

Comparative administrative law in Europe: State-of-the-art overview and research agenda

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Abstract

This article provides an overview of the scholarship in comparative administrative law in Europe, starting with general trends in the field and then reviewing systematically the key topics covered in the scholarship devoted to public administration and judicial review of administrative action. It concludes by offering some suggestions about an agenda for future research.

Keywords

Comparative administrative law, European administrative law, Europeanization of administrative law

I. Introduction

Administrative law in Europe has been closely connected to comparison and scholarly exchanges across borders since the late 19th century, starting with administrative law giants: Otto Mayer's *French Administrative Law*¹ preceding his *German Administrative Law*,² Gneist with his German perspective on English administrative law³ and the discussions between Dicey and Hauriou on the (non-)existence of administrative law respectively in England and France.⁴ In those cases, foreign law was used to spark the development of new ideas in one's legal system. Comparative law understood as the exposition of different administrative systems and their laws

1. O. Mayer, *Theorie des französischen Verwaltungsrechts* (Trübner, 1886).
2. O. Mayer, *Deutsches Verwaltungsrecht* (Duncker und Humblot, 1895).
3. R. von Gneist, *Das Englische Verwaltungsrecht der Gegenwart* (Berlin, 1884).
4. S. Cassese, *La construction du droit administratif* (Montchrestien, 2000).

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in Europe was, at the outset, the product of an American perspective on Europe: that of Frank Goodnow with *Comparative Administrative Law: An Analysis of the Administrative Systems, National and Local, of the United States, England, France and Germany* (1893). After this initial interest, however, over the 20th century, comparative administrative law ebbed.⁵ As the administrative state entered a period of retreat under the pressure of neo-liberal and public management discourses, comparative administrative law in Europe entered the shadows. However, since approximately 2010, scholarly works in this field have flourished anew,⁶ following in particular the Yale project directed by Susan Rose-Ackerman and Peter Lindseth.⁷ The publication of the *Oxford Handbook of Comparative Administrative Law*⁸ in 2022 confirms this trend, with a section dedicated directly to a number of European traditions (Anglo-American, French and German) and chapters including a European dimension, if not a direct European comparison. The comparison between the USA and European systems is thus well alive, although it is now more one-sided in the sense that Europe-based scholars are more interested in comparing their systems with the USA⁹ than the other way round.¹⁰ In short, comparative administrative law in Europe is as lively as ever, as this contribution will illustrate.

Administrative law is a challenging field for comparison on three counts at least: first, it has been very much connected to national histories and remains very much so despite efforts in the scholarship to develop the idea of global administrative law;¹¹ second, it is challenging for scholars to have a detailed and up-to-date technical knowledge of a large number of administrative systems at once;¹² third, the definition (as well as existence and scope) of administrative law can be distinguished between two different approaches to the field – one revolving around public administration and one revolving around judicial review.¹³ This overview will follow this distinction.

Because of the potentially endless extent of comparative administrative law in Europe, our contribution is limited to the most salient features that can be extracted from the scholarly literature mostly published in French, English and German. We have also tried our best to include literature

5. See, for instance, the general reports on administrative law in the proceedings of the International Academy of Comparative Law (whose Secretary-General between 1973 and 2006 was Professor Roland Drago, a French comparative administrative lawyer), the teaching by Jean Rivero in France (*Droit administratif comparé*, 2 vols (Cours de droit, 1954–58)), the comparative discussions preparing some of the key soft law instruments on principles of good administration at the Council of Europe (M. Niemivuo, ‘Good Administration and the Council of Europe’, 14 *European Public Law* (2008); Council of Europe, *The protection of the individual in relation to acts of administrative authorities – An analytical survey of the rights of the individual in the administrative procedure and its remedies against administrative acts* (1975)) or the case law of the Court of Justice of the European Union in Joined Cases 7/56, 3/57 to 7/57 *Algera*, EU:C:1957:7 or Case 17/74 *Transocean Marine Paint Association*, EU:C:1974:106.
6. J.-B. Auby, ‘Springtime for Comparative Administrative Law’, BACL blog available at <https://british-association-comparative-law.org/2021/10/01/springtime-for-comparative-administrative-law-by-jean-bernard-auby/>.
7. Two editions have now been published: *Comparative Administrative Law* (Edward Elgar, 2010 and 2019) and the third one is in the making. Around the same period, also from a US-based scholar, see F. Bignami, ‘Comparative Administrative Law’, in M. Bussani and U. Mattei (eds.), *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012).
8. P. Cane et al. (eds.), *Oxford Handbook of Comparative Administrative Law* (Oxford University Press, 2022).
9. E.g. P. Cane, *Controlling Administrative Power – A Historical Comparison* (Cambridge University Press, 2016).
10. O. Tamir, ‘Our Parochial Administrative Law’, 97 *Southern California Law Review* (2024) (forthcoming).
11. E.g. S. Cassese (ed.), *Research Handbook on Global Administrative Law* (Edward Elgar, 2017).
12. J. Bell, ‘Comparative Administrative Law’, in M. Reimann and R. Zimmermann (eds.), *Oxford Handbook of Comparative Law* (2nd edition, Oxford University Press, 2019), p. 1260.
13. *Ibid.*, p. 1261.

published in Dutch, Italian and Spanish¹⁴ – though with no guarantee of representativeness in those languages – to show the diversity and liveliness of this topic and to point towards either specific pet topics and under-researched areas or to prompt curiosity from the reader to double check the information.¹⁵

This article starts with an overview of the general trends in comparative administrative law in Europe (section 2), and key discussions in the field of public administration (section 3) and judicial review (section 4), before closing with some suggestions for future research (section 5).

2. General research trends in key projects on comparative administrative law

While the study of public administration falls within the purview of political/administrative sciences in Europe, it does so less exclusively than in the USA, leaving ample scope for lawyers to embrace it, so much so that a diverse body of comparative law literature is available. Four different types of comparative law scholarship can thus be distinguished. The first type of work focuses primarily on methodological questions.¹⁶ The second one builds on the approach already adopted in the late 19th century by Goodnow and analyses (more or less) systematically key features of a number of national administrative systems.¹⁷ Also following the major works of the late 19th century where a foreign administrative system was thoroughly presented by an outsider expert, the third type of work features an analysis of the French system from an English perspective,¹⁸ or of the German system from a Common Law¹⁹ or French²⁰ perspective.²¹ Dating back from the 1980s and often – though not

14. With thanks to Luis Arroyo Jimenez, Oren Tamir, Raymond Schlössels and Rob Widdershoven for their helpful suggestions.

15. As keen comparatists, the authors welcome information about missing literature or new and ongoing projects connected to comparative administrative law in Europe. Any suggestions and accompanying comments will be published following peer review on the blog of the *Review of European Administrative Law*.

16. J.P. Costa, 'Institutions internationales et droit administratif comparé' 41 *Revue internationale de droit comparé* (1989); F. Haut, 'Réflexion sur la méthode comparative appliquée au droit administratif', 41 *Revue internationale de droit comparé* (1989); J. Rivero, 'Le droit administratif en droit comparé: rapport final' 41 *Revue internationale de droit comparé* (1989); J. Boughey, 'Administrative Law: The Next Frontier for Comparative Law', 62 *International and Comparative Law Quarterly* (2013); F. Velasco Caballero, 'Metodología comparativa para el Derecho administrativo', *Revista Española de Derecho Administrativo* (2019); S. de la Sierra, 'Límites y utilidades del derecho comparado en el derecho público. En particular, el tratamiento jurídico de la crisis económico-financiera', *Revista de Administración Pública* (2016); F. Quezada, 'Una aproximación crítica a la comparación de derechos administrativos', 1 *Revista de Derecho Público: Teoría y Método* (2020); J. Barnés, 'Un marco para el método del análisis comparado en el Derecho administrativo', in J.C. Laguna de Paz, Í. Sanz Rubiales, I. de los Mozos Touya; J.L. Martínez López-Muñiz (eds.), *Derecho administrativo e integración europea: estudios en homenaje al profesor José Luis Martínez López-Muñiz* (Reus, vol. 1, 2017).

