

The Many Faces of “Good Administration” in European Integration: the European Union and Council of Europe in Comparative Perspective

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I. Introduction

European integration has multiple channels and manifestations, but perhaps the two most well-known are the European Union (EU) and the Council of Europe (CoE). The EU is a supranational organisation that is the successor to the European Community, established as the European Economic Community in 1957. It has a distinctive legal order, where the principles of direct effect and direct applicability are paramount. It works according to a broadly top-down approach, but due to the conferral principle, the competences of the EU, while formulated broadly, are limited to those enumerated in the EU treaties—the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The CoE is an international organisation founded by the Statute of the CoE (SCoE) of 1949, operating as an intergovernmental entity under international law. Principles and standards circulate between the national and international levels, with no interference from characteristically distinctive CoE legal principles.

One thing that unites both modalities for European integration is the effort to promote good governance and good administration. These concepts are, or should be, features of any public organisation, whether national, international or supranational. The EU and CoE each attempt to promote good administration, although their efforts differ in important respects, even as they work at complementary levels.

In the EU, good administration mostly benefits economic actors through specialised (very often economic) policies, often also with a cross-border dimension of some sort. Good administration is a principle recognised both in case law of the Court of Justice of the European Union (CJEU) and in Article 41 of the EU Charter of Fundamental Rights (CFR). It works alongside the principle of proportionality, the rule of law (and its components such as transparency, legality, legal certainty, legitimate expectations), the principle of effective judicial protection and the right of defence. The CoE, like the EU, has paid sustained attention to good administration over the years (starting with the Resolution (77) 31 on the protection of the individual in relation to acts of administrative authorities as the first general instrument) and has unpacked multiple aspects in binding and non-binding instruments, in particular Recommendation (2007)7 on good administration, adopted by the Committee of Ministers of the CoE on the basis of Article 15 (b) SCoE. In the CoE, in other words, the main beneficiaries of good administration are most often private individuals in their day-to-day interactions with their national administration, where a cross-border dimension appears infrequently.

This chapter aims to unpack the differences between the EU's and CoE's respective programmes of promoting good administration along three different dimensions: spatial (Section II), material (Section III), and institutional (Section IV). Section V then maps the interactions between the EU and the CoE. One surprising, if inadvertent, side effect of the coexistence and mutual reinforcement of the two organisations, this chapter suggests, is that the very complexity of this interplay makes it difficult for legal practitioners, officials, and scholars to learn, think and decide in a truly distinctive European way, fully integrating the requirements of both orders. We take up this point in the Conclusion.

¹ This chapter builds on a research programme funded by the DFG (2016-2024), which led to the publication of Stelkens, U. and Andrijauskaitė, A. (eds) (2020), *Good Administration and the Council of Europe: Law, Principles, and Effectiveness*. A follow up companion is in progress.

II. Spatial Differentiation in European Integration

Good administration refers to features of an administrative system. In Europe, there is not one single administrative system, but a plurality of administrative systems, to which requirements of good administration apply by virtue of national administrative law, EU membership and/or CoE membership as well as *ad hoc* arrangements that can either extend or limit the obligation to comply with good administration requirements. There is not one single “European Administrative Space” (von Bogdandy 2017, 16ff; 2016, 532), but a plurality. As a matter of principle, the “basic” European administrative space includes the EU Member States participating in all EU policies. However, this European administrative space knows functional variations according to specific economic concerns or specific policies (such as security). For instance, the European Monetary Union only includes 20 Member States out of the 27 EU Member States. The Schengen Space (the space where freedom of movement can be exercised without border checks in Europe) does not include all Member States (Bulgaria, Cyprus, Ireland and Romania), but also includes non-Member States (Iceland, Norway, Switzerland, and Liechtenstein). In addition, this basic European administrative space can be expanded through cooperation with neighbouring countries – especially those countries outside the EU that are members of the CoE, with or without a partnership with the EU.²

