Chapter 1
Introduction: The Relationships Between Global Administrative Law and EU Administrative Law

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In the last two decades, European Union (EU) administrative law has gone through a process of extraordinary development and consolidation. It first developed as a body of principles and rules aimed at governing, on the one hand, the action of the EU public powers (such as the action of the Commission in the fields of State aids and competition), on the other hand, the action of the national administrations operating as decentralized EU agencies (e.g. the action of national public administrations in the field of public procurement). Subsequently, it has gradually developed in such a way to apply to the several phenomena of organizational and procedural interconnections among national and EU authorities. As a matter of fact, the EU legal order has elaborated a great variety of mechanisms of integration and composition of organizations and activities, establishing in different policy areas "European common systems", made up of national, European and mixed authorities jointly responsible for the administrative implementation of an increasing number of EU rules and policies.

The emergence of a global administrative law represents a more recent phenomenon. It stems from the proliferation, as a functional response to the changing needs of the world community, of global regulatory systems by sector, sometimes provided with rulemaking powers and called to adopt individual measures, as well as of bodies responsible for the resolution of the controversies that may arise between the global regulators and the addressees of their action, or between the latter. Such development implies the establishment of a number of regulations by sector, centred around administrative law provisions (e.g. those concerning administrative proceedings and participation of private subjects) and established by a variety of legal sources, often differing from the traditional sources of international public law. In this context, the notion of "global administrative law" does not refer

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generically to a body of administrative law beyond the State. Rather, it refers to the administrative regulation of a global legal space differing from the traditional representation of the world community in several regards: (a) as for the subjects, because the classical construction of States as the only subjects of international law is substituted by a more complex understanding, based on the recognition that the subjects of global administrative regimes are, on the side of regulators, a rich variety of global public powers as well as private bodies, on the side of regulatees, not only States but also individuals, firms, market actors and NGOs; (b) as for legal principles, rules and practices, because the regulation of the action of the various global regulatory systems and the other subjects of the global legal space, contrary to the traditional assumptions of international law science, frequently makes recourse to instruments of administrative decision and management; (c) as for the sources, because global administrative law cannot be conflated in the classical sources of public international law, but it extensively relies on measures of different types, such as institutional practices, intra-institutional rules and private regulation. The notion of global administrative law thus describes a new legal reality of rules, institutions and practices that the classical understanding of international relations and international legal regimes fails to recognize or under-estimates.

The two mentioned components of administrative law beyond the State – EU administrative law and global administrative law – have been studied so far as two parallel bodies of law. Little attention has been paid to their "horizontal" relationships, while the analysis of "vertical" relationships between national administrative law and, respectively, EU and global administrative law has been privileged.

Yet, the relationships between EU administrative law and global administrative law that are established in an ever increasing number of policy areas raise several stimulating questions. First, which game of forces characterizes, in the sectors where such relationships take place, the interactions between EU administrative law and global administrative law? To which extent are EU administrations subject to EU law and to global law? And to which extent is global administrative law subject to the influence of EU administrative law? Is there opposition or communication among the two legal systems? And what principles govern the co-existence among EU and global administrative law? Second, what is the result of such game of forces? Does the interaction among EU administrative law and global administrative law give place to an architecture reproducing the traditional paradigm of statal administrative law, centred on the fundamental opposition between authority and freedom and on coercion and authoritative powers? Or does it respond to a different design, which cannot be fully traced back to the administrative experience of the States? In this case, in what ways do the usual forms of statal administrative law combine with the forms belonging to the tradition of international public law, where the rationale of negotiation prevails over command and control? And what are the consequences of the absence, in the global legal space, of a genuine constitutional architecture?

This book seeks to open the discussion on such uneasy issues. Its purpose is to contribute to the overall understanding of EU administrative law and global

administrative law through the analysis of their multiple legal relationships. Its authors are not interested in applying to a number of sectors a predefined set of EU and global administrative law categories. Rather, they seek to enrich and refine EU and global administrative analytical tools through the exam of the manifold relations between the two bodies of administrative law beyond the State. In this sense, the effort carried out in this book is essentially analytical: the aim is to begin to explore the complex reality of the interactions between EU administrative law and global administrative law, to provide a preliminary map of such legal and institutional reality, and to review it.