17. E.g. M. Fromont, *Droit administratif des états européens* (PUF, 2006); M. D'Alberty, *Diritto amministrativo comparato. Mutamenti dei sistemi nazionali e contesto globale* (Il Mulino, 2019); G. Napolitano, *Introduzione al diritto amministrativo comparato* (Il Mulino, 2020).

18. J. Bell and F. Lichère, *Contemporary French Administrative Law* (Cambridge University Press, 2022).

19. M. Singh, *German Administrative Law – In Common Law Perspective* (Springer, 1985).

20. A. Jacquemet-Gauché, *Droit administratif allemand* (Puf, 2022).

21. For a more detailed analysis of such outsider perspectives, see K.-P. Sommermann, 'Buchbesprechung: Eberhard Schmidt-Aßmann, Das Verwaltungsrecht der Vereinigten Staaten von Amerika. Grundlagen und Grundzüge aus deutscher Sicht, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 301, Nomos, Baden-Baden 2021, 420 S., geb., EUR 106,-, ISBN 978-3-84-877833-1; Anne Jacquemet-Gauché, *Droit administratif allemand*, Presses

always – focusing on a number of key jurisdictions, the fourth type includes comparisons across national administrative law in Europe from the perspective of the EU integration process,²² sometimes discussing the techniques EU integration relies on,²³ and sometimes analysing the resistance to this integration.²⁴ This type of work asks how the EU integration process influences national administrative law,²⁵ or conversely how EU law can build on and learn from the commonalities²⁶ and differences among the administrative laws of its Member States,²⁷ or alternatively how far national administrative law is useful to understand the specific legal and administrative construct that the EU is.²⁸

Across these last three different types of scholarship, the main questions revolve more or less explicitly around changes,²⁹ convergence,³⁰ inspiration and influence,³¹ the possibility of transplanting legal concepts and instruments,³² interactions between law and society, the existence of

Universitaires de France, Paris 2022, 516 S., brosch., EUR 30,-, ISBN 978-2-13-083285-0; John Bell and François Lichère, *Contemporary French administrative law*, Cambridge University Press, Cambridge 2022, 319 S., geb., GBP 89,99, ISBN 978-1-316-51116-9', 21 *Die Öffentliche Verwaltung* (2023).

22. T. von Danwitz, *Europäisches Verwaltungsrecht* (Springer, 2008); H. Siedentopf and J. Ziller (eds.), *Making European Policies Work – L'Europe des administrations – Volume II – National Reports – Rapports nationaux* (Bruylant/Sage, 1988); M.J.M. Verhoeven, *The Constanzo Obligation: The Obligation of National Administrative Authorities in the Case of Incompatibility between National Law and European Law* (Intersentia, 2011); S.W. Haket, *The EU Law Duty of Consistent Interpretation in German, Irish and Dutch Courts* (Intersentia, 2019).
23. E.g. S. Arrowsmith and S. Treumer, 'Competitive Dialogue in EU Law: A Critical Review', in S. Arrowsmith and S. Treumer (eds.), *Competitive Dialogue in EU Procurement* (Cambridge University Press, 2012).
24. E.g. Y. Marique and S. van Garssen, 'Public-Private Cooperation and Judicial Review: A Case Study Drawn from European Infrastructure Projects', 24 *European Public Law* (2018).
25. J. Schwarze, *Droit administratif européen* (2nd edition, Bruylant, 2009); *European Administrative Law* (revised 1st edition, Thomson/Sweet & Maxwell, 2006); J. Schwarze, *Europäisches Verwaltungsrecht, Entstehung und Entwicklung im Rahmen der Europäischen Gemeinschaft* (2nd edition, Nomos Verlag, 2005); J. Schwarze, *European Administrative Law* (Office for Official Publications of the European Communities and Sweet & Maxwell, 1992).
26. G. della Cananea and M. Bussani, 'The "Common Core" of Administrative Laws in Europe: A Framework for Analysis', 26 *Maastricht Journal of European and Comparative Law* (2019); M. Bussani, 'European Administrative Law: A Project and Its Methodological Roots', 8 *The Italian Law Journal* (2022).
27. P. Birkinshaw, *European Public Law: The Achievement and the Brexit Challenge* (3rd edition, Kluwer, 2020); A. von Bogdandy and P. Huber (eds.), *Handbuch Ius Publicum Europaeum, Band III Verwaltungsrecht in Europa – Grundlagen; Band IV: Verwaltungsrecht in Europa: Wissenschaft; Band V: Verwaltungsrecht in Europa: Grundzüge; Band VIII: Verwaltungsgerichtsbarkeit in Europa: Institutionen und Verfahren; Band IX: Verwaltungsgerichtsbarkeit in Europa: Gemeineuropäische Perspektiven und supranationaler Rechtsschutz*; A. von Bogdandy (ed.), *The Max Planck Handbooks in European Public Law – vol I – The Administrative State* (Oxford University Press, 2017).
28. J. Mendes, 'The Foundations of EU Administrative Law as a Scholarly Field: Functional Comparison, Normativism and Integration', 18 *European Constitutional Law Review* (2022); J. Mendes, 'Comparative Administrative Law in the EU: The Integration Function and its Limits', in M. Bartl and J. Lawrence (eds.), *The Politics of European Legal Research: Behind the Method* (Edward Elgar, 2022); F. Brito Bastos, 'Doctrinal Methodology in EU Administrative Law: Confronting the "Touch of Stateness"', 22 *German Law Journal* (2021).
29. M. Künnecke, *Tradition and Change in Administrative Law: An Anglo-German Comparison* (Springer, 2007).
30. T. von Danwitz, *Europäisches Verwaltungsrecht*; G. Marcou (ed.), *Les mutations du droit de l'administration en Europe – Pluralisme et convergences* (L'Harmattan, 1995). J. Schwarze (ed.), *Administrative Law under European Influence (On the Convergences of the Administrative Laws of the EU Member States)* (Nomos, 1996).
31. U. Scheuner, 'Der Einfluss des französischen Verwaltungsrechts auf die deutsche Rechtsentwicklung', 16 *Die Öffentliche Verwaltung* (1963).
32. Y. Marique and E. Slautsky, 'Resistance to Transplants in the European Administrative Space – An Open-Ended Reading of Legal Changes', 14 *Review of European Administrative Law* (2021).

common core principles,³³ the effects of European integration on domestic administrative systems,³⁴ the development of an integrated European administration from top to bottom, and thus the development of a European administrative space and methodology pertaining to European³⁵ or global³⁶ comparative administrative law.

