A law of administrative procedure for the EU

The EU administration has expanded considerably in recent decades. Not only have the institutions themselves grown in size and stature but new agencies, offices and bodies have been established. Despite this, the EU currently has no comprehensive legislation on citizens' procedural rights in respect of the EU's administrative process.

General principles and ad hoc laws

The EU has established the procedural rights of private persons in two ways. Initially, administrative legality was based on general principles of law such as fundamental rights, processing rights, judicial review of law, fact and discretion, equality, legal certainty and proportionality. These have been developed through the jurisprudence of the Court of Justice (CJEU) and through a European Code of Good Administrative Behaviour drafted by the European Ombudsman. In more recent years, rules have developed through ad hoc secondary legislation in specific fields of substantive law.

Pros and cons of codification

Unlike the EU, most EU Member States (MS) have codified their administrative procedures, along with some international organisations such as the WTO. However despite these precedents and several calls over the years from the European Parliament, the EU has so far resisted.

Clearer, simpler and more legitimate...

Those in favour of codification argue that standardising the sectoral rules would simplify and rationalise the administrative process. With respect to the large body of EU administrative law developed by the CJEU, a single law established by the legislators is considered as adding legitimacy to the process. Such rules could also be expected to be clearer and more accessible to citizens than general principles developed through case law.

...or inappropriate, unnecessary, inflexible?

Those opposed to the idea argue that such codification is the mark of a state and of a long legal tradition, neither of which the EU has. They point to a lack of pressing need and the adequacy of the current rules and jurisprudence in dealing with any particular requirements. There are also fears that codification may restrict the natural development of administrative procedure.

The effect of the Lisbon Treaty

The Lisbon Treaty contains some significant changes to the rules of European administration. In particular Article 298 TFEU marks the first explicit reference to the EU's administration in the Treaties. It sets out guiding principles for administrative action: openness, efficiency and independence. Moreover it provides a mandate for the EP and Council to establish a legal framework in this respect.

Furthermore, the incorporation of the Charter of Fundamental Rights as a binding text with equal value to the Treaties (Art. 6 TEU) provides legal recognition of the right to good administration (Article 41) as well as the right of access to documents (Article 42).

EP working group

The Committee on Legal Affairs (JURI) set up a working group on EU administrative law in July 2010. It had two objectives: firstly to establish the current state of EU administrative law and then to propose appropriate legislative action in the light of Article 298. The group finished its work in October 2011, setting out its conclusions in a working paper.

It expressed particular concern at the inadequacy of citizen's procedural rights vis-à-vis the EU's administration, taking into account the increasing levels of direct contact between them. The group suggested the JURI committee consider preparing a legislative initiative for a single, general administrative law binding on institutions, bodies, offices and agencies. It argued that such a law would provide “a minimum safety net of guarantees” for citizens. However, it also urged the Committee to consider various soft-law instruments to complement “hard-law rights”.

Drawing on the working group's findings, JURI adopted a legislative initiative report (under Article 225 TFEU) on 6 November 2012. The report requests the Commission proposes a regulation on a European law of Administrative Procedure and includes detailed recommendations to the Commission as to the proposal's content.