Conversely, the CoE and its satellites—the European Commission for Democracy through Law, known as the “Venice Commission” (Grabenwarter 2017); the Congress of Local and Regional Authorities (CLRAE) (Schaffarzik 2017); the Group of States against Corruption (GRECO) (Rau 2017); the European Commission for the Efficiency of Justice; and perhaps most importantly, the European Court of Human Rights (ECtHR), the body charged with adjudicating claims under the CoE’s most famous shared instrument, the European Convention on Human Rights (ECHR)—also have differentiated membership. The CoE membership includes not only the territory of EU Member States but also *all* former communist states of Central, Eastern, and South Eastern Europe (excluding Belarus and Kosovo but including Russia until 2022), and those Western European States outside the EU (Andorra, Iceland, Monaco, Liechtenstein, Norway, San Marino, Switzerland, and the United Kingdom).³ If this membership applies for the ECHR (see Article 59(1) ECHR) it varies for other conventions. For instance, the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data has been ratified by 44 States, but not all CoE Member States (such as Belgium, Greece, Italy or the United Kingdom), and includes accession by non-CoE Member states (such as Argentina, Mexico, and Senegal). Equally CoE satellites have a differentiated membership. For instance, GRECO has 50 members, including the USA and 6 international organisations with observatory status (including the UN, and the OECD); the Venice Commission has 61 members including the USA, Peru, Brazil, Tunisia and Korea, 4 observers (Argentina, Holy See, Japan and Uruguay) and “other” bodies with whom they cooperate (the EU, OAS and OSCE/ODIHR). This wide membership brings together diverse historical experiences and evolutions in regard to the ways in which a state relates to its citizens, and how this evolution happened. As an example, a strong distinction can be made between former communist states and Western democratic countries in the ways in which good administration has percolated from the instruments of the CoE (Stelkens, Andrijauskaitė and Marique 2020, 779–88). The conclusions return on this point.

These differentiated European administrative spaces suggest that “good administration” receives different content, scope and enforcement mechanisms depending on the countries and the policy fields. Nonetheless, it can still be argued that good administration is a component part of a “common heritage”

² Under the accession process of the Western Balkans to the European Union (Albania, Montenegro, North Macedonia, and Serbia, with Bosnia and Herzegovina and Kosovo also potential candidates for EU accession; only Kosovo is not a member of the CoE) and the Eastern Partnership of the European Union, which currently includes Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine with only Belarus outside the CoE.

³ That the “Brexite” from the EU should be followed by a “Brexite” from the ECHR (see Article 58 ECHR) is the object of serious repeated political and legal discussions in the United Kingdom (Amos 2024; Duranti 2017 2ff; Fenwick and Mastermann 2017; Theil 2017, 587ff; Zoethout 2017).

(Article 1 SCoE) on which both the CoE and the EU legal orders are built (the latter flowing from the seminal 1963 decision in *Van Gend en Loos* and numerous “constitutionalising” decisions ever since). The “core” of the European administrative spaces (see von Bogdandy 2016, 2017), so to speak, refers to those few members of both the EU and the CoE (such as the Netherlands) which have ratified nearly the entirety of the CoE’s conventions while also not opting out of any EU policy areas. But most European States have different intertwined commitments to good administration based on their supranational or international obligations compared to other European States. There is thus no one European administrative space, but a multitude of such spaces. The activities of the EU and the CoE are complementary in shaping how requirements of good administration are developed and implemented across these various European administrative spaces.

III. Material differences

The material differences between the CoE and the EU are linked to the type of administrative interactions falling within these two systems at the level of principle (A) as well as the substantive areas covered (B).

A. Principles

The starting point is that each Member State has its own administrative system with its own relatively effective standards for good administration. The CoE and the EU influence these national standards differently.

The CoE is based on traditional principles of public international law. There is no principle of conferral and no limits to the activities of the CoE and the case law of the ECtHR in the realm of administrative law: the competences of the CoE are not enumerated in a limitative list. Quite the contrary: the broad wording of Article 1 of the SCoE implies that the scope of the CoE encompasses any governmental and intergovernmental activity except for matters relating to national defence (Article 1(d) SCoE) (Breuer 2017b, 38.06ff).

