FOREIGN LAW AS APPLIED BY ADMINISTRATIVE AUTHORITIES: *GRENZNORMEN* REVISITED

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UDK: 342.924:341.96
342.92(4)EU
Pregledni znanstveni rad
Primljeno: siječanj 2018.

It is a matter of fact that conflict-of-law rules frequently lead to the application of foreign law by the courts in cases of private law. Consequently, the legal science has quite frequently had to deal with this issue. On the contrary, the problem of the application of foreign law by administrative authorities has not been equally discussed. It was German academician Karl Neumeyer who introduced a system of delimiting rules ("Grenznormen"), requiring the application of foreign administrative law in the decision-making of administrative authorities. This article deals with the existence and implications of some of these provisions, as provided in various sources of EU legislation. Further, the article deals with the question concerning to which extent the principles of application of foreign law by the courts also apply to the application of foreign administrative law by the administrative authorities within the EU.

Keywords: application of foreign law, administrative international law, recognition of foreign administrative acts, administrative surveillance, review of administrative acts

1. INTRODUCTION[1]

It is a matter of fact that conflict-of-law rules frequently lead to the application of foreign law by both judicial and non-judicial authorities, when dealing with

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[1] This article was prepared within the framework of the research programme "Publicization of Law in European and International Comparison" at the Law Faculty, Charles University, Prague, Czech Republic.

the legal implications of private law. In this regard, the European Union has undertaken an active and broad process of harmonisation, establishing a set of common conflict-of-law rules in the areas of contractual[2] and non-contractual obligations[3], maintenance obligations[4], divorce and legal separation[5], succession[6] and matrimonial property.[7]

Consequently, the application of foreign law by courts (and to some extent by administrative authorities, such as public notaries, land registrars, guardianship authorities, social security authorities, immigration officers etc.) in these areas has become a subject of relatively frequent academic interest, particularly by the science of private international law.[8]

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2 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177 of 4.7.2008.

3 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199 of 31.7.2007.

4 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7 of 10.1.2009.

5 Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343 of 29.12.2010.

6 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201 of 27.7.2012.

7 Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ L 183 of 8.7.2016.

8 Alexander, G., *The Application and Avoidance of Foreign Law in the Law of Conflicts*, Nortwestern University Law Review, *vol.* 70, 1976, pp. 602 – 638; Esplugues, C.; Iglesias, J.; Palao, G., *Application of Foreign Law,* Munich, 2011; Hartley, T., *Pleading and Proof of Foreign Law: The Major European Systems Compared*, International and Comparative Law Quarterly, *vol.* 45, 1996, pp. 271 – 292; Hausmann, R., *Pleading and Proof of Foreign Law – a Comparative Analysis*, European Legal Forum, *vol.* 1, 2008, pp. 1 – 18; Jänterä-Jareborg, M., *Foreign Law in National Courts: A Comparative Analysis*, Recueil des courts, *vol.* 204, 2003, pp. 199 – 379; Sass, S., *Foreign Law in Civil Litigation: A Comparative Survey*, American Journal of Comparative Law, *vol.* 16, 1968, pp. 332 – 371; Trautmann, C., *Europäisches Kollisionsrecht und ausländisches Recht im nationalen Zivilverfahren*, Tübingen, 2011, etc.

On the contrary, the very similar issue of application of foreign law by administrative authorities in matters of public law has been addressed only occasionally by scholars.[9] While in the legal relations of private law, sovereign States are prepared to apply and enforce law of another State, if (and when) the connection to this other State appears to be closer, the application of foreign law in relation to administrative law is generally not considered. Thus, there is generally no place for the application of foreign law, *except* those (rare) cases when the applicable provisions prevail. Consequently, any application of foreign law by administrative authorities, when dealing with the legal relationships of administrative law, is based upon its respective provision of the law of the State.[10]

In this regard, virtually all recent authors, dealing with this subject, refer to the legal concepts as developed by German scholar *Karl Neumeyer,* who sought to establish *administrative international law* (*internationales Verwaltungsrecht*) as an administrative law parallel to the system of private international law.[11] If private international law was constituted by the conflict-of-law rules, administrative international law in *Neumeyer's* view was constituted by *delimiting rules* (*Grenznormen*).[12] These norms determine whether the administrative law of the State is to be applied or not.