An important driver for comparative administrative work is the need to consider administrative reforms at either the national or European level. Examples of official reports relying on comparative analysis abound. In the UK, projects leading to the establishment of the Ombudsman³⁷ and seeking to reform the UK civil service³⁸ can be mentioned. In France, the *Conseil d'Etat* published for a long time foreign contributions in its annual reports and now has a specific unit to proceed with comparative analysis and provide it to the judges.³⁹ There has been a shift of approach over the years, however: in an earlier period, as mentioned by Rivero, the use of comparative law by the *Conseil d'Etat* was an attempt to spread the French model;⁴⁰ now it is done more in the spirit of dialogue and information about other systems.⁴¹ In this vein, schemes to exchange staff or organize professional visits with the French *Conseil d'Etat* are now developed. Parliamentary assemblies also rely on comparative studies either thanks to institutional units such as the French Senate⁴² or on a more *ad hoc* basis such as the Dutch Parliament.⁴³ Moreover, reforms through the EU

33. G. della Cananea and M. Bussani, 26 *Maastricht Journal of European and Comparative Law* (2019).

34. From a legal perspective: K.-H. Ladeur (ed.), *The Europeanisation of Administrative Law* (Ashgate/Dartmouth, 2002); J. Jans, S. Prechal and R. Widdershoven (eds.), *Europeanisation of Public Law* (2nd edition, Europa Law Publishing, 2015). From a political science perspective, see e.g. E. Page and L. Wouters, 'The Europeanization of the National Bureaucracies?', in J. Pierre (ed.), *Bureaucracy in the Modern State* (Edward Elgar, 1995).

35. A. Von Bogdandy, 'European Law Beyond "Ever Closer Union" – Repositioning the Concept, its Thrust and the ECJ's Comparative Methodology', 22 *European Law Journal* (2016); A. Bleckmann, 'Methoden der Bildung europäischer Verwaltungsrechts', 46 *Die Öffentliche Verwaltung* (1993); F. Melleray (ed.), *L'argument de droit comparé en droit administratif français* (Bruylant, 2007); R. Caranta, 'Pleading for European Comparative Administrative Law: What is the Place for Comparative Law in Europe?', 2 *Review of European Administrative Law* (2009); G. Napolitano, 'European Administrative Law and Comparative Administrative Law: Fierce Rivals or Reciprocal Friends?', in P. Cossalter and G. Guglielmi (eds.), *Internationalisation du droit administratif* (Pantheon Assas, 2020); W. Van Dooren, *Measuring Public Administration: A Feasibility Study for Better Comparative Indicators in the EU* (European Commission, 2018).

36. G. Napolitano, 'The Transformation of Comparative Administrative Law', 4 *Rivista trimestrale di diritto pubblico* (2017).

37. Sir John Whyatt, *The Citizen and Administration: The Redress of Grievances* (Justice, 1961) including a comparison of the Swedish and the Danish Ombudsman. This report paved the way to the establishment of the Parliamentary Ombudsman in the UK in 1968. For critical comments on transplants in this era, O. Kahn-Freund, 'On Uses and Misuses of Comparative Law', 37 *Modern Law Review* (1974), p. 5–6.

38. Lord Fulton, *The Report of the Committee on the Civil Service* (1966–68 Cmnd. 3638) Appendix C includes an overview of the civil service in France, Sweden and the USA.

39. E. Jordão, 'The Use of Comparative Administrative Law by the French Conseil d'État', in P. Lindseth et al. (eds.), *Comparative Administrative Law* (Edward Elgar, forthcoming).

40. J. Rivero, 'Les phénomènes d'imitation des modèles étrangers en droit administratif', in *Miscellanea WJ Ganshof van der Meersch* (Bruylant, 1972).

41. See for instance J.-M. Sauvé, D. Migaud and J.-C. Magendie, *Pour une nouvelle déontologie de la vie publique – Rapport de la Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique* (2011), www.vie-publique.fr/rapport/31571-pour-une-nouvelle-deontologie-de-la-vie-publique-rapport-de-la-commiss.

42. They are all to be found at: www.senat.fr/europe-et-international/etudes-de-legislation-comparee.html.

43. A. Drahtmann, L. Honée, and A. Al Khatib, *Openbaarmaking van overheidsinformatie: Een rechtsvergelijkend onderzoek naar de wetgeving in Zweden, het Verenigd Koninkrijk, Duitsland, Frankrijk, Slovenië en Estland* (Leiden, 2022), www.rijksoverheid.nl/documenten/rapporten/2022/09/30/openbaarmaking-van-overheidsinformatie.

accession process have also relied on comparative administrative law such as the papers produced by the OECD under the Sigma capacity building programme.⁴⁴ Finally, the Reneual network⁴⁵ provided extensive comparative analysis in a – so far unsuccessful – attempt to contribute to the adoption of a Regulation on an EU administrative procedure act.⁴⁶

This lively comparative work is developing around an extended epistemic community, facilitated through specific research centres drawing doctoral students for research visits,⁴⁷ or the organization of joint doctoral events.⁴⁸ European funding has supported this thriving community, with major European Research Centre funding for the common core project led by della Cananea, building on diachronic⁴⁹ and Trento⁵⁰ methods⁵¹ and for a public management project studying administrative tools and procedures under the lens of an American perspective and led by Radaelli,⁵² for instance. Other thematic funding has supported comparative research on procurement,⁵³ language and administration⁵⁴ or soft law and its use by national administrations and courts.⁵⁵

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44. OECD-PUMA, 'Preparing Public Administration for the European Administrative Space' *SIGMA Papers* 23 (1998), www.oecd-ilibrary.org/governance/preparing-public-administrations-for-the-european-administrative-space_5kml6143zd8p-en.
45. www.reneual.eu/. H. Hofmann and J.P. Schneider, 'Administrative Law Reform in the European Union: the ReNEUAL Project and its Basis in Comparative Legal Studies', in S. Rose-Ackerman, P. Lindseth and B. Emerson (eds.), *Comparative Administrative Law* (2nd edition, Edward Elgar, 2019). The ReNEUAL Model Rules led to a resolution adopted by the European Parliament 'for an open, efficient, and independent EU administration', on 9 June 2016, inviting the Commission to consider the annexed proposal for a regulation. This proposal focuses on the rules governing the adoption of individual administrative acts by the Union's administration and includes many ideas put forward in ReNEUAL's Book III, which covers single case decision-making in this regard. See the table summarising the similarities and differences in J.P. Schneider, 'Einzelfallentscheidungsverfahren als Gegenstand von Buch III des ReNEUAL-Musterentwurfs', in J.P. Schneider, K. Rennert, and N. Marsch (eds.), *ReNEUAL-Musterentwurf für ein EU-Verwaltungsverfahren* (Beck, 2016), p. 140 ff. On the reception of the ReNEUAL Model Rules by the EU institutions in general: G. della Cananea, 'ReNEUAL's Model Rules in the Light of the "Common Core" of European Administrative Law', in Z. Kmiecik (ed.), *Administrative Proceedings in the Habsburg Succession Countries* (Wolter Kluwers, 2021), p. 284 ff.
46. H. Hofmann, 'Current Debates on European Administrative Law: Background and Perspectives', in J.-B. Auby (ed.), *Comparative Law of Administrative Procedure* (Bruylant, 2016).
47. For instance, the Max Planck Institute in Heidelberg, Oxford and Cambridge Universities, the European University Institute, and the German Research Institute for Public Administration in Speyer.
48. For instance the annual Germano-French doctoral school or the Review of European Administrative Law Forum every second year.
49. The diachronic method compares legal systems and legal solutions across time.
50. The Trento method is based on the approach developed for comparative private law at Cornell by Schlessinger in the 1960s. The objective is to ensure the highest level of consistency across the systems under comparison by devising a set of questions pertaining to a case. Respondents from different legal systems are then asked how the case would be solved under the detailed circumstances presented in the case, instead of asking about a doctrinal solution. The objective is to include in each case any relevant factor affecting the answer, to ensure that they would be considered.
51. G. della Cananea and M. Bussani, 26 *Maastricht Journal of European and Comparative Law* (2019); M. Bussani, 8 *Italian Law Journal* (2022); G. della Cananea, *The Common Core of European Administrative Law – Retrospective and Prospective* (Brill, 2023).
52. www.protego-erc.eu/.
53. <https://sapiensnetwork.eu/>.
54. www.cost.eu/actions/CA19102/#tabs±Name:Working%20Groups%20and%20Membership.
55. <https://erasmus-plus.ec.europa.eu/projects/search/details/575097-EPP-1-2016-1-FI-EPPJMO-NETWORK>.