The book is the outcome of a two-year research, funded by the Italian Ministry of Education, by the Istituto di ricerche sulla pubblica amministrazione – Irpa, and by the Universities of Siena, Rome "Tor Vergata", Naples, Viterbo, and Campobasso. The five working groups, each operating in one university, have been coordinated, respectively, by Professors Bernardo Giorgio Mattarella, Claudio Franchini, Giacinto della Cananea, Stefano Battini, and Hilde Caroli Casavola. Gianluca Sgueo has greatly helped to finalize the interactions among the various groups, as well as to manage the final stages of the project.

The researchers, selected with an international call for papers, have been asked to examine specific issues, while considering the general framework of global and European administrative legal principles and some cross-cutting issues, such as the competences of European institutions and global organizations and their possible overlap, the public–private dualism at the two levels, the issues of democracy and representation, the instruments of protection of private subjects towards public authorities.

The contributions to this book have been organized in six parts. The first part explores the potentialities of a comparison between EU administrative law and global administrative law. The second and the third part look at the linkages and interconnections between global administrative law and EU law. The last three parts then focus on specific sectors, by analyzing, respectively, cases of parallel regimes, converging harmonizations, and cross implementations.

The first part of the book discusses the relationships between EU and global administrative law by comparing some of their features. It does not provide an analysis of principles, rules and practices of EU and global administrative law. Rather, it focuses on certain structural elements of their legal systems, taken by themselves and in their interaction with national law. Somehow unsurprisingly, it highlights a combination of limited similarities and marked differences.

The comparative inquiry opens with Edoardo Chiti's analysis of the EU and global administrative organizations. Three main aspects of such organizations are compared: the position of the EU and global administrative bodies in the institutional system; the organizational models prevalent in the EU and global administrations; and the recourse to private actors by the EU and global administrative law for performing specific activities. The analysis reveals a complex and peculiar pattern of similarities and differences in the administrative organizations of the EU and the global legal space. EU and global administrations are different in terms of the "constitutional" anchorage of their public administrations, which is

present in one case but not in the other. They tend to converge as far as their organizational models and the role assigned to private actors in the exercise of administrative functions are concerned. But this convergence takes place at a general level only, while the specific arrangements maintain important, distinguishing specificities. Such pattern of limited similarities and marked differences has several explanations: similarities reflect the common functional needs to which EU and global administrative systems are called to respond, while differences stem from the particular historical formation of the various systems beyond the State as well as from the particular place occupied by the European Commission in the EU legal order.

Barbara Marchetti's contribution compares the EU judicial system with the judicial mechanisms of four global regimes: the World Trade Organization, the UN Convention on the Law of the Sea, the Mercosur and the World Bank. It opens with a discussion of the multiple jurisdictions – international, constitutional and administrative – of EU courts. Then, the fundamental structure and functions of the dispute settlement system of the World Trade Organization, the International Tribunal for the Law of the Sea, the Mercosur system and the Inspection Panel of the World Bank are examined. In a global legal space characterized by both juridification and judicialization, several differences can be identified between judicial systems founded on voluntary jurisdiction, such as the UN Convention on the Law of the Sea and judicial systems based on exclusive and obligatory jurisdiction, such as the EU and the WTO. Furthermore, important divergences can also be found in comparing *prima facie* similar mechanisms for international compliance.

Bernardo Giorgio Mattarella's chapter deals with the influence of EU and global administrative law on national administrative decisions. Proceeding from the theory of administrative acts, typical of the legal scholarship of many European countries, the author examines first the way in which the law beyond the state affects the several steps of administrative decisions: the legal basis for administrative acts, their making, their contents, their legal effects, their execution and their review. This analysis displays more similarities than differences between EU and global law. The different techniques of influence are then investigated, distinguishing between the secure devices, which ensure the supremacy of European law over domestic one and the more diverse techniques used by global law. From this point of view, the differences are bigger, although an accurate exam reveals patterns of resemblance and convergence. Finally, the outcome of the described phenomena on crucial legal issues is considered, showing that the theory of administrative act seems able to adjust to the influence of the law beyond the state, and that even the impact of the latter on the rule of law and democracy is quite less stressful than one could expect.

The second and the third part of this book turn to the linkages and interconnections between global administrative law and EU law. Their purpose is to complement the comparative inquiry carried out in the first part by giving an impression of the multiple forms in which global administrative law and EU law come to contact and interact and by exploring the legal challenges inherent to such variety of interconnections.