In contrast to the conflict-of-law rules of private international law, the *delimiting rules* more often than not are embodied in substantive law (*mittelbare Verweisung*)[13], since this delimitation is a prerequisite to the application of substantive administrative law. Such provisions are also more closely connected to the structure and policies of the substantive law in question. It follows

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9 Biscottini, G., *L'efficacité des actes administratifs étrangers*, Recueil des Cours de l'Académie de Droit International, *vol.* 102, 1961, pp. 638 – 696; Matscher, F., *Gibt es ein internationales Vewaltungsrecht?*, in: Sandrock, O. (ed.), *Festschrift für Günther Beitzke*, Berlin, 1979, pp. 641 – 649; Ohler, C., *Internationales Verwaltungsrecht – ein Kollisionsrecht eigener Art?*, in: Leible, S.; Ruffert, M. (eds.), *Völkerrecht und Internationales Privatrecht*, Jena 2006, pp. 131 – 148; Schlochauer, H., *Internationales Verwaltungsrecht*, in: Giese, F. (ed.), *Die Verwaltung*, Köln, 1956, pp. 56 – 59; Steindorff, E., *Internationales Verwaltungsrecht*, in: Strupp, K. (ed.), *Wörterbuch des Völkerrechts*, Berlin, 1962, pp. 581 – 592; Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsnormen,* Frankfurt am Main, 1965.

10 Lalive, P., *Sur l'application du droit public étranger,* Annuaire de l'Institut de Droit International, *vol.* 56, 1975, pp. 275 – 278.

11 Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil,* München, 1936.

12 *Ibid.*, pp. 136 – 151.

13 *Ibid.*, pp. 194 – 195.

from this that it would be impossible to a large extent to treat these provisions separately from substantive law, since they fail to constitute a province of law of their own.[14]

It is a matter of fact that, while dealing with the *delimiting rules*, scholars were used to mainly analyse the provisions of their national law. *Karl Neumeyer* did this with respect to German law in the first three volumes of his monumental work.[15] Subsequently, *Giuseppe Biscottini* dealt with the topic in the 1960s with regard to Italian law.[16] More recently, *Christoph Ohler* dealt with the issue of *delimiting rules* in his habilitation thesis.[17]

However, the existence and implications of this set of rules in the sources of EU law has remained out of the scope of interest for legal scholarship. At the same time, the attention of legal scholarship has recently been attracted[18] by those

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[14] Vogel, K., *Administrative Law. International Aspects*, in: *Encyclopedia of Public International Law, 9. – International Relations and Legal Co-operation in General,* Amsterdam, 1986, pp. 4 – 5.

[15] Neumeyer, K., *Internationales Verwaltungsrecht*: *Innere Verwaltung I,* München, 1910; Neumeyer, K., *Internationales Verwaltungsrecht*: *Innere Verwaltung II,* München, 1922; Neumeyer, K., *Internationales Verwaltungsrecht*: *Innere Verwaltung III,* München, 1926.

[16] Biscottini, G., *Diritto amministrativo internazionale, Vol. 1,* Padova, 1964; Biscottini, G., *Diritto amministrativo internazionale, Vol. 2,* Padova, 1966.

[17] Ohler, C., *Kollisionsordnung des Allgemeninen Verwaltungsrecht. Strukturen des deutschen internationalen Verwaltungsrechts,* Tübingen, 2005.

[18] Bleckmann, A., *Zur Anerkennung ausländischer Verwaltungsakte im Europäischen Gemeinschaftsrecht*, Juristische Zeitschrift, *vol.* 40, 1985, pp. 1077 – 1086; Clarizia, P., *Il mutuo riconoscimento dell' atto amministrativo nell' ordinamento europeo,* Roma, 2010; Comba, M.; Richetto, S., *Horizontal Cross-Fertilization and Cryptotypes in EU Administrative Law,* Review of European Administrative Law, *vol.* 5, 2012, pp. 153 – 173; De Lucia, L., *From Mutual Recognition to EU Authorization: A Decline of Transnational Administrative Acts?*, Italian Journal of Public Law, *vol.* 8, 2016, pp. 90 – 117; Gautier, M., *Acte administratif transnational et droit de l'Union européenne*, in: Auby, J.; Dutheil de la Rochere, J. (eds.), *Traité de droit administratif européen*, Bruxelles, 2013, pp. 1303 – 1315; Gerontas, A., *Deterritorialization in Administrative Law: Exploring Transnational Administrative Decisions*, Columbia Journal of European Law, *vol.* 19, 2013, pp. 423 – 468; Neßler, V., *Der transnationale Verwaltungsakt: zur Dogmatik eines neuen Rechtsinstituts,* Neue Zeitschrift für Verwaltungsrecht, *vol.* 14, 1995, pp. 863 – 873; Pernas García, J., *The EU's Role in the Progress Towards the Recognition and Execution of Foreign Administrative Acts*, in: Rodríguez-Arana Munoz, J. (ed.), *Recognition of Foreign Administrative Acts,* New York, 2016, pp. 15 – 33; Ruffert, M., *Recognition of Foreign Legislative and Administrative Act,* in: Wolfrum, R. (ed.), *Max Planck Encyclopedia of Public International Law,* Oxford, 2008, pp. 567 – 578; Silva Sampaio, J., *O acto administrativo pela estrada fora – os efeitos transnacionais do acto*

