# SUMMARY

## Transnational act in the system of European administrative acts

The book distinguishes and describes a particular form of activity of public administration bodies, namely issuing transnational administrative acts of European law. These acts are issued by the authorities of the Member States of the European Union. Although these are not acts issued by the institutions or bodies of the European Union, they are nevertheless European acts in the sense that they are binding in the sphere of European law. They are also acts of application and are issued in specific circumstances. They have direct effect in the territory of the Member States of the European Union. Therefore they also have legal effect in the territory of a foreign state in relation to the authority that issued the act. The role of these acts is crucial for the integration of the Single Market, the free movement of people, services and goods. This stems from the fact that while European law is created exclusively by EU bodies, at the level of law application, the rule is deemed 'national application'. What this means is that the basic instrument of jurisdiction in European administrative law is a national administrative act. With regard to this, it can also be stated that by issuing a transnational act, national administrative bodies become part of the European administrative structure.

A national administrative act may become effective abroad in two ways. The first of these is recognition, which involves a separate act of the host state authority accepting the national decision of another Member State and giving it binding force on the territory of that host state. The second way concerns transnational acts. Such an act derives its effectiveness from a substantive rule of European law that is directly binding in the Member States. A rule of European law that gives effect to a transnational act in the European legal area is not the rule that determines the content of the act. The content of a transnational act may be formed directly on the basis of European law provisions or on the basis of national provisions implementing European law (directives). Another possible situation is where a transnational act is based on national rules, with Member States acting in mutual trust to maintain the standard of regulation. Most often, however, we encounter a mixed case, i.e. a different configuration of the three options presented.

The distinction made above between a transnational act and an act that is effective as a result of recognition is also expressed in the question of legal protection in connection with an impairment in the act's adoption. In the case of a transnational act, in principle it should be verified in accordance with the procedures in force in the country of origin. This is why the principle of mutual trust in the legal order of Member States plays a key role within the European Union. In the case of a recognised act, however, there is the possibility of legal protection under the recognition procedure. The legal validity of the act is based on the authority of the receiving State. Unlike a transnational act, a recognised act is not part of European law.

In order to define transnational administrative acts, it was necessary to define European acts, but those issued by the institutions and bodies of the European Union. In the first instance, these were executive acts of Union bodies, principally those of the Commission. A distinction was made between specific acts (both individual and general) and regulatory acts. The latter are issued in abstract circumstances and function as a management instrument towards a generally defined group of addressees. These acts meet the obligation of regulatory content between legislative acts and specific administrative acts. Administrative acts of the bodies of the Union are issued in the executive procedure and this gives rise to a coupling: on the one hand, the purpose of the act determines the choice of a particular procedure and, on the other, the procedure in which the act was issued determines its nature. Administrative acts issued in the implementing procedure may be both regulations and decisions. European administrative jurisdiction is also constituted by decisions issued of Union bodies (usually agencies).

An administrative act issued by a national authority and based on the application of European law is not always a European administrative act. This only applies to acts that are part of European law. If, however, an act of a national authority is also a European administrative act, this means it is a transnational administrative act. Such an act is an act of the authority of a Member State. In this case, it is not possbile to speak of a delegation of competences from Union bodies to the Member States or between Member States. The authority issuing the transnational act remains a national authority. Transnational force consists in the direct effectiveness of this act in other EU Member States. This force derives from a rule of European law that defines the scope of the effectiveness of a transnational administrative act.

What is proposed here is a classification of transnational administrative acts according to the subject matter. The first case that can be distinguished in this regard is that of acts designating the status of a person, including the granting of professional rights. The second case is material acts, including those relating to products. There is also a third group, which covers acts relating to the provision of services or, more broadly, the performance of an economic activity. The fourth case concerns the situation when a national authority operates by issuing acts in a foreign territory.

With regard to legal protection related to issuing transnational administrative acts, the most important thing is the correctness of this process according to the rules

in force in the state where the act was issued. Without doubt, if the act conflicts with the national law of the issuing state, the act will be defective. If the act contravenes European law, there can be no doubt that it is defective, as that law applies both in the State that issued the act and in the host State. When the law of the host state is violated, it would generally be preferable for the grounds for the violation to be assessed in accordance with the rules in force in the state in which the act was adopted. Undoubtedly, however, this matter would have to be assessed on a case-by-case basis, taking into consideration the provisions of European law that govern the transnational administrative act in question. This regulation would be crucial in determining the procedure appropriate for reviewing the act issued. In the absence of European regulation, it could be argued that the act should be controlled in the state of issue according to the procedures in force there.

The reference act can be regarded as a special case. However, the question of its classification is controversial. This monograph assumes that it is a transnational act in scope. It binds only the authorities of the other Member States and only to the extent that it limits the possibility of issuing an act that contravenes it. Reference acts are issued under what are termed 'coordinated procedures', which aim to reconcile the position of the authorities of the Member States.

*Translated by Rob Pagett*