso delle agenzie dell’UE: novità, opportunità e criticità dopo Aquind e TenneT TSO’, *Rivista del contenzioso dell’Unione europea*, 2024, No. 3.

62 Navin-Jones, M., ‘A Legal Review of EU Boards of Appeal: Part 2 The Role and Functioning of EU Boards of Appeal’, in *European Public Law*, 2024, No. 3, pp. 276.

63 CJEU, 21 July 2011, C-14/10, *Nickel Institute*, para. 60, ECLI:EU:C:2011:503; CJEU, 9 March 2023, C-119/21 P, *PlasticsEurope AISBL*, ECLI:EU:C:2023:180.

64 Now article 191 TFEU.

65 Regulation (EU) 2006/1367, article 10.

66 On Aarhus Convention, in general see: Pallemarts, M., *The Aarhus Convention at ten: interactions and tensions between conventional international law and EU environmental law*, 2011, Zutphen, Europa Law Publishing.

67 Eliantonio, M., Ritchell, J., ‘Access to Justice in Environmental Matters in the EU Legal Order: The ‘Sectoral’ Turn in Legislation and Its Pitfalls’, *European Papers*, 2024, No. 1, pp. 261-274.

was initially granted to a qualified environmental NGO. More recently, the new Regulation (EU) 2021/1767, amending Regulation 1307/2006, has broadened access to internal review to ‘*other members of the public*’.⁶⁸ Of course, any act resulting from an internal review can be challenged before the courts. However, even where the environment is not concerned, the action for annulment of EU administrative acts is always available under Article 263 TFEU, which sets the parameters that limit the admissibility of annulment actions. So, if the Court declares an act void, the respondent EU institution, body, office, or agency, is required to take any action needed to correct the situation.⁶⁹ However, domestic administrative law or decisions giving execution to EU law must be challenged before the relevant Member States’ courts. The preliminary ruling is a remedy in the hands of the national court to challenge the validity of secondary law that might not be possible to challenge in the form of annulment actions before the CJEU.⁷⁰

Against this backdrop, we cannot overlook the decisional interdependence between national and EU authorities which led to a final act as the result of the cumulative exercise of executive functions shared between the EU and Member State levels. For example, these new forms of shared execution of EU law⁷¹ are well established in the implementation of many EU policies based on multilevel administrative cooperation such as the Banking Union,⁷² environmental law, and medical and food authorisations. This model turns both EU and Member State authorities into a single composite framework⁷³ where they exercise decision-making powers jointly.⁷⁴ Additionally, the level at which an act may be judicially reviewed is not necessarily the same as the level at which there may be a review of the ‘*irregularities leading up to that measure’s adoption*’.⁷⁵ As confirmed in the *Berlusconi* case C-219/17,⁷⁶ raised by the Italian Council of State, which in turn refers to and develops the *Borelli* case law of 1992,⁷⁷ national courts are precluded from reviewing the legality of decisions to initiate procedures, preparatory acts or non-binding proposals adopted by competent national authorities, given that it is the ECB that is entitled to adopt the binding decision.⁷⁸

68 Regulation (EU) 2021/1767, article 1.

69 Galetta, D.U., Ziller, J., *EU Administrative Law*, op. cit., 253.

70 CJEU, 8 Nov. 2022, C873/19, *Deutsche Umwelthilfe e.V.*, ECLI:EU:C:2022:857.

71 Ziller, J., ‘Introduction. Concepts d’administration directe, d’administration indirecte et de coadministration et fondements du droit administratif européen’ in Auby, J.-B. et Dutheil de la Rochère, J. (eds), *Traité de droit administratif européen*, 2022, Bruxelles, Bruylant, p. 297-305.

72 Fromage, D., ‘Multilevel (administrative cooperation) in the EU: the unique case of the Banking Union’ in Fromage D. (eds.), *Jacques Ziller a European Scholar*, Florence, 2022, EUI, Florence, pp. 150-160.

73 Sarmiento, D., ‘Integrated Decision-Making in the EU and Judicial Review. Can the puzzle be fixed?’ in *EU Law Live Weekend Edition*, 2024, No. 188, p. 2.

74 CJEU, 19 Dec. 2018, C- 219/17, *Berlusconi*, ECLI:EU:C:2018:502, para. 45.

75 Brito Bastos, F., ‘Derivative illegality in European composite administrative procedures’, *CMLR* 2018, No. 1, p. 104.

76 Dermine, P., Eliantonio, M., ‘Case note on CJEU (Grand Chamber), judgement of 19 December 2018, C-219/17, *Silvio Berlusconi and Finanziaria d’investimento Fininvest SpA (Fininvest) v Banca d’Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS)*’, *Review of European Administrative Law*, 2019, No. 2, 237-253.

77 CJEU, 3 Dec. 1992, C97/91, *Oleificio Borelli*, EU:C:1992:491.

78 ‘Under Article 4(1)(c) of the SSM Regulation, read in conjunction with Article 15(3) thereof and Article 87 of the SSM Framework Regulation, the ECB has exclusive competence to decide whether or not to authorise the proposed acquisition, at the end of the procedure laid down, in particular, in Article 15 of the SSM Regulation and Articles 85 and

This preliminary ruling is noteworthy today for reasons that go beyond the conditions and modalities of the Court's jurisdiction in composite procedures.⁷⁹ In fact, this judgment represents only the first step in a multilevel dialogue between courts. The applicants, Berlusconi and Fininvest, again brought the matter before the CJEU to obtain the annulment of the ECB's decision, which was nonetheless confirmed by the General Court in May 2022,⁸⁰ but recently annulled on appeal by the EU Court.⁸¹

As an example of intertwined administrative cooperation in the banking sector, the interesting case *Corneli* T502/19⁸² should be recalled. Specifically, the General Court annulled an ECB decision for misapplying national law:⁸³ 'when the ECB is required to apply national law transposing EU law, it is the national law transposing the directive that must be applied'.⁸⁴ This case sheds light both on the ECB as a supervisor of the Banking Union and on the possibility for the EU Courts to apply and interpret national law and to ensure effective judicial protection for shareholders. For the sake of clarity, it has to be pointed out that the appeal in this case is now pending⁸⁵ before the CJEU.

86 of the SSM Framework Regulation.', C- 219/17, *Berlusconi*, para 54.

79 Ibid, para 55.

80 CJEU, 11 May 2022, T-913/16.

81 CJEU, 19 Sept. 2024, joined cases C-512/22 P e C-513/22 P, *Fininvest c. ECB*, ECLI:EU:C:2024:774. Not only, but the EU Court ordered the ECB, the losing party, to bear its own costs and to pay the costs incurred by the appellants in the proceedings at first instance and on appeal.

82 Wissink, L., 'Administrative cooperation in banking supervision', in Chevalier, E., Eliantonio, M., Lanceiro, R.T., *Administrative cooperation in the European space*, 2025, Bruxelles, Bruylant, p. 139.

83 EU Court, 12 Oct. 2022, T502/19, *Corneli*, ECLI:EU:T:2022:627, para 105.

84 Markakis, M., 'The General Court annuls an ECB decision for misapplying national law: Case T-502/19 *Francesca Corneli v ECB*', REALaw.blog, 8 Nov. 2022.

85 C-777/22 P, BCE c. *Corneli*.