This community has developed a diversity of publication channels, such as the country reports published in *European Public Law* or the newly launched *French Yearbook of Public Law* or the comparative articles published in the *Review of European Administrative Law*, the *German Law Journal* or the *Italian Journal of Public Law*. Particularly noteworthy is the *Revue Française de droit administratif*, which publishes regular overviews of developments in other administrative systems (in particular Germany and Italy) and started to publish reviews on foreign books under the coordination of Anne Jaquemet Gauché in 2023. This epistemic community gathers in some way or another at events such as the annual ICON-S meetings, the annual meetings of the European Group of Public Administration (in its stream law and administration⁵⁶) or the International Congress of Comparative Law every four years, with topics having ranged from public-private partnerships,⁵⁷ to regulatory powers of independent agencies⁵⁸ and to administrative silence.⁵⁹ In addition, an annual meeting of comparative administrative law has been held in Aix-en-Provence (France) since 1978, with the proceedings published in the *Annuaire européen d'administration publique*. It is currently organized by Delphine Costa, on a dedicated theme that is selected each year to follow key topical developments. This usually covers European countries such as Belgium, Italy, Germany, Greece, Luxembourg, Norway, Spain, Switzerland, the Netherlands, the United Kingdom and even beyond Europe, with regular representatives from China and Japan. Finally, academic networks have developed in specific areas, such as in the environment,⁶⁰ public procurement and public contracts.⁶¹

3. Public administration

The comparative administrative law scholarship pertaining to public administration can be divided into five main categories depending on its main focus: key administrative organizations and organizational design; administrative tools and techniques; administrative activities; administrative principles; and policy areas.

56. These meetings have resulted in the publication of edited collections such as D. Dragos and B. Neamtu (eds.), *Alternative Dispute Resolution in European Administrative Law* (Springer, 2014); D. Dragos, P. Kovač, and B. Marseille (eds.), *The Laws of Transparency in Action – A European Perspective* (Palgrave, 2018); D. Dragos, P. Kovač and H. Tolsma (eds.), *The Sound of Silence in European Administrative Law: Legal and Empirical Insights in Selected Jurisdictions* (Palgrave, 2020); M. Eliantonio and D. Dragos (eds.), *Indirect Judicial Review in Administrative Law: Legality vs Legal Certainty in Europe* (Routledge, 2023).

57. F. Lichère (ed.), *Public-Private Partnerships – Reports of the XVIIIth Congress of the International Academy of Comparative Law* (Bruylant, 2011).

58. Y. Marique, 'The Rule-Making Powers of Independent Administrative Agencies (QUANGOs)', in K. Boele-Woelki and S. Van Erp (eds.), *General Reports of the XVIIth Congress of the International Academy of Comparative Law* (Bruylant/ Eleven Publishing, 2007).

59. P. Aberastury and O. Aguilar Valdez (eds.), *Administrative Silence* (Intersentia, 2023).

60. www.eelf.info/.

61. E.g., www.public-contracts.org/ and <https://eplgroup.eu/>.

Under the first category – that of organizational design/administrative organization⁶² – one finds comparisons pertaining to the civil service in Europe,⁶³ to local government,⁶⁴ to regulatory agencies,⁶⁵ to externalization⁶⁶ and outsourcing⁶⁷ as well as to ombudsmen.⁶⁸

Under the second category – that of administrative tools and techniques – one finds several works pertaining to the use by the administration of its discretion,⁶⁹ how administrative procedures⁷⁰ frame this discretion,⁷¹ their complexities,⁷² deficiencies⁷³ and codification,⁷⁴ and how new techniques such as soft law⁷⁵ or digitalization shape and amplify administrative powers. Two specific administrative situations are also under comparative examination: administrative silence⁷⁶

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62. M. Ruffert, *Law of Administrative Organization of the EU: A Comparative Approach* (Edward Elgar, 2020).
63. K.-P. Sommermann, C. Fraenkel-Haeblerle and A. Krzywoń (eds.), *The Civil Service in Europe: A Research Companion* (Routledge, 2024 forthcoming); S. Bønsing, N. Mäntylä and Henrik Wenander, 'Status and Criminal Liability of Civil Servants in Modern Public Administration: A Comparative Study of Denmark, Finland, and Sweden', 29 *European Public Law* (2023).
64. C. Panara and M. Varney (eds.), *Local Government in Europe – The 'Fourth Level' in the EU Multi-Layered System of Governance* (Routledge, 2013); G. Marcou, 'Les collectivités locales dans les constitutions des États unitaires en Europe', 42 *Les Nouveaux Cahiers du Conseil constitutionnel* (2014); G. Marcou, 'Les réformes des collectivités territoriales en Europe: problématiques communes et idiosyncrasies' 141 *Revue française d'administration publique* (2012).
65. Y. Marique, in K. Boele-Woelki and S. Van Erp (eds.), *General Reports of the XVIIth Congress of the International Academy of Comparative Law*; K.-P. Sommermann, C. Fraenkel-Haeblerle and J. Socher (eds.), *Die Umsetzung organisations- und verfahrensrechtlicher Vorgaben des europäischen Umweltrechts in ausgewählten Mitgliedstaaten* (Duncker & Humblot, 2020).
66. S. De Somer, *Autonomous Public Bodies and the Law – A European Perspective* (Edward Elgar, 2017).
67. C. Jenart, *Outsourcing Rulemaking Powers* (Oxford University Press, 2022).
68. A. Castro, 'Ombudsman', in J. Smits et al. (eds.), *Elgar Encyclopedia of Comparative Law* (2023); M. Remac, *Coordinating Ombudsmen and the Judiciary: A Comparative View on the Relations between Ombudsmen and the Judiciary in the Netherlands, England and the European Union* (Intersentia, 2014).
69. J. Mendes, 'Administrative Discretion in the EU: Comparative Perspectives', in S. Rose-Ackerman, P. Lindseth and B. Emerson (eds.), *Comparative Administrative Law* (2nd edition, Edward Elgar, 2019). For early works on the topic, A. Klap, *Vage normen in het bestuursrecht* (W.E.J. Tjeenk Willink, 1994); R.J.N. Schlössels, *Het specialiteitsbeginsel over de structuur van bestuursbevoegdheden, wetmatigheid van bestuur en beleidsvrijheid* (Sdu Uitgever, 1998).
70. J.-B. Auby (ed.), *Comparative Law of Administrative Procedure* (Bruylant, 2016); H.P. Nehl, *Principles of Administrative Procedure in EC Law* (Hart Publishing, 1999); J. Barnes (ed.), *El procedimiento administrativo en el Derecho Comparado* (Civitas, 1993); L. Parejo and A. Marcos Vaquer Caballeria (eds.), *Estudios sobre el procedimiento administrativo I – Derecho comparado* (Tirant lo Blanch, 2018).
71. F. Bignami, 'From Expert Administration to Accountability Network: A New Paradigm for Comparative Administrative Law', 59 *The American Journal of Comparative Law* (2011).
72. C. Backes et al., *Snellere besluitvorming over complexe projecten vergelijkend bekeken: quickscan* (Boom Juridische uitgevers, 2010).
73. R. Grote, 'Procedural Deficiencies in Administrative Law: A Comparative Analysis', 18 *South African Journal on Human Rights* (2002); L. Hering, "'Rectification" and "Irrelevance" in EU Direct Administrative Procedures: A Systematic and Comparative Analysis', 26 *European Public Law* (2020).
74. F. Uhlmann (ed.), *Codification of Administrative Law – A Comparative Study on the Sources of Administrative Law* (Hart Publishing, 2023).
75. M. Eliantonio, E. Korkea-aho and O. Stefan (eds.), *EU Soft Law in the Member States – Theoretical Findings and Empirical Evidence* (Hart Publishing, 2022).
76. D. Dragos, P. Kovač and H. Tolsma (eds.), *The Sound of Silence in European Administrative Law: Legal and Empirical Insights in Selected Jurisdictions*.