The second part, in particular, is devoted to the dynamic of legal principles, which are easily traded between the European and the global legal regimes.

This part opens with Giacinto della Cananea's analysis of the genesis and features of principles of global public law. It is argued that a body of general legal principles common to national legal orders and regulatory systems beyond the State is in the process of emerging. Such principles regulate the ways in which powers are exercised by subordinating decisions to the execution of an established procedure. Their purpose is to remedy the marked sectionalism of the various legal regimes. These principles, which form a procedural (rather than substantive) due process of law, present common, recurring features, different from those characterizing other categories of legal principles. They are structurally and functionally different from both the principles of conventional international law and the principles traditionally recognized in national legal orders. The author investigates these features and the sources of such principles, both in EU law and in the global regulatory systems, and discusses whether the traditional dichotomy between municipal public law and international law has lost its significance, and whether the new principles have a universal or only relative value.

Joana Mendes's chapter then illuminates a specific aspect of the interplay between EU and global regulation, namely the problems arising from the reception of global rules on procedural participation by EU law in sectors, such as food-safety and environmental protection. The chapter investigates whether implementation of international law by EU law is capable of bypassing participation that would otherwise be granted by the EU institutions and bodies. Crucially, this may hinder the procedural protection of the persons affected or the standards of political or social legitimacy that have become accepted in EU governance. Several case–studies are considered to illustrate three different types of interaction between international regulatory regimes and the EU legal order: direct reception, reception filtered by EU procedures specifically created for this purpose, reception following existing EU procedures. These case–studies show how the incorporation of international law in EU law may actually jeopardize the effectiveness of the consolidated EU procedural standards.

Juli Ponce's contribution focuses on the procedural principles relating to the right to good administration, such as the duty of giving reasons and the citizens' participation, showing that such principles are increasingly recognized in different legal systems. Their spread is mainly an achievement of courts: global ones, such as the TWO Appellate Body, EU ones and national ones. The analysis, which takes into account also the case law of the European Court of Human Rights and of certain national courts, such as the US Supreme Court, shows that, in spite of the many differences between the mentioned legal systems, there is a certain degree of convergence in relation to problems and solutions. After accounting for this convergence, the author discusses in general terms the virtues and limits of judicial review of administrative decisions and the relations between judicial globalization and good administration.

Further models of connection and mutual influence are considered in the third part of the book.

Gianluca Sgueo's contribution opens this part by examining the involvement of civil society's actors in the EU and global administrative space, in order to understand whether, and to what extent their action brings the EU and global administrative law closer. The chapter focuses on the organized networks of civil society organizations, which significantly affect the development and implementation of policies by EU and global organizations. These networks, which the author calls "interlocutory coalitions", may be considered a significant factor in spreading interaction and convergence between the EU and the global legal spaces. Several factors stimulate the proliferation of such coalitions, although they face problems of legitimacy, organization and effectiveness. After some general remarks on civil society participation in the ultranational decision-making, Sgueo assesses the contribution of interlocutory coalitions to bolstering principles of administrative governance at the European and the global level. Building on such analysis, the final part of this chapter develops a theoretical framework for reflections on administrative convergence as well as on civil society networks' potential to develop and enlarge in the future.

A different dynamic is presented in Stefano Battini's chapter, which deals with the impact of both Europeanization and globalization on consular assistance and diplomatic protection. The international conventions on consular assistance and diplomatic protection are briefly summarized, in order to clarify the commonalities as well as the differences between them. Then, the impact of Europeanization is evaluated, taking into account both the horizontal (the right to consular and diplomatic protection from authorities of member states other than those of citizenship) and the vertical dimension (the right to consular and diplomatic protection from European authorities). Finally, the impact of globalization is considered. The transformations occurring in these specific sectors seem to exemplify some more general phenomena. On the one hand, globalization increases the international dimension of domestic administrative law, by widening the part of domestic administrative law that regulates situations having a link with foreign legal systems. On the other hand, globalization decreases the degree of specificity of that part of domestic law, submitting the exercise of "foreign affairs" administrative functions to the general requirements of the rule of law.

The discussion leads to the analysis of specific sectoral areas, which is carried out in the last three parts of the book. Several sectors are considered: public procurement, antitrust, cultural heritage, pharmaceutical products, accounting and auditing, banking supervision, environmental protection and climate change. While examining the concerning regulations and authorities, many viewpoints are considered: EU's participation in global regulatory regimes, the impact of global regulations on European administrative decisions, the role of private parties, judicial and procedural guarantees of individuals.

