

## BOOK REVIEWS

C. HARLOW, P. LEINO, G. DELLA CANANEA (EDS)  
RESEARCH HANDBOOK ON EU ADMINISTRATIVE LAW,  
EDWARD ELGAR PUBLISHING, CHELTENHAM,  
NORTHAMPTON, 2017 (607 PP.)

*Marco Macchia\**

Once upon a time there were explorers of continents. Then came the age of the discovery of islands and atolls. Today, in the era of Google Earth, every corner of the planet is known to almost all, and unexplored territories no longer exist.

Something similar can be said of today's EU administrative law. All administrative functions and powers can now be examined extensively and in detail, and of course there are a number of handbooks to help us do so. Particularly worthy of note are those by J. Schwarze (*European Administrative Law*, Luxembourg, 1992); P. Craig (*European Administrative Law*, 2012); or H. Hofmann - G. Rowe - A. Turk (*Administrative Law and Policy of the European Union*, 2011); J.B. Auby - J. Dutheil de la Rochère (*Traité de droit administratif européen*, 2014). Italian studies of administrative law include M.P. Chiti (*Diritto Amministrativo Europeo*, 2013) and G. della Cananea - C. Franchini (*I principi dell'amministrazione europea*, 2013). In addition to academic monographs, there are also a number of studies devoted to particular aspects of this branch of law, such as C. Harlow - R. Rawlings (*EU process and procedure*, 2014), providing critical analyses of the administrative procedures of the European Union.

The *Research Handbook on EU Administrative Law* has some distinctive features that give it a special position among the various publications on the subject. First of all, its standpoint and

---

\* Associate Professor of Administrative Law, University of Rome "Tor Vergata"

its style of analysis provide a broad overview of EU administrative law and, at the same time, a detailed and original examination of “new” issues, including research and practice, such as the administrative activities of the Fundamental Rights Agency, the role of technocratic rules, and the analysis of due process of law in the administrative case law of the European Courts. In terms of content, we might say that this *Handbook* has some unusual “elements” that distinguish it from others in its field. As we read in the *Introduction*, “the Handbook is aimed at a wider readership interested in learning something about the governance structures of the EU and how it is administered”. In my opinion though, there are at least three main areas of focus that clearly shape the analysis running through the volume.

The first is its focus on *the mature phase of European administrative law*. Scholars no longer ponder over issues such as whether EU administrative law should be regarded as an autonomous discipline, provided with bodies, techniques and mechanisms of its own. Since the days when this was still a matter for discussion, works belonging to an intermediate phase have gone on to highlight the combination of institutional features, looking in depth at the sources of law and the ways they are formed, and how judicial jurisdiction works, thus merging elements of constitutional law, concepts of administrative law, and techniques of procedural law.

The *Research Handbook* seems to herald a new and more “mature” season, acknowledging the changes that have taken place and the extended sphere of activity of the EU administration, exploring the nature and exercise of the powers of public authorities. Today, EU administrative systems are no longer concerned only with regulation, the mere issuing of rules. The European administration (in its narrowest sense) is also required to provide public assistance, to exercise *imperium* (e.g., during inspections) or to judge between the interests expressed by the Union, taking on board the innovative features of the structures and processes of EU governance. New, shared actions are carried out by the EU through the application of general procedures covering executive law-making, transparency and the regulation of government contracting.

In a study of this kind, providing an overview of the development of the European administrative sphere, some issues

can be skimmed over (being widely known or dealt with in brief), such as the judicial regime of legal sources, traditional models of organisation, or how the Commission adopts executive regulations. The *Handbook* sheds new light on little-known phenomena such as administrative appeals to European agencies, the use of English as the language of academic exchange in EU legal matters, or the frequent interaction between the administration and the judiciary. Examples include the role of the Ombudsman in cases of maladministration, or parliamentary control of EU policies. Parliaments are arenas of public debate and are an important mechanism holding governments accountable and discussing European policy. Other examples include the study of internal audit, audit by the Commission, and external audit by the European Court of Auditors (ECA); after all, courts of justice uphold the law on a case-by-case basis, receiving requests for preliminary rulings from national courts or directly from private parties, whereas control of compliance with the requirements of administrative law by auditors is more systematic. Through its examination of these topics, the *Handbook* confirms its place in the study of the mature phase of European administrative law.