and administrative sanctions.⁷⁷ A significantly under-researched area here is that of the mechanisms of revocation and withdrawal of administrative acts.⁷⁸

Under the third category – that of the economic dimensions of administrative activities⁷⁹ – one finds a wealth of research dedicated to public contracts in general,⁸⁰ and under their many dimensions of general principles,⁸¹ public-private partnerships,⁸² concessions,⁸³ procurement procedures,⁸⁴ contractual performance,⁸⁵ remedies in procurement,⁸⁶ corruption and conflicts of interest in contracts,⁸⁷ or liability in the course of procurement.⁸⁸ This rich literature contrasts starkly with the disappearance of comparison pertaining to public services – which was once relatively lively⁸⁹ – and the paucity of comparison in fields immediately connected to public contracts such as public finances,⁹⁰ public property⁹¹ or the allocation of scarce resources.⁹²

Under the fourth category – that of administrative principles⁹³ – a broad array of comparative research has been carried out that can be divided into three main subject matters: first, some works focus on specific principles such as the principle of good administration either at the level

77. O. Jansen (ed.), *Administrative Sanctions in the European Union* (Intersentia, 2013).

78. To the best of our knowledge the only research undertaken in this area is by B. De Kam, *De intrekking van beschikkingen, mede in Europees en rechtsvergelijkend perspectief* (Kluwer, 2016).

79. See on the link between the economy and public law, M. Ruffert, 'Public Law and the Economy: A Comparative View from a German Perspective', 11 *International Journal of Constitutional Law* (2013).

80. U. Stelkens and R. Noguelou (eds.), *Comparative Law on Public Contracts* (Bruylant, 2011).

81. S. de la Rosa and P. Valcárcel Fernández (eds.), *General Principles of Public Contracts in Europe* (Bruylant, 2022).

82. F. Lichère (ed.), *Reports of the XVIIIth Congress of the International Academy of Comparative Law* (Bruylant, 2011).

83. E.g., P. Bogdanowicz, R. Caranta, and P. Telles (eds.), *Public-Private Partnerships and Concessions in the EU* (Edward Elgar, 2020).

84. E.g. in edited collections (e.g., K.-M. Halonen, R. Caranta, and A. Sanchez-Graells (eds.), *Transparency in EU Procurements – Disclosure Within Public Procurement and During Contract Execution* (Edward Elgar, 2019), in generalist journals (*European Public Law*), in procurement journals (such as *Public Procurement Law Review* or *European Procurement & Public Private Partnership Law Review*) or in other specialist journals (e.g. Y. Marique, 'Cooperation and Competition in Complex Construction Projects: Implementation of EU Procurement Rules in England and Belgium', 5 *International Journal of Law in the Built Environment* (2013)).

85. D. Dragos et al. (eds.), *Contract Changes – The Dark Side of EU Procurement Law* (Edward Elgar, 2023).

86. L. Folliot-Lalliot and S. Torricelli (eds.), *Oversight and Challenges of Public Contracts* (Bruylant, 2018).

87. Y. Marique, 'Integrity in English and French Public Contracts: Changing Administrative Cultures?', in J.-B. Auby, E. Breen and T. Perroud (eds.), *Corruption and Conflicts of Interest* (Edward Elgar, 2014).

88. D. Fairgrieve and F. Lichère (eds.), *Public Procurement Law: Damages as an Effective Remedy* (Hart, 2011).

89. H. Wollmann and G. Marcou (eds.), *The Provision of Public Services in Europe: Between State, Local Government and Market* (Edward Elgar, 2010); G. Marcou and F. Moderne (eds.), *L'idée de service public dans le droit des États de l'Union européenne* (L'Harmattan, 2001).

90. For one exception to this dearth of comparison, see S. Damarey (ed.), *Responsabilité financière des gestionnaires publics: Approches internationales* (Mare et Martin, 2023).

91. For some exceptions to this dearth of comparison: Forthcoming special issue of *Droit public comparé* coordinated by T. Perroud; D. Thebault, *Les biens publics en droit anglais* (Thèse Université Paris Cité, 2019); G.A. van der Veen, *Openbare zaken* (W.E.J. Tjeenk Willink, 1997).

92. P. Adriaanse et al. (eds.), *Scarcity and the State II – Member State Reports on the Allocation of Gambling Licences, Radio Frequencies and CO₂ Emission Permits* (Intersentia, 2016).

93. H. Khan, *Principles of Administrative Law: A Comparative Study* (Oxford University Press, 2012); G. Nolte, 'General Principles of German and European Administrative Law – A Comparison in Historical Perspective', 57 *Modern Law Review* (1994); H. Pünder, 'German Administrative Procedure in a Comparative Perspective: Observations on the Path to a Transnational *ius commune proceduralis* in Administrative Law', 11 *International Journal of Constitutional Law* (2013).

of the Council of Europe⁹⁴ or within the European Union,⁹⁵ and related principles such as the duty to give reasons,⁹⁶ proportionality,⁹⁷ transparency⁹⁸ or legitimate expectations;⁹⁹ second, some works analyse the impact of new principles linked to new public management and governance (such as efficiency, audit or accountability¹⁰⁰) across national administrations;¹⁰¹ and third, the pressures on the rule of law across Europe have led to more attention to the rule of law from comparative administrative law scholars¹⁰² although twin ideas such as the principle of legality¹⁰³ and administrative liability¹⁰⁴ have long been thoroughly studied by comparative administrative lawyers.

Under the fourth category – that of policy areas – comparative studies are done in a quantitative manner for assessing the implementation of the cohesion policy¹⁰⁵ or for the internal market scoreboard (developed by the European Commission to monitor how the EU Member States implement the internal market and their enforcement tools) in some fields, such as procurement¹⁰⁶ or responsive administration for establishing a new venture.¹⁰⁷ More analytical and qualitative research is carried out for policy areas such as the economy, in particular in relation to the much-debated service directive,¹⁰⁸ the level of liberalization of competition and economic regulators¹⁰⁹ or

