



# Draft Model Rules on EU Administrative Procedures

---

*András Zs. Varga:*

**Book II – Administrative Rulemaking (by the EU)**



# Draft Model Rules on EU Administrative Procedures

**ReNEUAL** Research Network on  
EU Administrative Law

Working Group 1

Prof. Deirdre Curtin  
University of Amsterdam

Team leaders:  
Prof. Herwig Hofmann  
University of Luxembourg

Prof. Joana Mendes  
University of Amsterdam

in cooperation with the European Law Institute (ELI)

## **Draft Model Rules on EU Administrative Procedures** **Book II – Administrative Rulemaking (by the EU)** **1<sup>st</sup> Tentative Draft 2013 – working version**

Version for discussion at the ELI General Assembly 2013 in Vienna:

Initial drafting team:  
Prof. Edoardo Chiti (Tuscia), Prof. Paul Craig (Oxford), Prof. Deirdre Curtin (Amsterdam),  
Prof. Carol Harlow (LSE), Prof. Herwig Hofmann (Luxembourg), Prof. Joana Mendes (Amsterdam).

This draft takes into account comments received from ReNEUAL and ELI members following a general call for comments of May 2013 and comments made by participants of the ReNEUAL conference on June 27 and 28 2013 in Luxembourg, particularly the commenters Prof. Olli Mäenpää and Judge Kieran Bradley.



# **Draft Model Rules on EU Administrative Procedures**

## **Book II – Administrative Rulemaking (by the EU)**

---

„This book addresses rule-making procedures by the executive, i.e. those that remain outside the formal legislative procedures provided for in EU law.”



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

Preliminary questions:

administrative?

lawmaking?



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

Preliminary questions in Member States:

government=administration?

executive=government?

executive=administartion?

is lawmaking an action of administration?



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

### Frames of answers in Member States:

Chaotic use of notions due to different theoretical models:

a) bolshevik organisation of state:

- monolithic administration
- governmental (political) decision-making: communist party

b) constitutional organisation of state:

- separation of powers
- governmental decision-making: political decisions transformed into legal acts by the Legislation (Parliament) and the Executive (Cabinet or President)



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

Frames of answers within the EU bodies:

Asymmetry of powers

At state level

Legislative  
Executive  
Judiciary

≠

At EU level

Council/Parliament  
Commission  
ECJ



# **Draft Model Rules on EU Administrative Procedures**

## **Book II – Administrative Rulemaking (by the EU)**

---

„This book addresses rule-making procedures by the executive, i.e. those that remain outside the formal legislative procedures provided for in EU law.”





# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

### Scope and definition

#### Draft 1a:

These procedures apply to the establishment of Union regulatory acts. regulatory acts are **legally binding acts of general application** that concretise policies or legislative options, excluding legislative acts.

#### Draft 1b:

These procedures apply to the establishment of Union regulatory acts. regulatory acts are **legally binding acts of general application** that concretise policies or legislative options, excluding legislative acts the legal effect of which are binding on, and capable of affecting the legal interests of third parties.



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

### Doubts concerning formulation of Draft1:

Notion of primary legislation is certain enough.

Notion of delegated legislation is also certain enough.

Notion of administrative legislation /regulatory acts/ is uncertain both at MS or EU level.



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

### Draft 2: NO DEFINITION!

These procedures apply to the establishment, amendment and repeal of acts of general application, which are not adopted

- a) acts adopted by the Commission or the Council under Articles 290 and 291 TFEU;
- b) non-legislative acts of the EU institutions, bodies, offices and agencies adopted on the basis of Treaty provisions;
- c) acts adopted by EU agencies, bodies and offices, including internal acts in preparation of an act adopted by the Commission;
- d) acts defining single case decision-making, including those determining the conditions of implementation of EU law by other institutions, agencies, bodies and offices of the EU or by the Member States.
- e) other acts concretising policies or legislative options and directly or indirectly affecting on or an intending to affect third parties



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

### Article 1     **Scope**

(1) These procedures apply to the establishment, amendment and repeal of acts of general application, which are not adopted according to the legislative procedure, including:

- a) acts adopted by the Commission or the Council under Articles 290 and 291 TFEU;
- b) non-legislative acts of the EU institutions, bodies, offices and agencies adopted on the basis of Treaty provisions;
- c) acts adopted by EU agencies, bodies and offices, including internal acts in preparation of an act adopted by the Commission;
- d) acts defining single case decision-making, including those determining the conditions of implementation of EU law by other institutions, agencies, bodies and offices of the EU or by the Member States.
- e) other acts concretising policies or legislative options and directly or indirectly affecting on or an intending to affect third parties.

(2) These procedures do not apply to acts of the European Ombudsman, the Court of Justice of the European Union when acting in its judicial capacity and the European Central Bank in the exercise of its obligations under the Treaties.



# Draft Model Rules on EU Administrative Procedures

## Book II – Administrative Rulemaking (by the EU)

---

### Detailed rules of the draft:

- Initiative
- Preparation of the Draft Act and the Reasoned Report
- Consultation and Participation
- Expedited Procedures
- Control Mechanisms and Adoption of the Act



# **Draft Model Rules on EU Administrative Procedures**

## **Book II – Administrative Rulemaking (by the EU)**

---

**Thank you for your attention!**