sources of EU law that provide a legal basis for the trans-territorial[19] impacts of administrative acts. In fact, these norms also offer several interesting examples of *delimiting rules*, which are worth becoming the subject of academic attention.

Therefore, this article aims to deal with this issue. Further, it will also deal with the application issues arising from the requirement to apply foreign law by administrative authorities, in particular with regard to those conclusions made by legal scholarship concerning the application of foreign law by courts.

2. "GRENZNORMEN" REVISITED IN EU LAW

2.1. Introductory remarks

The European Union is considered to represent a composite legal order founded upon a complex system of cooperation among judicial and administrative authorities aimed at reaching the objectives of its Treaties. Within this framework, the sources of EU law provide for the enlargement of the legal effect of administrative acts issued by the authorities of the home Member States to the host Member State(s).

It is a fact that one can identify administrative acts having trans-territorial effects within several regulations. Here, authorisations for the export of dual-use items[20], including the export of cultural goods[21] and decisions by customs authorities[22] represent notable examples. However, the model of these trans-territorial effects of administrative acts is generally considered to be a legal phenomenon derived from those directives.[23]

administrativo, Lisboa, 2014; Sydow, G., *Verwaltungskooperation in der Europäischen Union*, Tübingen, 2004.

19 In this context, also the term "trans-national" or "extra-territorial" is used by some scholars. Concerning this terminology, see Hofmann, H.; Rowe, G.; Türk, A., *Administrative Law and Policy in the European Union*, Oxford, 2011, p. 645.

20 Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 134 of 29.5.2009.

21 Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, OJ L 39 of 10.2.2009.

22 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 of 10.10.2013.

23 Sydow, *op. cit.* (fn. 18), p. 128.

Currently, this is the case of authorisations for pursuing undertakings of collective investment in transferable securities[24] and authorisations for pursuing investment services[25], insurance services[26], management of alternative investment funds[27], as well as by the activity of credit institutions[28] etc. In this regard, it is argued that trans-territorial effects will also arise within the territory of any host Member State that fails to implement such requirements correctly, or refuses to implement them at all.[29]

It is a distinguished feature of this model of administrative acts that their legal effects are produced here directly by applicable law (*ex lege*). However, the directives provide for specific formal proceedings that constitute a precondition for the rise of legal effects in the territory of the host Member State.

Examples include collective investment in transferable securities (UCITS), whose Directive 2009/65/EC provides in its Art. 17 that a management company wishing to establish a branch within the territory of another Member State, shall notify the competent authorities of its home Member State. In this respect, the competent authorities require each such management company to provide certain information and documents.[30] Unless the competent authorities have

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[24] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302 of 17.11.2009.

[25] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173 of 12.6.2014.

[26] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335 of 17.12.2009.

[27] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174 of 1.7.2011.

[28] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176 of 27.6.2013.

[29] Gerontas, *op. cit.* (fn. 18), p. 453.

[30] In particular the identification of the Member State within the territory of which the management company plans to establish a branch, a programme of operations setting out the activities and services and the organisational structure of the branch, which shall include a description of the risk management process put in

reason to doubt the adequacy of the administrative structure or the financial situation of the management company, they shall within two months of receiving all the information required, communicate that information to the competent authorities of the host Member State and inform the management company accordingly.[31] The branch of the management company may be established and begin business after receiving communication from the competent authorities of the host Member State, or on the expiry of the two month period after these authorities received information from the competent authorities of the home Member State.

These proceedings (which are called *notification proceedings*[32] or *passive mutual recognition*[33]) are also followed by other directives.[34] These serve several purposes. Firstly, they provide necessary information to the administrative authorities of the home Member State concerning activities to be pursued by the addressee of an administrative act in another Member State. Further, while pursuing business in the territory of the host Member State, the addressee is obliged to comply with certain rules enacted by this Member State and, consequently, the communication from the competent authorities of the host Member State aims to inform the addressee about the content of such rules. And last, the aim of the *notification proceedings* is to provide necessary information to administrative authorities of the host Member State concerning those activities to be pursued by the addressee in his territory.