The fourth part, in particular, examines the dynamics and tensions that can be observed in areas where coordination between EU and global administrative law is absent or inadequate and the two bodies of administrative law beyond the State operate in parallel.

Simona Morettini's chapter reviews the complex way in which the EU and global regulatory regimes limit the use of public procurement by national governments as an instrument of domestic policy. Although the primary objective of procurement is the acquisition of goods or services on the best possible terms, national governments have frequently used their extensive powers of procurement to promote further national concerns, industrial, social and environmental in nature. These secondary policies, legitimately pursued by national governments, could be in contrast with other global and European legitimate purposes, such as the free trade. The chapter analyzes how EU and global administrative law affect the use of procurement as an instrument of national policy. It compares the rationales underlying, respectively, EU regulation and global regulation. And it highlights their tensions and potential conflicts.

Other areas in which coordination between EU and global administrative law is absent or inadequate are those of protection of cultural heritage and competition policy. The former is the subject of Carmen Vitale's contribution, which examines how the EU and the relevant global regulatory systems deal with the protection, circulation, and enjoyment of cultural heritage in order to understand whether there are conflicts between different legal regimes. After describing the various ways in which globalization affects the definition of cultural heritage and the new needs and interests that it originates, the chapter draws a parallel between the EU law and the global law, mainly resulting from the World Heritage Convention System. While describing the EU and global regulations, the author also investigates the interdependence between these regulations and the national law.

Competition policy is the subject of Elisabetta Lanza's contribution. Globalization of markets forces competition authorities, including the European Commission, to develop coordinated competition policies. The chapter investigates the role played by the EU for the antitrust policies coordination in the global market, also in the light of the meaningful interactions of EU and US antitrust regulatory systems, as well as the struggling experience of the relevant global regulatory systems. Two possible ways forward are then identified: on the one hand, a WTO multilateral agreement on competition policy, and on the other hand a horizontal control through a global regulatory agencies federalism in the frame of the International Competition Network, inspired to the European Competition Network model.

In other sectors, EU and global administrative law seem to coexist more easily, as their harmonization efforts are directed towards common or connected purposes and the instruments used are sometimes the same. These sectors are examined in the fifth part of the book.

Alessandro Spina examines the EU and the global pharmaceutical regulations. At both levels, in this sector the network model is the outcome of the tension between the strong role traditionally pertaining to the national administrations and the transnational dimension of markets and research. The author considers separately the EU and the global level, and finally compares the two regulations and evaluates the relations between them. The EU experience has achieved an almost complete harmonization of pharmaceutical regulation, an advanced coordination of national administrations and the sharing of data and regulatory expertise among

them. At the global level, a public–private body promotes the harmonization of the pharmaceutical regulation through the adoption of shared guidelines and standards applicable in the development of new products. The concluding remarks are devoted to the similarities and differences between the EU and the global regulatory networks and to their mutual reinforcement and convergence.

Maurizia De Bellis explores the accounting and auditing sectors. In these areas, EU regulations refer to global standards, but in a selective way: there is not a simple incorporation of internationally recognized accounting standards, but extremely complex endorsement procedures, which involve public and private bodies and require both political and technical assessments. EU strategy aims at avoiding a delegation of its regulatory power in two main ways: first, controlling the access of international standards within the EU legal order through an endorsement procedure; second, attempting to influence the international standard setting process. After providing a general overview of global financial standards, the chapter describes the EU and the global approach to the two sectors and then concludes with some reflections on European enforcement of global private standards.

Hilde Caroli Casavola's contribution inquires into the EU and global regulations of public procurement, which are significantly different in terms of harmonizing techniques and in terms of enforcement devices, but interact very well. For global regulation, EU law is mainly an "internal" factor of domestic discipline, which ensures compliance and effective controls over procurement rules. As reversal, in the EU perspective, global regulation is both a crucial "external" factor, which favours the predictability necessary for European traders to rely on those rules *vis-à-vis* GPA member States, and a reforming factor. This positive interaction mutually reinforces both the systems. After providing some background information on WTO and EU scope of public procurement regulations, the author describes the specificities of the Government Procurement Agreement (GPA) and the EU implementation mechanisms and their effect, highlights the peculiarities of their institutional frameworks, focuses on the enforcement proceedings and on the remedies and finally puts forward some remarks concerning the similarities, differences and interactions between the EU and the global regime.