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94. U. Stelkens and A. Andrijauskaitė (eds.), *Good Administration and the Council of Europe – Law, Principles, and Effectiveness* (Oxford University Press, 2020).
95. E. Chevalier, *Bonne administration et Union européenne* (Bruylant, 2014).
96. D. Custos and J.-M. Larralde (eds.), ‘La motivation des actes administratifs. Le droit français à la lumière du droit administratif comparé’, 17 *Cahiers de la Recherche sur les Droits Fondamentaux* (2019).
97. A.J.C. De Moor-van Vugt, *Maten en gewichten: Het evenredigheidsbeginsel in Europees perspectief* (W.E.J. Tjeenk Willink, 1995); Nicholas Emiliou, *The Principle of Proportionality in European Law – A Comparative Study* (Kluwer, 1996).
98. D. Dragos, P. Kovač, and B. Marseille (eds.), *The Laws of Transparency in Action – A European Perspective*; A. Drahmman, L. Honée, and A. Al Khatib, *Openbaarmaking van overheidsinformatie: Een rechtsvergelijkend onderzoek naar de wetgeving in Zweden, het Verenigd Koninkrijk, Duitsland, Frankrijk, Slovenië en Estland*.
99. N.A. de Vos, *Europeanisering van het vertrouwensbeginsel. De betekenis van het Europese vertrouwensbeginsel voor de equivalente beginselen in Nederland, Frankrijk en België in het kader van een groeiend ius commune* (Boom Juridische uitgevers, 2011).
100. S. Rose-Ackerman, *Democracy and Executive Power: Policymaking Accountability in the US, the UK, Germany and France* (Yale University Press, 2021).
101. This research is often carried out primarily by political scientists (such as C. Pollitt and G. Bouckaert, *Public Management Reform: A Comparative Analysis – Into the Age of Austerity* (4th edition, Oxford University Press, 2017) but is relied upon by legal scholars who are studying how pervasively new public management ideas are influencing administrative law, see e.g. H. Addink, *Good Governance – Concept and Context* (Oxford University Press, 2019); I. Harden, ‘Chapter 37: Ombudsmen and Complaint-Handling’, in P. Cane, et al. (eds.), *The Oxford Handbook of Comparative Administrative Law* (Oxford University Press, 2020).
102. G. Napolitano, ‘Chapter 21: The Rule of Law’, in P. Cane et al. (eds.), *The Oxford Handbook of Comparative Administrative Law* (Oxford University Press, 2020).
103. A. Jacquemet-Gauché and U. Stelkens, ‘Dossier: Le principe de légalité en droit administratif comparé, Actes du colloque de Spire du 15 septembre 2021’, 2 *Revue française de droit administratif* (2022).
104. J. Bell and A. Bradley (eds.), *Governmental Liability: A Comparative Study* (London, 1991); D. Fairgrieve, M. Andenas and J. Bell (eds.), *Tort Liability of Public Authorities in Comparative Perspective* (London, 2002); K. Olifant (ed.), *The Liability of Public Authorities in Comparative Perspective* (Intersentia, 2016); H.J.T.M. van Roosmalen, *Overheidsaansprakelijkheid in Engeland en Nederland* (Sdu Uitgevers, 2007).
105. European Commission, *Ninth Report on Economic, Social and Territorial Cohesion*, 2024, p. 215–242.
106. See the text linked to footnotes 81–88.
107. https://single-market-scoreboard.ec.europa.eu/business-framework-conditions/administration_rules_en.
108. U. Stelkens, W. Weiß and M. Mirschberger (eds.), *The Implementation of the EU Services Directive* (Springer, 2012).
109. D. Mantzari, *Courts, Regulators, and the Scrutiny of Economic Evidence: Comparative Perspectives* (Oxford University Press, 2022); M. Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* (Oxford University Press, 2016).

various sub-fields of environmental policies, such as the national implementation of the Aarhus induced requirements¹¹⁰ and other procedural requirements.¹¹¹ In those cases, the comparison is more specialized and does not extend to the principles of general administrative law, which can cause challenges in terms of extrapolation, but can also shed more detailed light on cultural and systemic balances specific to a given administrative system.

The main drivers for this type of research are diverse. First, it may be that a specific EU instrument has been newly adopted, is controversial or is under revision, such that a stock-taking exercise is perceived to be useful from a comparative perspective. Second, a CJEU case may trigger comparable questions under some types of administrative systems.¹¹² Third, a very specific problem or plans for reforms in one country may lead scholarship to appraise anew the state of things thanks to a comparative inquiry.

Five features emerge from this brief overview of the comparative research on public administration – under the understanding that there is a risk of over-generalization in seeking to identify such trends across widely different approaches and topics. First, this research is, by reason of its extent, rarely systematic across all EU Member States. This means that often smaller states – in particular Luxembourg, Ireland, the Baltic countries, Denmark, Czechia and so on – are often left outside the scope of the comparison, especially if there is no obvious expert who speaks English, French or German in those countries. For instance, the *Manuel de droit comparé des administrations européennes*¹¹³ covers Spain, Italy, Germany, the Netherlands and the United Kingdom. This means that the challenges encountered by some administrations – often the smaller ones – are not included in the reflection about the development of a European administrative space and its specificities. Equally the comparative literature available in English, French or German and devoted to former Central and Eastern European systems and the Balkans is limited.¹¹⁴ Second, although most of the works mentioned above have a clear European focus, they often include the analysis of non-EU member states – in particular the USA¹¹⁵ – to offer a contrast, and broaden or nuance the lessons to be drawn from the comparison. Third, as systematic comparative administrative analysis is challenging, the works mentioned above can be broadly divided into two main categories – they tend to offer either a large scale / macro comparison, often relying much on the law in the books, or they tend to narrow their focus to a small scale full of intricate nuances, making extrapolation difficult. Fourth, our overview – even if only approximative – reveals some pet topics (such as public contracts) while other topics are left under-researched (e.g., the interface between

110. R. Caranta, A. Gerbrandy and B. Müller (eds.), *The Making of a New European Legal Culture: The Aarhus Convention – At the Crossroad of Comparative Law and EU Law* (Europa Law Publishing, 2017).

111. A. Nicotina, 'A Procedural Idea of Environmental Democracy: the 'Débat Public' Paradigm within the EU Framework', 14 *Review of European Administrative Law* (2021).

112. A good recent illustration is the concession beach case (CJEU, Case C-348/22 *Comune di Ginosa*, EU:C:2023:301) in relation to Italy, but with similar issues arising across the Mediterranean sea.

113. K. Abderemane et al., *Manuel de droit comparé des administrations européennes* (Larcier, 2019).

114. Though there are notable exceptions such as U. Stelkens and A. Andrijauskaite (eds.), *Good Administration and the Council of Europe – Law, Principles, and Effectiveness* or R. Scarciglia (ed.), *Administrative Law in the Balkans: Case Studies of Comparative Administrative Law in Albania, Bulgaria, Croatia, Serbia and Slovenia* (Cedam, 2012).

115. E.g., M. Ruffert, *Law of Administrative Organization of the EU: A Comparative Approach*; M. D'Alberty, *Comparative Administrative Law: Europe and the United States* (Columbia University School of Law, 1995).

administrative law and criminal law in general¹¹⁶). Finally, there is barely any systematic comparison at the sub-national level for federal countries.¹¹⁷

4. Judicial review of administrative action

If comparative works on administrative law in general were not abundant until the end of last century, this is even more the case when zooming in on comparative research on judicial review of administrative action in particular.

Beyond some exceptions,¹¹⁸ in some cases tackling specific issues of judicial review,¹¹⁹ the first comprehensive works on comparative judicial review started to appear in the 1970s.¹²⁰ Taking a true ‘comparative’ approach (i.e., beyond the mere ‘juxtaposition’ of legal systems),¹²¹ the volume of Auby and Fromont long remained the only volume of its kind, until the *Casebook on Judicial Review of Administrative Action* appeared in 2019.¹²² In the meantime, however, other – less comparative but more comprehensive – endeavours were undertaken, including perhaps the most extensive work on administrative justice in the last two decades of the 20th century: the collective work on *Administrative Law: the Problem of Justice*.¹²³ Nevertheless, one cannot escape the conclusion that comparative works on judicial review of administrative action remained a relatively niche topic until the turn of the millennium, even within the already rather niche branch of comparative administrative law.