Naturally, this legal framework provides a fertile ground for *delimiting rules*, determining the applicability of foreign law by administrative authorities of the concerned Member States.

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place by the management company, the address in the management company's host Member State from which documents may be obtained and the names of those responsible for the management of the branch.

31 Where the competent authorities of the management company's home Member State refuse to communicate the required information to the competent authorities of the management company's host Member State, they shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts in the management company's home Member State.

32 Janssens, C., *The Principle of Mutual Recognition in EU Law,* Oxford, 2013, pp. 79 – 80.

33 Armstrong, K., *Mutual Recognition*, in: Barnard, C.; Scott, J. (eds.), *The Law of the Single European Market*, Oxford, 2002, pp. 240 – 241.

34 Art. 35 of the Directive 2014/65/EU, Art. 145-146 of the Directive 2009/138/EC, Art. 35-38 of the Directive 2013/36/EU etc.

2.2. Competitive model of administrative surveillance

The model of the trans-territorial effects of administrative acts triggers a need to guarantee appropriate levels of administrative surveillance vis-á-vis the territory of the host Member state.[35] Basically, there are two different approaches[36] toward reaching this goal: In the *decentralised model*, it is exclusively the host State that pursues competencies in its territory. This model reflects the principle of territorial sovereignty of the State. Consequently, it has traditionally been reflected in international treaties, providing for trans-territorial effects of certain licences (e.g. driving permits[37], certificates of airworthiness, certificates of competency, pilot licences[38], *laissez-passer for a corpse*[39] etc.).

On the other hand, there is the *competitive model* in which these competencies are executed exclusively by the home State. This model reflects the fact that, even after enlargement of its legal effects, the act concerned remains governed by the law of the home Member State. Consequently, it is the administrative authority of the home Member State that is in the best position to evaluate to what extent the addressee complies with its arising obligations. Simultaneously, taking the principle of the *jurisdictional immunity* of the State into account, it is basically only the administrative authority of the home Member State that is empowered to review[40] the issued act.

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[35] Abraham, F., *Building Blocks of the Single Market. The Case of Mutual Recognition, Home Country Control and Essential Requirements,* Leuven, 1991; Gross, T., *Die administrative Föderalisierung der EG. Rechtsprobleme des grenzüberschreitenden Prüfungsrechts der Bankaufsichtsbehörden*, Juristen Zeitung, *vol.* 49, 1994, pp. 597 – 599; Schlag, M., *Grenzüberschreitende Verwaltungsbefugnisse im EG-Binnenmarkt. Eine Untersuchung zur Zulässigkeit und zu den rechtlichen Grenzen einer mitgliedstaatsübergreifenden Verwaltungstätigkeit anhand des Bankenaufsichtsrechts*, Baden Baden, 1998, pp. 30 – 38; Winkelmüller, M., *Verwaltungskooperation bei der Wirschaftsaufsicht im EG – Binnenmarkt*, München, 2002.

[36] Armstrong, *op. cit.* (fn. 33), pp. 239 – 240.

[37] The Geneva Convention on Road Traffic of 1949, the Vienna Convention on Road Traffic of 1968.

[38] The Chicago Convention on International Civil Aviation of 1944.

[39] The Berlin Convention on the Transport of Corpses of 1937, the Agreement of the Transport of Corpses of 1973.

[40] In this context, a review means any annulment, suspension, modification or revocation of an issued administrative act pursuant to the applicable national legislation.

Facing these two basic models, the EU law opted for the *competitive*.[41] Simultaneously, the obvious disadvantages[42] of the competitive model are softened by *sharing* certain responsibilities among those administrative authorities of both the host and the home State.