By contrast the situation is more complicated at the EU level because the requirements of good administration depend on the types of relationships they apply to. Four different sets of relationships can be distinguished. The first set pertains to the interactions between the components of what we might call the EU “administration” (referring to the entirety of EU institutions, bodies, offices, and agencies; for instance, as between the Commission and the European Ombudsman or the Agency for Fundamental Rights and Frontex). The second set pertains to EU administration in relation to individuals and economic actors, when the EU works under so-called “direct administration” (e.g., competition until 2003, development aid). In this case, Member States do not intervene in the final decisions and their national administrative law does not need to be taken into account (Ziller 2022, 302–3). The third set pertains to the relationships between the EU administration, EU Member States implementing EU law and the final addressee (e.g., customs). Known under the label of “indirect administration”, this type of interaction raises questions regarding vertical composite procedures⁴ and the articulation of European and domestic administrative law. This triggers questions as to how EU requirements of good administration align with national requirements of good administration, and the consequences of a possible discrepancy and/or instances of national maladministration. The fourth set pertains to administrative cooperation (leading to integrated administration, networked administration and horizontal composite procedures) between the authorities of different Member States⁵ and the EU’s administration and final addressees. In this case, two levels of articulation are required: first, the European and domestic administrative laws need to be articulated bilaterally; and secondly, different

⁴ Composite procedures involve administrative action from different Member States (“horizontal composite procedures”) or from one or several Member States and the European Union (“vertical composite procedures”) (Hofmann 2009, 136–167).

national administrative laws (with their own requirements for good administration) also need to be reconciled. The last three components are most often currently included under the general umbrella of “EU Administrative Law” (e.g., by Hofmann, Rowe and Türk 2011, 1–19; Schmidt-Abmann 2004, 377ff; Schwarze 2005, Clff). In addition, some policy areas such as cohesion policy, research policy or technological development are managed through a mix of direct and indirect administration (Ziller 2022, 304).

The EU legal system imposes only limited specific requirements of good administration on EU Member States due to a combination of two principles. First, the principle of conferral provided for in Article 5 (1) of the TEU means that the EU only has the powers that the Member States have transferred to it, and no more than that: the competences of the EU are — even if they are formulated broadly — enumerated in the TEU and the TFEU in the form of a limitative list.⁵ The EU may only create “specialized administrative law” (i.e. “institutional structures, procedures, types of measures, powers, supervisory structures” etc that vary across and among the sectoral policies (Hofmann, Rowe and Türk 2018, 5) to be transposed, implemented and enforced by its EU Member States as ancillary to the exercise of its competences in various policy fields, but not general administrative law (i.e. principles applicable throughout any policies) as the Treaties provide no legal basis to do so (Dubos 2015, 17).

Secondly, the principle of institutional autonomy (*Fleischkontor* 1971; *International fruit company* 1971) of the Member States has received different understandings in the scholarship (e.g. Galetta 2010, 33ff, 75ff; Mehdi 2014; Stelkens 2012, 527ff; Vincze 2016, 26ff; 2017; von Danwitz 2008, 302ff). It broadly “refers to the preservation of state administrative structures despite the existence of a common legal framework” at the EU level (Bois and Van Cleynenbreugel 2021, 7). It often applies in combination with procedural autonomy and in cases pertaining to judicial organisation. However, it also finds application in the realm of administrative organisation, meaning that Member States “remain at liberty to designate, structure and organise their administrations as long as they are capable of implementing EU law.” (Bois and Van Cleynenbreugel 2021, 11–12. Add: Opinion to *Commission of the European Communities v Hellenic Republic* 2005 [27]; Opinion to *Fish Legal and Emily Shirley v Information Commissioner and Others (Fish Legal)* 2013). There are only two limits to this institutional autonomy. First, the well-settled case law of the CJEU demands that the application of national law “must not have the effect of making it virtually impossible to implement” the EU legislation in question, and that “national legislation must be applied in a manner which is not discriminatory compared to procedures for deciding similar but purely national disputes” (*Deutsche Milchkontor GmbH and Others v. Germany* 1983 [16]ff; Craig 2018, 758ff; Galetta 2010, 33ff; Jans et al. 2015, 40ff). This means that the effectiveness and administrative capacity of Member States to implement EU law needs to be maintained. Secondly, this procedural and administrative autonomy needs to respect fundamental rights and freedoms (Opinion in *Dvizev* 2018 [119]).