This volume closes with a discussion of sectors in which EU and global administrative law not only coexist peacefully, but also pursue common goals and tend to reinforce each other through cross implementations and integrated organizations. This happens in sectors such as financial stability and environmental protection, to which the last three contributions are devoted.

Enrico Leonardo Camilli analyzes the connections between the EU and global financial regulation, exploring the ongoing processes of legal reform in the EU and in the global legal space and how they could mutually reinforce. The chapter, in particular, analyzes the relationships between the activity of the Basel Committee and the EU harmonization process on banking services. Of course, the two regimes are very different in nature, but they share the aim to achieve a mutual and credible coordination of national regulatory systems and they interact along two different "routes": one goes from Basel to Brussels and deals with the implementation of global decisions by EU institutions; the other goes from Brussels to Basel and

involves the role of EU institutions in the Basel standard setting. After describing the main features of the Basel Committee, the chapter focuses on these interactions, considering the development of the two regulations and the debate prompted by the recent financial turmoil.

In Rui Lanceiro's chapter, a quite complex network of administrative regulations and bodies is described: the one set forth by the Aarhus Convention, which grants rights to the public and imposes obligations on public authorities in terms of decision-making procedures, in order to protect the environment and ensure sustainable development. The chapter begins with a brief presentation of the Aarhus Convention and then presents the EU as a party to it. It goes on to explore the consequences of such membership, including the duty of implementation by the EU's institutions and by the Member States and the consequences of non-compliance. Finally, it focuses on the application of the compliance mechanism of the Aarhus Convention to the EU's Member States and to the EU itself, and it explores the foreseeable impact of the procedure to review compliance of the EU to the Aarhus Convention.

Georgios Dimitropoulos's chapter is devoted to a case of involvement of private parties in the implementation of administrative law beyond the State. The sector considered is climate change, where the instrument of the certification system has been used extensively both on the global and on the EU administrative level. After describing the procedures and focusing on the implementation role of private subjects, the chapter describes the regulatory tools used by UE and global bodies for the regulation of private administration. EU and global climate change law share the purpose to strike a balance between global climate protection and cost-efficiency, and use the same implementation technique, based on private certification. Even private certifiers implementing climate change law are common: very often a single body verifies the compliance with the two kinds of obligations. As a result, private administration grows as a common administrative structure for both EU and global administration.

The contributions collected in this book do not provide a complete picture, nor do they describe a coherent set of objects. They do, however, offer useful accounts and thoughtful analyses of both general tendencies and sectoral areas.

In comparative terms, the differences between the EU and the global legal systems can be easily depicted for administrative organization, ways of action and instruments of review. EU law is well settled in its principles, bodies and procedures, while the global one is so diverse, as to make it often impossible to draw general conclusions. The former has very efficient and secure ways to affect national law, while the latter is unsteady and adaptable. More generally, the former relies strongly on national public authorities, while the latter looks more freely for partners, even in the private sector, and often is itself the product of private bodies. Moreover, the EU has a large scope of action and performs several different functions, while the global legal systems tend to focus on specific yet important policies and to act mainly as regulatory regimes.

However, there are similarities and exceptions to these tendencies. EU and global regulations are often similar, at times converge and reinforce each other.

Global law uses organizational models and manners of action typical of the EU law, which in turn adjusts to many global regulations, making its own law similar to the global one. Convergence is particularly strong for some aspects, such as the principles regulating administrative procedures, and in some sectors, such as the environmental protection. Also global law often relies on national governments, while EU law does not neglect private enforcement. They both are largely western systems of law.

As for the relationships between the EU and global law, the picture is a very fragmented one. In some areas, EU law and global law get together very well, coordinate and implement each other, in others they ignore each other or even compete. In some areas, globalization pushes forward the law produced by global bodies, in others the game of forces is more favourable to the EU. The reciprocal attitudes are discontinuous as well: obviously there is not one "European policy" of global bodies, but it is just as difficult to identify a consistent "global policy" of the European institutions, common to different sectors.

Admittedly, the contributions collected in this book are only a first attempt to explore a dense area of new legal issues, which further research should develop and systematize. Yet, they bring our attention to an area, which is crucial to understand the present and future patterns of both EU and global administrative law. And they pioneer a new route to investigate the complex life of administrative law beyond the State.

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