However, it is the *authority* of the home State, which is primarily competent to deal with any breach of addressee obligations. In this respect, Directive 2009/65/EC provides in its Art. 21 that a company's host Member State may require companies pursuing business within its territory, through the establishment of a branch, to provide information necessary for the monitoring of their compliance with rules that apply to them under the responsibility of the company's host Member State.[43]

Where the competent authorities of a company's host Member State ascertain a company to be in breach of any under their responsibility, those authorities shall require the company concerned to put an end to that breach. Should the

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[41] In this respect, the Recital 21 of the Directive 2009/65/EC clearly refers to the competitive model: "The competent authorities of the UCITS home Member State should be competent to supervise compliance with the rules regarding the constitution and functioning of the UCITS, which should be subject to the law of the UCITS home Member State. To this end, the competent authorities of the UCITS home Member State should be able to obtain information directly from the management company. In particular, the competent authorities of the management company's host Member State may require management companies to provide information on transactions concerning the investments of the UCITS authorised in that Member State, including information contained in books and records of those transactions and fund accounts. To remedy any breach of the rules under their responsibility, the competent authorities of the management company's host Member States should be able to rely on the cooperation of the competent authorities of the management company's home Member State and, if necessary, should be able to take action directly against the management company." The Recital 25 of the Directive 2013/36/EU provides in similar fashion that "responsibility for supervising the financial soundness of a credit institution and in particular its solvency on a consolidated basis should lie with its home Member State. The supervision of Union banking groups should be the subject of close cooperation between the competent authorities of the home and host Member States."

[42] It is a matter of fact, that the *decentralised model* reflects the practical needs of administrative surveillance: it is the administrative authority of the host State that is most closely to the addressee established in the respective territory and consequently, is in optimal position to pursue surveillance.

[43] Those requirements shall not be more stringent than those which the same Member State imposes on management companies authorised in that Member State for the monitoring of their compliance with the same standards.

company fail to take necessary steps to end the breach, authorities of the host Member State shall inform the home Member State accordingly.

In this regard, the competent authorities of the home Member State shall take all appropriate measures to ensure that the company puts an end to the breach. Directive 2009/65/EC thus confers the competencies to take appropriate measures *vis-á-vis* activities pursued in the territory of another Member State primary to the authorities of the home Member State. Only subsidiary, are those powers conferred to the authorities of the host Member State.[44]

Consequently, under Directive 2009/65/EC, the administrative authorities execute their competencies in the territory of their own State (applying their own law), as well as *vis-á-vis* the territory of another Member States, where the company must comply with "the legal or regulatory provisions in force in the management company's host Member State". In this respect, the administrative authorities of the home Member State not only defend public interests of the concerned another State[45], but are also required to apply these "the legal or regulatory provisions in force", i.e. *to apply the foreign law.*[46] Thus, Directive 2009/65/EC contains a *delimiting rule* in its Art. 21 that limits application of its own public law and requires the application of foreign law by administrative authorities in specific cases.[47]

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[44] If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company persists in breaching the regulatory provisions in force in the management company's host Member State, the competent authorities of the management company's host Member State may, after informing the competent authorities of the management company's home Member State, take appropriate measures to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory.

[45] Sydow, G., *Jeder für sich oder einer für alle? Verwaltungsmodelle für die Europäische Union*, in: Bauschke, G. (ed.), *Pluralität des Rechts – Regulierung im Spannungsfeld der Rechtsebenen*, Stuttgart, 2002, pp. 9 – 26.

[46] It is a fact that the Directive 2009/65/EC is referring here to those legal provisions, implementing it to the national legal framework of the host Member State. Consequently, those legal provisions may differ from the legal framework in force in the home Member State.

[47] Directive 2011/61/EU provides very similar delimiting rules in its Articles 31, 32, 33, 35, 39, 40 and 41.

2.3. Review of foreign administrative acts

Trans-territorial enlargement of the legal effects of administrative acts also triggers the question of the review of foreign administrative acts. In regard to this question, *Karl Neumeyer* argued[48] that any review of foreign administrative acts would be in strict contrast with the principle of jurisdictional immunity of the State. This argument has consequently been shared by other scholars of administrative international law.[49] On the other hand, it was French legal science that argued the possibility to review the foreign administrative act in order to protect the public interests of the host State concerned.[50]

By opting for the *competitive model*, EU law basically confers powers to review an issued administrative act, having trans-territorial effects, to the administrative authorities of the home Member State.[51] However, there are some interesting exceptions from this rule. In the area of alternative investment funds, Directive 2011/61/EU provides in its Art. 45 that, where the competent authorities of the host Member State of a manager of alternative investment funds have clear and demonstrable grounds for believing that the manager is in breach of the obligations arising from rules applicable, they shall refer those findings to the competent authorities of the home Member State. These authorities shall take appropriate measures, including, if necessary, to request additional infor-

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48 Neumeyer, *op. cit.* (fn. 11), p. 349.