With the increasing influence of EU legislation, but also, more importantly, the case law of the CJEU, a strand of comparative works related to judicial review started to emerge, with the aim of assessing the process of ‘Europeanization’ and possibly of the convergence of national systems of administrative justice in Europe. These works have remained, however, limited in terms of either the legal systems compared,¹²⁴ or the coherence in the comparison between legal

116. One relatively early work (comparing the Netherlands with the USA) is by C.L.G.F.H. Albers, *Rechtsbescherming bij bestuurlijke boeten* (SDU Uitgevers, 2002). More recent works include O.F. Essens, *Operationalising Effective Public Enforcement of Environmental Law in the European Union, with a Focus on England, Germany and the Netherlands* (Utrecht, 2019); A. de Vries, *Evidence and Transnational Punitive Enforcement Proceedings in the European Union. The gathering, sharing and use of evidence by Member States’ administrative and judicial authorities during transnational punitive enforcement proceedings in the EU’s integrated internal market and Area of Freedom, Security and Justice* (Eleven, 2024).

117. For an exception where sub-national entities are compared across borders, see F. Cittadino et al. (eds.), *Climate Change Integration in the Multilevel Governance of Italy and Austria* (Brill, 2023).

118. R. Bonnard, *Contrôle Juridictionnel de l’Administration: Étude de Droit Administratif Comparé* (Librairie Delagrave, 1934).

119. F. Morstein Marx, ‘Comparative Administrative Law: Note on Review of Discretion’, 87 *University of Pennsylvania Law Review and American Law Register* (1938–1939).

120. J.-M. Auby and M. Fromont, *Les recours contre les actes administratifs dans les pays de la Communauté économique européenne* (Daloz, 1971).

121. On this point, see G. Della Cananea and M. Bussani, 26 *Maastricht Journal of European and Comparative Law* (2019), p. 221.

122. C. Backes and M. Eliantonio, *Cases, Materials and Text on Judicial Review of Administrative Action* (Hart Publishing, 2019).

123. G. Motzo and A. Piras, *Administrative Law: The Problem of Justice* (Giuffrè, 1990–1991). See also in the same period, G. Recchia (ed.), *Ordinamenti europei di giustizia amministrativa (Trattato di diritto amministrativo, XXV)* (Cedam, 1996) and J. Barnés (ed.), *La justicia administrativa en el derecho comparado* (Civitas, 1993).

124. E.g. M. Eliantonio, *Europeanisation of Administrative Justice? The Influence of the ECJ’s Case Law in Italy, Germany and England* (Europa Law Publishing, 2008); C.-D. Classen, *Die Europäisierung der Verwaltungsgerichtsbarkeit: eine*

systems.¹²⁵ Recently, new comparative work has been carried out on the impact of specifically Article 47 of the Charter of Fundamental Rights pertaining to the right to effective judicial protection (although the comparison is not limited to administrative courts),¹²⁶ and on the adjudication of a specific piece of EU legislation (i.e., the Habitats Directive) in several EU legal systems.¹²⁷

Meanwhile, in the last 10 years, a wealth of comparative works on judicial review has seen the light of the day. Some works have tackled ‘classic’ topics of judicial review from a comparative perspective, such as the structure of models of administrative justice,¹²⁸ standing rules,¹²⁹ the control of administrative discretion,¹³⁰ as well as rules and principles of administrative decision-making procedures¹³¹ administrative silence,¹³² the indirect review of administrative action,¹³³ the rules concerning the voidness or voidability of administrative acts¹³⁴ and the liability of public authorities,¹³⁵ including in a historical perspective.¹³⁶ Other comparative works are instead more general in nature but contain aspects related to judicial review.¹³⁷ Worth highlighting are several chapters in the above-mentioned *Oxford Handbook of Comparative Administrative*

vergleichende Untersuchung zum deutschen, französischen und europäischen Verwaltungsprozessrecht (Mohr Siebeck, 1996); F. Grashof, *National Procedural Autonomy Revisited – Consequences of Differences in National Rules on Administrative Litigation for the Enforcement of Environmental European Union Law* (Europa Law Publishing, 2016); M.-P. Granger, ‘National Applications of Francovich and the Construction of a European Administrative Jus Commune’, 32 *European Law Review* (2007).

125. J. Jans, S. Prechal and R. Widdershoven (eds.), *Europeanisation of Public Law*, especially the chapter on judicial protection by R. Ortler and R. Widdershoven.
126. M. Bonelli, M. Eliantonio and G. Gentile (eds.), *Article 47 of the EU Charter and Effective Judicial Protection, Volume 2: The National Courts’ Perspectives* (Hart Publishing, 2023).
127. M. Eliantonio, E. Lees and T. Paloniitty (eds.), *EU Environmental Principles and Scientific Uncertainty before National Courts – The Case of the Habitats Directive* (Hart Publishing, 2023).
128. S. Nason (ed.), *Administrative Justice in Wales and Comparative Perspectives* (University of Wales Press, 2017); G. Marcou, ‘Une cour administrative suprême: particularité française ou modèle en expansion ?’, *Pouvoirs* (2007); A. Gailllet, ‘Le Conseil d’État français: histoire d’une exportation difficile en Europe’, *Revue Française de droit administratif* (2013).
129. M. Eliantonio et al. (eds.), *Standing Up for Your Right(s) in Europe – A Comparative Study on Legal Standing (Locus Standi) before the EU and Member States’ Courts* (Intersentia, 2013); also available at www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=75651.
130. S. Ranchordas and B. de Waard (eds.), *The Judge and the Proportionate Use of Discretion: A Comparative Administrative Law Study* (Routledge, 2015); G. Zhu (Ed), *Deference to the Administration in Judicial Review: Comparative Perspectives* (Springer, 2019).
131. G. della Cananea and M. Bussani (eds.), *Judicial Review of Administration in Europe* (Oxford University Press, 2021).
132. D. Dragos, P. Kovač and H. Tolsma (eds.), *The Sound of Silence in European Administrative Law*.
133. M. Eliantonio and D. Dragos (eds.), *Indirect Judicial Review in Administrative Law: Legality vs Legal Certainty in Europe*.
134. G. Bocksang Hola, *L’inexistence juridique des actes administratifs: Essai de théorie juridique comparée: France, Chili, Espagne, Italie* (Mare et Martin, 2013).
135. G. della Cananea and R. Caranta (eds.), *Tort Liability of Public Authorities in European Laws* (Oxford University Press, 2020).
136. G. della Cananea and S. Mannoni (eds.), *Administrative Justice: Fin de Siècle. Early Judicial Standards of Administrative Conduct in Europe (1980–1910)* (Oxford University Press, 2021); K.P. Sommermann and B. Schaffarzik (eds.), *Handbuch der Geschichte der Verwaltungsgerichtsbarkeit in Deutschland und Europa* (Springer, volume 2, 2019).
137. See, especially, R. Seerden (ed.), *Comparative Administrative Law: Administrative Law of the European Union, its Member States and the United States* (4th edition, Intersentia, 2018); F. Bignami, ‘Regulation and the Courts: Judicial Review in Comparative Perspective’, in F. Bignami and D. Zaring (eds.), *Comparative Law and Regulation: Understanding the Global Regulatory Process* (Edward Elgar, 2018); I. Deviatnikovaitė (ed.), *Comparative Administrative Law – Perspectives from Central and Eastern Europe* (Routledge, 2024).