Questions arise about the nature of the principle of institutional autonomy and the extent to which EU law interferes with national sovereignty when it comes to setting requirements of good administration (Opinion to *Parking Brixen* 2005 [71]). On the one hand, some scholars understand the principle of institutional autonomy in combination with the obligation for the EU to respect the national identity of Member States (Potvins-Solins 2015, 326–327, fn 5), as guaranteed in Article 4(2) of the TEU.⁶ National identity covers features of Member States “inherent in their fundamental structures, political and constitutional, inclusive of regional and local self- government” and as “their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security”. The features considered as “core”, forming the “character” of the national administration and the relationship between the national administration and the public include the national rules on administrative organisation, the civil service, and local self-government, as well

⁵ The German version of Article 5(1) TEU speaks of a “Prinzip der begrenzten *Einzelmächtigung*” (our emphasis) and therefore stresses the “enumerative” character of the competences of the EU as a rule (in contrast to conferrals in the form of sweeping clauses).

⁶ This is in line with the general assumption that today EU law is not only about advancing the harmonisation of national systems but also about resisting a perceived top-down Europeanisation (von Bogdandy 2016, 525).

as national rules on administrative procedures, public procurement, public services, freedom of information and data protection, judicial protection and accountability in administrative matters and state liability. This limits the “Europeanisation” of the national administrative law of the EU Member States in these fields (Slautsky 2018).

On the other hand, other scholars read the relationship between the principle of organisational autonomy of Member States and EU law differently: they argue that this principle only means that the existing national administrative organisations and procedures can be used to implement EU law when EU law does not provide for specific administrative requirements. This interpretation frames the principle of organisational autonomy as a default mechanism when implementing EU law and not as protection for EU Member States (Stelkens 2012, 527–536). Indeed, the detailed components of administrative systems such as the administrative organisations, processes and structures are often barely known by citizens, so much so that the citizenry does not really identify with these administrative components (Stelkens 2012, 535).

As a consequence, there is uncertainty about the interactions between national and EU requirements of good administration and how they need to be concretely articulated in specific cases – leaving scope for controversies, legal uncertainty and judicial challenges. All these issues have the potential to confound the maintenance of good administration.

B. Material scope

As a result of these differences in the respective competences of the EU and the CoE, the two international organisations approach good administration differently: the CoE tends to provide detailed requirements in transversal matters occurring across the whole range of public policies (which could be understood as “general administrative law” in domestic systems such as Belgium, France, or Germany) while the EU regulates good administration in specific policy areas (which could be understood as “special administrative law” in the same domestic systems).

Outside the scope of the “Area of Freedom, Security and Justice” (Articles 67ff of the TFEU) EU administrative law is shaped by legislation concerning highly specialised procedures before highly specialised authorities mainly of relevance for economic enterprises operating across borders. The best examples are the competition policy (e.g.: *HSBC Holdings plc* 2023; *United Parcel Service, Inc. v European Commission* 2022 [100]-[101]), customs (*Harley-Davidson Europe Ltd and Neovia Logistics Services International v European Commission* 2023) and liberalisation packages in energy and transport, and similar policies with their requirements of independent regulatory agencies (De Somer 2017), or the supervisory and oversight structure proposed by the Digital Act (Reichel and Chamberlain 2023). EU instruments often define the requirements in minute detail, leaving little room for manoeuvre to Member States (although this differs depending on the types of instruments and the degree of harmonisation sought, but in any case, policy choices have been made at the EU level for the broad direction of the given instrument) as the main objectives pursued by the EU are to develop, maintain and protect the freedom of movement and the internal market. These detailed administrative requirements can lead to practical uncertainty. For instance, access to files in administrative matters needs to be carefully balanced with confidentiality and professional secrecy, a weighing that takes place in the particular circumstances of a case, considering the administrative background and relationships between the actors involved in the administrative processes (e.g. *Varec* 2008).