The *Handbook's* second characteristic feature is its focus on the analysis of the new functions of the European administrative system, usually exercised through innovative forms of cooperation among the different systems involved, both at European and national level. EU law reaches out to new areas such as anti-terrorism measures and refugee aid. The new functions concern shared policies such as State Aid, financial regulation, and controlling the EU's external borders – but they do not entail giving up traditional integrative systems based on the principles and forms of the *rule of law* that have been granted effective recognition by the European legal system. The broad-ranging analysis offered by the *Research Handbook* shows that the new forms of action have an important place in legal theory, and scholars can fully appreciate its findings.

It emerges from the analysis that the EU institutions do not operate merely as authoritative bodies, as happens at national level. In reality, they foster cooperation, as attested by the Open Method of Coordination (OMC) and EU Integrated Border Management (IBM), the border management system of the

European Union whereby Member States are equally responsible under the supervision of the European Border and Coast Guard Agency. It is also noteworthy that for some new forms of action, Member States are requested to undertake new international agreements so that the functions they exercise are no longer ruled only by EU law. Another example is the European Stability Mechanism, a tool not covered by monetary policy but stemming from a specific treaty with an international body created specifically for this purpose.

Lastly, the *Research Handbook* stands out for its attention to the measures adopted by Member States to address the various crises affecting Europe. A transversal dimension emerges, characteristic of the European administrative system, and this constitutes a privileged standpoint for legal scholars.

To combat the current crisis facing democracy, coupled with the rising phenomenon of populism, Europe has fostered greater citizen involvement in the work of the administration. European policies are often considered to be weak from the point of view of accountability, and phenomena such as these are addressed in the chapters on transparency and participation and the right to know by access to documents. The European Parliament can also exert pressure on supranational institutions.

On the other hand, in order to combat the world economic and financial crisis, Europe has insisted on the inseparability of the Member States of the Union. *The Rome Declaration* - the Declaration of the Leaders of 27 Member States and the European Council, the European Parliament and the European Commission - state: "We will act together, at different paces and intensity where necessary, while moving in the same direction, as we have done in the past, in line with the Treaties and keeping the door open to those who want to join later. Our Union is undivided and *indivisible*".

This assertion of inseparability strengthens the whole system and avoids further and future (more) dangerous crises. "Inseparability" also implies the acknowledgment of circumstances that have lasted so far, recognising that Europe is moving at different speeds, as shown by the concentric circles of the Euro zone, Schengen, and forms of concerted cooperation, all helping to keep States advancing at different paces moving together.

In response to a crisis of legitimacy besetting the European administration, the Union has set up practises of coordination and systems of integration between the European and national authorities. From this perspective, the European Union is a space where national interests have merged, allowing Member States to work together to extend their powers beyond national borders. It may therefore be said that the need for collaboration, inherent in multilateralism, has strengthened the powers of the Member States. One example is the Single Supervisory Mechanism entrusted to the European Central Bank; it consists of national and European supervisors monitoring the activity of banks operating in other States. The *Joint Supervisory Teams* have mixed membership as they comprise staff members of the ECB and national supervisors (Reg. ECB no. 468/2014).

To conclude, the *Research Handbook* has the merit of shedding light on a useful and complex evaluation of the European institutions as good administration. It focuses especially on public policy and the aspects of organisation that allow the EU public authorities to exercise their functions, concluding with a look at some of the problem areas that undoubtedly exist. We might also add that this volume seems to contain tools with which to monitor and assess the whole administrative system and from which to produce a sort of scoreboard. It is imperative that the European Administration not be seen to exist only on paper, but that it should also be a reality for citizens and businesses. The *Research Handbook* is not simply a legal analysis of the functioning and regulation of the EU administration; it is above all a study that underlines the close relationship between legal regimes, European policies, and the resulting mutual implications. From this point of view, it contains the keys to understanding and assessing good administration practices and measuring the effectiveness of citizens' rights. It is, of course, no easy task to evaluate all aspects of administrative powers, but this handbook provides some useful tools that take us a long way in this direction.