Law,¹³⁸ and *Comparative Administrative Law* collections,¹³⁹ which offer comparative observations on various topics of judicial review. Also the *Oxford Handbook of Administrative Justice* deserves a special mention, as it contains a comprehensive set of reflections on the topic, although these are not always comparative in nature.¹⁴⁰

Finally, although the focus of this contribution is on Europe, it should be noted that increasingly more comparative work on judicial review of administrative action is carried out to encompass non-European jurisdictions.¹⁴¹

5. A research agenda on comparative administrative law

From the previous sections, we can conclude that, after a period of relative silence, comparative administrative law in Europe seems to have experienced a *renaissance* since the turn of the millennium and is an ever-expanding, broadening and deepening field of analysis. In this wealth of recent research endeavours, a positivist approach to ‘law and administration’¹⁴² appears to have been traditionally predominant, despite the obvious connections of administrative law with political sciences, history, sociology of organizations and to a lesser extent economics that feature in part of the works mentioned above to varying degrees.

Different avenues for future research can be signposted, although the main question remains the starting point for any comparison – why do we want to compare in the first place? For inspiration, for understanding, for importing, for exporting, for adapting to changes, for conceptualizing, for collecting information, or something else? What is the benefit of exhaustivity, selection, inclusion and diversity? How far in the past do we need to reach out to understand the current situation and how stable might the current situation remain in the future?

Bearing in mind these cautionary general questions, contemporary public administrations in Europe face numerous challenges – such that one avenue for future comparison might be called ‘challenge-led’: it would start with the identification of the most pressing challenges for administrative systems in Europe, such as threats to democratic pluralism and low social/political compromise, resistance to facing the hard social, economic, political and environmental reality and its conflicting truths, such as in the case of climate change, the ageing population, maintaining a

138. P. Cane et al. (eds.), *The Oxford Handbook of Comparative Administrative Law* (Oxford University Press, 2020), especially Chapter 28 by M. Asimow, ‘A Comparative Approach to Administrative Adjudication’; Chapter 35 by L. Thio, ‘Courts and Judicial Review’; Chapter 41 by H. Wilberg, ‘Judicial Review of Administrative Reasoning Processes’; Chapter 42 by P. Craig, ‘Legality: Six Views of the Cathedral’; Chapter 43 by P. Daly, ‘Facticity: Judicial Review of Factual Error in Comparative Perspective’; and Chapter 44 by J. Mathews, ‘Reasonableness and Proportionality’.

139. S. Rose-Ackerman, P. Lindseth and B. Emerson (eds.), *Comparative Administrative Law* (2nd edition, Edward Elgar, 2019) especially Chapter 23 by P. Craig, ‘Judicial Review of Questions of Law: A Comparative Perspective’; Chapter 24 by J. Mathews, ‘Proportionality Review in Administrative Law’; and Chapter 25 by G. Bocksang Hoha, ‘Voidness and Voidability of Unilateral Administrative Acts in the Western Tradition’.

140. M. Hertogh et al. (eds.), *The Oxford Handbook of Administrative Justice* (Oxford University Press, 2021).

141. E.g. P. Daly, *Understanding Administrative Law in the Common Law World* (Oxford University Press, 2021); S. Jhaveri and M. Ramsden (eds.), *Judicial Review of Administrative Action across the Common Law World* (Cambridge University Press, 2021); C.-Y. Huang and D. S. Law, ‘Proportionality Review of Administrative Action in Japan, Korea, Taiwan, and China’, in F. Bignami and D. Zaring (eds.), *Comparative Law and Regulation: Understanding the Global Regulatory Process* (Edward Elgar, 2018); L. Eugenio García-Huidobro and S. Guidi, ‘El espejismo de Baena: Luces y sombras de un derecho administrativo comparado latinoamericano’, 19 *Internacional Journal of Constitutional Law* (2021); R. Pelingeiro, ‘Análisis comparativo de los sistemas de justicia administrativa en América Latina’ 24 *Estudios Socio-Jurídicos* (2022).

142. To borrow the title of a classic in English administrative law by Carol Harlow and Richard Rawlings.

sustainable level of healthy workers, the growing inequality among a population with very diverse needs and means, growing social injustice, threats to physical security and social wellbeing, digitalization and AI used in the administrative realm and the need for strengthening administrative coordination across countries and regions and across policy areas (e.g., taxation, social security, health care). Across those challenges, what role does administrative law play in European countries? To what extent is this similar everywhere? Why (not)? Could the answers provided be different? And how different?

All these questions lead to reflecting on the countries under comparison (including countries seen as peripheral and not core to the European project), the micro or macro level of the comparison and the interactions between constitutional and administrative law and between public administration and judicial review. Key in these questions remains the ability to communicate across linguistic communities. While translation based on AI opens new doors here, communication does not mean merely access to legal texts in a language one understands, but also properly locating the meaning of concepts and techniques within their social, economic, political and legal contexts, so that communication goes beyond formal access and extends to substantive access and respectful exchange between equals. In this respect, the identification of facilitators for comparative endeavours (places, institutions, individuals, funding etc.) is crucial. In the vein of decentring comparison, attention needs to be paid to a better understanding of regional integration and its contribution (e.g., Benelux or Nordic Association) and the EU Neighbouring policy and associated partnerships and their actual administrative reality in the respective countries. This also leads to reflecting upon the need to develop distinct methodologies for comparing EU countries engaged in administrative interactions underpinning a multi-level form of governance across the EU administrative space, for comparing the EU and individual European states with non-EU countries above and beyond general principles, and for comparing individual European states with administrations sharing a longer (even if complex) administrative tradition outside Europe. This leads back to the objectives of the comparison, where convergence and/or pluralism may have a more or less attracting force. This also opens up the entry points in comparison, not limited to a vertical top-down approach, but including various expressions of horizontal and bottom-up perspectives.

In comparing administrative answers to the current political, social, economic and environmental challenges across European administrative systems, the researcher might find that a positivist approach to the law yields only limited results. The research investigations could be enriched thanks to an ever broader and deeper dialogue across disciplines (both methodologically and substantively)¹⁴³ and an accountable collaboration between academia, state officials and citizens. Indeed, comparative work is not immune to too-cosy relationships between scholars and practitioners,¹⁴⁴ yet it needs to understand how things work (or not) on the ground in the different administrative systems to stay relevant. Establishing clear and reliable communication channels between scholars and practitioners, while maintaining a critical distance might require developing ethical principles of mutual expectations. The stakes are high as some administrative systems could be difficult to reach for academic outsiders. However, questions asked by outsider experts can be most helpful for insiders for reflecting upon their own systems and underpinning assumptions. In short, the future of comparative administrative law in Europe needs to be open to engaging with


143. For instance, operationalising the network theory as Van Cleynbreughel is doing with his EUDAIMONIA project.

144. P. Leino-Sandberg, 'Enchantment and Critical Distance in EU Legal Scholarship: What Role for Institutional Lawyers?', 1 *European Law Open* (2022).

wider discussions, and building pathways and processes for strengthening collaboration, iteration, experimentalism and incrementalism beyond law and beyond academia, so as to provide tools to address the major political, social, economic and environmental challenges that European states currently face.

Overall, comparative administrative law has gained increasing prominence over the last 15 years or so, generating its own sub-fields and research questions. As European states, the European Union, the Council of Europe and the NATO are facing new political, social, economic and environmental challenges to their existence, organization and objectives, comparative administrative law is more than ever needed to smoothen dialogue, mutual trust and a constructive future together respectful of human dignity, pluralism, good governance and judicial protection.

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