By contrast, the CoE-principles of good administration are relevant for the entire range of administrative action of all administrative authorities in a given state. This means that they do not primarily target highly specialised administrations but rather the so-called street level bureaucracy (*cf.* Lipsky 1980), i.e. “everyday” administrations on the ground dealing with usual problems encountered by ordinary people. Therefore, the CoE-principles of good administration mainly target those “core areas” of domestic administrative law that are to a certain extent “no-go-zones” for EU law due to being closely linked to the national identity of EU Member States. The CoE instruments cover administrative

organisation and administrative procedures (e.g.: Recommendation (2007)7 article 2; Recommendation (95)19), local self-government (European Charter on Local Self-Government), freedom of information (starting early with Recommendation (81)19) and the like. The CoE does not prescribe detailed requirements leaving a wide choice to Member States, as long as their choice contributes to the overall objectives of the rule of law and democracy.

This distinct approach to the material scope of good administration leads to three-fold consequences, all resulting from the lack of a coherent approach to the allocation of roles between the CoE and the EU. First, the requirements set by the CoE and the EU can be superposed in some cases.⁷ Second, some areas are only covered by one of the two systems. For instance, the CoE did not develop instruments pertaining to procurement while this has a massive influence for EU industrial policy (Di Carlo and Schmitz 2023) and has triggered case law pertaining to the organisation of national administration, especially at the local level (e.g. *Coditel* 2008). Conversely, spatial planning – one of the rare policy areas covered by the CoE (Recommendation (84)2 on the European Regional/Spatial Planning Charter) – is barely touched upon by the EU.⁸ Third, some aspects of good administration escape both systems. For instance, administrative means to address corruption (e.g. financial audit and control)⁹ in the spending of national money (*versus* EU funds) are not addressed in either of the two systems in a comprehensive way (see however, Recommendation (2023)5 on the principles of good democratic governance). However, corruption is a concern that is included in most of the CoE-related instruments in some form or another. GRECO monitors the implementation of a Code of Conduct for Public Officials (Recommendation (2000)10) and of the Guiding Principles of the twenty principles for the fight against corruption, which pertains to public officials in its article 10.¹⁰ In that indirect manner, corruption in national administrations has been partially addressed by CoE-requirements. The fight against corruption in domestic administrations is also included in EU instruments indirectly, such as in the Conditionality Regulation (2020/2092 recitals 8 and 16; Sanchez, Eliantonio and Korkhea-aho, this volume) and the Whistle-blower Directive (2019/1937 recitals 6, 15 and 23).

To contrast the material scope of good administration at the CoE and EU levels and their respective beneficiaries, illustrations drawn from the case law of the respective Courts are useful. At the EU level, Article 41 of the ECFR is invoked in its different components by large economic actors to protect their economic interests. The duty of care and the principle of impartiality have been invoked to challenge proceedings and inspections by OLAF that have led to the exclusion of the claimant from participating in procurement and grant award procedures funded by the general budget of the European Union (*RH v European Commission* 2023 [64]), to challenge EU sanctions following an excess in quotas for chemical products (*Darment Oy v European Commission* 2020 [54]), and to challenge sanctions imposed for the infringement of competition regulations (*Shell Petroleum and Others v Commission* 2012 [170]). The distinction between objective and subjective impartiality has been made in relation to a cartel case (*Ziegler* 2013 [155]. *Add. Chronopost and La Poste v UFEX and Others* 2008 [54]; *Gorostiaga Atxalandabaso v Parliament* 2009 [46]). The right of defence has been invoked to challenge sanctions imposed for infringement of competition regulations (*Shell Petroleum and Others v Commission* 2012 [82]).

By contrast, the CoE-principles of good administration have been invoked in mundane administrative matters pertaining directly to the interests of individuals, such as by a resident against the noise

⁷ E.g.: the processing of personal information was first regulated by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, before the EU regulated in this area, leading to its Regulation (EU) 2016/679 (General Data Protection Regulation).

⁸ At least in explicit terms of good administration, although the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment could be understood as a laying down requirements for good administration.

⁹ The civil and criminal consequences of corruption are provided by the Criminal Law Convention on Corruption and Civil Law Convention on Corruption. The Civil Law Convention touches upon matters pertaining to financial control and audit (article 10) but it seems to apply only to private bodies and not public ones.

¹⁰ Guiding Principle 10 of CM Resolution 97(24) on the twenty guiding principles for the fight against corruption.

regulations pertaining to airports (*Powell and Rayner v. the United Kingdom* 1990), “illusory” administrative mechanisms (*Bronikowski v. Poland* 2004 [172]) established by a succession of laws and defective administrative practices for repatriated persons post-WWII to claim compensation in Poland in the 1990s (*Bronikowski v. Poland* 2004 [184]); the need for a case by case analysis of the circumstances surrounding the demolition of an illegal building to assess the “extent of the intrusion into the personal sphere of those concerned” of such a demolition (*Ivanova and Cherkezov v. Bulgaria* 2016 [55]); the revocation of an acquired right to an early-retirement pension, which needed to be carried out “in good time, in an appropriate manner and with utmost consistency” (*Moskal v. Poland* 2009 [51], [72]); and the ambivalent and untimely treatment by the relevant authorities of the owner of a protected painting (*Beyeler v Italy* 2000 [119]).

IV. Institutional differences

The requirements of good administration do not only differ spatially and materially between the CoE and the EU. They also follow different institutional features, both in terms of the definition and adoption of these requirements (A) and the monitoring of their implementation (B).

A. Sources and adoption

The differences between the CoE and the EU are not so much in the sources of the requirements for good administration, but in how these sources are relied upon in the two international organisations. The CoE and the EU follow different procedures to adopt legal instruments and binding requirements for their Member States. The EU follows international principles for the adoption of Treaties, the ECFR, and primary law and a supranational procedure whereby secondary law (directives, regulations etc.) can be adopted by a majority of Member States. The CoE follows a traditional international system of decision-making with unanimity being required or at least the consent of the States to be bound. This applies for the Convention on Access to Official Documents and the European Charter of Local Self Government and its Additional Protocol on the right to participate in the affairs of a local authority.

In addition, principles of good administration are also identified by the two court systems, the CJEU together with the court of first instance in the EU system, the General Court (GC) (e.g. *Slovak Telekom v. Commission* 2012 [67]-[68], referring to *TU München* 1991; *La Cinq v. Commission* 1992 [86]; and *Atlantic Container Line and Others v. Commission* 2003 [404]), and the ECtHR (*Beyeler v. Italy* 2000; *Moskal v. Poland* 2009; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* 2005 [49]; *Church of Scientology Moscow* 2007 [87]; *Alekseyev v. Russia* 2010 [85]; *Chapman v. UK* 2001 [106] ff.; *Megadat.com SRL v. Moldova* 2008 [73]; *Lombardi Vallauri v. Italy* 2009 [45]). The CJEU/GC develops general legal principles of good administration that remain outside the formal text of the ECFR: even if there are specific secondary law provisions (e.g. Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative (OJ 2011 L 65, 1) recitals 1, 2, 4 and 10), the formal provision of the Charter does not exhaust all the different options. The ECtHR does not limit the application of the CoE Treaties to the Member States party to them, but uses its interpretative powers to extract principles applicable to any CoE Member States, as happened in the landmark *Demir and Baykara* case (2008 [76]ff.). In this case the ECtHR made it clear that it could take into account international conventions and recommendations adopted by any international organisations, not just the CoE, when interpreting the norms of the ECHR. Even more so, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies (*Demir and Baykara* case 2008, [85]ff. In *Magyar Helsinki Bizottság v. Hungary* (2016 [123]ff, the ECtHR (GC) confirmed this method of “globalized” interpretation of the ECHR.)

Next to this hard law and judicial interpretation, soft law has developed prominently at the level of the CoE and the EU, meaning that although not judicially enforceable the requirements included in soft law instruments shape expectations of good administration. Soft law is an ever-growing component of the EU toolkit produced mainly by the European Commission. Although EU soft law can include interpretations pertaining to good administration (e.g. EU Ombudsman, *Code of Good Administrative Behaviour and Complaints*), the problem with EU soft law is to identify how its extensive use can be squared with the very principles of good administration (e.g. Weiß, 2022). The CoE soft law tools are more distinctively the product of the shared interpretation by Member States of acceptable or necessary standards for good administration (Stelkens and Andrijauskaitė, 2020). By means of a recommendation (Resolution (77)31; Recommendation (80)2; Recommendation (91)1; Recommendation (2003)16; Recommendation (2019)6): CoE-Member States are encouraged to take the necessary measures to align their domestic law with the standards enshrined in the relevant instrument. Despite their non-binding character the CoE recommendations can have some legal force for Member States, as Article 15 (b) of the SCoE explicitly confers on the CM the right to request information from Member States about their actions with regard to such recommendations (see Breuer 2017a, 36.12 ff.). Thus, the CM recommendations “do have “moral authority”, since they reflect the collective position of European governments on the subjects they cover— and their influence on member States is attested.” (Benoît-Rohmer and Klebes 2005, 108ff): This authority is confirmed by the practice of the Member States of entering reservations where they do not intend to fully apply a recommendation. Member States thus treat recommendations as “if they contained legally binding obligations” (Polakiewicz 2005, 248).

Finally, interactions between the CoE and the EU on the one hand and other international treaties on the other hand are also a source of obligations pertaining to good administration either at a general level (e.g., the Good Friday Agreement referring to the ECHR,¹¹ and hence all the case law connected to this convention) or a specific level, such as when the EU and CoE Member States are party to international treaties providing for good administration requirements (e.g., the UN Convention Against Corruption and the Aarhus convention on Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters).

B. Implementation, monitoring and enforcement

The transposition, monitoring and enforcement of EU law concerns the duties of EU Member States deriving from Article 4(3) of the TEU to “ensure the fulfilment” of EU law (The concretisation of these requirements is much explored in the EU scholarship. See e.g. Scholten 2023): these processes ensure that EU law is effectively applied in concrete legal situations. Requirements of good administration do fall squarely within these processes with the institutionalised EU Ombudsman especially tasked to address problems arising from maladministration in the EU administration itself (Vogiatzis 2017). By contrast, the operationalisation of the CoE requirements of good administration extends beyond the ECtHR’s case law. Indeed, the CoE-principles of good administration are not only applied by the ECtHR, their implementation in national administrative systems is also monitored through regular peer-review processes.¹² For instance, the CLRAE monitors the implementation of the European Charter of Local Self-Government periodically with the help of experts and political officeholders. Plans are being discussed to extend this system to monitor the enforcement of the ECtHR’s judgments, beyond the implementation of the Charter itself (*Reykjavik Declaration* 19).

¹¹ Good Friday (Belfast) Agreement (available on <https://www.gov.uk/government/publications/the-belfast-agreement>). See Strand One, Al. 5 and 26; Strand Three, Al. 2, 4 and 9. The protection of the Good Friday Agreement is provided for in the Protocol on Ireland/Northern Ireland to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01) (*OJ C 384 I*, 12.11.2019, 1–177).

¹² Jongen, 2018. According to this research, GRECO has more authority than other peer-review processes in the anti-corruption field, such as the Implementation Review Mechanism of the UN Convention against Corruption and the OECD Working Group on Bribery. However, other research on CoE satellites and their peer-review processes is more ambivalent (see e.g. for the Venice Commission: De Visser 2015; Hoffmann-Riem 2014).

V. Complementarity between the CoE and the EU

The interactions between the EU and the CoE are multiple (e.g. Ziller 2023). For instance, Article 6(2) and (3) of the TEU refer explicitly to the ECHR (Gawrich 2016). Moreover, Article 220 of the TFEU provides that the EU shall establish all appropriate forms of cooperation with the CoE. Fostered in 1987 by an exchange of letters between the Secretary General of the CoE and the President of the Commission of the (then) European Communities, this cooperation morphed in 2007 into a Memorandum of Understanding (Polakiewicz and Sandvig 2016, 130ff; Schmahl 2017, 37.34ff).

This leads to substantive links between the EU and the CoE. First, common standards of democracy and the rule of law serve as the basic values of both the EU (Article 2 TEU) and the CoE (Article 3 SCoE). These standards are principally concretised by the CoE but they also have an effect on the EU and the implementation of Article 2 of the TEU (EU Commission, *A new EU Framework to strengthen the Rule of Law* (COM[2014]158 final) of 11 March 2014, [2]; EU Commission, *Strengthening the rule of law within the Union*, 7; Andriantsimbazovina 2011, 774ff; Carpano 2005, 277ff; Kochenov, Pech and Platon 2015, 704ff; von Bogdandy and Ioannidis, 2014, 68ff). Secondly, the ECHR is “absorbed” by EU law in Article 6(3) of the TEU and Articles 52(3) and 53 of the ECFR. This connection would be enhanced if the EU were to accede to the ECHR. The negotiations for the EU to become a CoE member have been long, however (Jacqué 2021).

The links are also of a more technical nature as the European Commission has developed its methodology to monitor the rule of law (including its good administration component) in Member States (*European Rule of Law mechanism – Methodology for the preparation of the Annual Rule of Law Report*). This methodology includes sources from the CoE reports (from the Venice Commission, to the GRECO, the Consultative Council of Judges, the Consultative Council of European Prosecutors, the Department for the execution of judgments, and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism). This system has been expanding from being a monitoring mechanism to also making recommendations to countries since the 2022 report regarding specific areas for improvement (e.g. European Commission, Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Rule of Law Report), in particular, in relation to anti-corruption.

Technical links are confirmed by the EU’s Conditionality Regulation (2020/2092 on a general regime of conditionality for the protection of the Union budget). First, Article 4(2) of this Regulation clearly links compliance with good administration and the effective implementation of EU law. Second, Article 3(b) of the Regulation considers any failure “to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law-enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest” (emphasis added) as “indicative of breaches of the rule of law” and therefore clearly includes “good administration standards” in its broader concept of the “rule of law”. Finally, recital 16 to this regulation clarifies that the Commission, when identifying breaches of the principles of the rule of law by an EU Member state, should, *inter alia*, take into account the “conclusions and recommendations of relevant international organizations and networks, including [CoE] bodies such as the [GRECO] and the Venice Commission, in particular its rule-of-law checklist”, thus providing an example of how the CoE principles of good administration can be “transformed” into general principles of EU law (EU Commission, *Proposal for a Council Implementation Decision on Measures for the Protection of the Union Budget against Breaches of the Principles of the Rule of Law in Hungary* [34], [39]).

VI. Conclusions

Good administration is more than ever a major concern for the CoE and the EU. Europe’s administrative shape and scope may be facing a major enlargement should new countries become EU Member States

in the coming years, following the Russian war of aggression against Ukraine. This chapter attempted to unpack the spatial, institutional and material differences between these two European organisations, one close to the ordinary citizen dealing with day-to-day administrative matters where diversity is accepted as long as the twin objectives of rule of law and democracy are contributed to, and one closer to economic actors working across borders and pursuing major economic interests, where harmonisation of administrative processes is supposed to reduce red tape and administrative burdens, and thus foster the internal market.

Acknowledging these differences is the first step to appreciating the complementarity between the EU and the CoE in brokering administrative spaces where good administration is pervasive. However, the differences in Europe, both at the bottom in the evolution of Member States towards the rule of law and democracy and at the top between the CoE and the EU mean that there is no one single European definition and implementation of what constitutes good administration. This makes it difficult to train the average bureaucrat dealing with administrative files or the reformer designing new processes and organisations to think in a truly European manner so that she would ask herself how Europe-wide good administration could be fostered in specific choices protecting the rule of law and democratic requirements. So far, these bureaucrats and reformers keep thinking in national terms because the EU starts from the premise that national administration will implement EU law and that EU requirements can be only *ad hoc*; and because the CoE does not seek to change national practices, but only to ensure that its objectives of securing the rule of law and democracy are met, being very open as to how this happens in practice.

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