49 Jarck, C., *Abänderung und Aufhebung ausländisches Staatshoheitsakte im internationalen Rechts-verkehr,* Göttingen, 1954, pp. 70 – 85; König, K., *Die Anerkennung der ausländischen Verwaltungsakten*, Köln, 1965, pp. 101 – 102; Magerstein, W., *Hoheitsakte fremder Staaten und ordre public*, Juristische Blätter, *vol.* 77, 1954, pp. 424 – 436; Wenander, H., *Recognition of Foreign Administrative Decisions*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, *vol.* 71, 2011, pp. 755 – 785.

50 Jarck, *op. cit.* (fn. 49), pp. 70 – 85.

51 In this respect, the applicable provisions regularly require that competent authorities of the home Member States notify any amendment, or annulment of the issued acts to concerned administrative authorities of the host Member States. E.g. the Regulation 428/2009 provides in its Art. 13, that the competent authorities of the home Member State, acting in accordance with this Regulation, may annul, suspend, modify or revoke an export authorisation which they have already granted. Where they refuse, annul, suspend, substantially limit or revoke an export authorisation or when they have determined that the intended export is not to be authorised, they shall notify the competent authorities of the other Member States and the Commission thereof and share the relevant information with them. In case the competent authorities of a Member State have suspended an export authorisation, the final assessment shall be communicated to the Member States and the Commission at the end of the period of suspension.

mation from the relevant supervisory authorities in third countries. If despite the measures taken by the competent authorities of the home Member State, the manager persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant alternative investment fund, the financial stability or the integrity of the market in the host Member State, the competent authorities of the host Member State may take all appropriate measures needed in order to protect the investors of the relevant fund, the financial stability and the integrity of the market in the host Member State.[52]

Further, Directive 2011/61/EU provides that if the competent authorities of the host Member State "have clear and demonstrable grounds for disagreement with the authorisation of a non-EU manager of alternative investment funds by the Member State of reference", they may take all appropriate measures needed. Such appropriate measures may include "preventing the manager of alternative investment funds concerned to further market the units or shares of the relevant fund in the host Member State." Thus, the Directive opens the possibility for a review of a foreign administrative act by the administrative authorities of the host Member States. If doing so, the competent authority must *apply foreign law,* when identifying clear and demonstrable grounds for disagreement with the method by which concerned authorisation was issued by the competent authority of *another* Member State. In this regard, Directive 2011/61/EU contains a *delimiting rule* in its Art. 45 which limits the scope of application of the law of the concerned Member State and calls for application of the foreign law.

2.4. Obligation to issue co-ordinated decisions

Finally, there are cases when EU law requires the competent administrative authorities to issue administrative acts with trans-territorial effects in coordinated proceedings. In the area of cross-border energy infrastructure ("projects of common interest"[53]), Regulation 347/2013 provides in its Art. 12 for a competence of the administrative authorities to issue *coordinated decisions* on the allocation of investment costs to be borne by each system operator for

[52] This includes the possibility of preventing the AIFM concerned to further market the units or shares of the relevant AIF in the host Member State.

[53] The Regulation 347/2013 provides in its Art. 2, that the "projects of common interest" are projects necessary to implement the energy infrastructure priority corridors and areas set out in Annex I to the Regulation and which is part of the Union list of projects of common interest referred to in Article 3.

those projects of common interest.[54] By virtue of this regulation, the concerned decision of the competent authority of one Member State has a direct trans-territorial effect *vis-á-vis* another decision which is to be issued by a corresponding authority in other Member State(s).

The Regulation further stipulates that, while issuing the *coordinated decisions*, the competent national administrative authorities shall "seek a mutual agreement". Further yet, the regulation provides for publication of those coordinated decisions. A copy of all decisions, along with all relevant information with respect to each decision shall be notified, without delay, by the Agency to the European Commission.[55]

It is a matter of fact that at least two competent authorities will be involved in the proceedings leading to the coordinated decision, each deciding according to its own procedural law. Consequently, the form of each of the coordinated decisions must comply with the basic requirements of the national law governing

[54] In its Art. 12, the Regulation 347/2013 provides, that "within six months of the date on which the last investment request was received by the national regulatory authorities concerned, the national regulatory authorities shall, after consulting the project promoters concerned, take coordinated decisions on the allocation of investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs. The national regulatory authorities may decide to allocate only part of the costs, or may decide to allocate costs among a package of several projects of common interest." Further, here the authorities concerned have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the national regulatory authorities concerned, they shall inform the Agency for Cooperation of Energy Regulators without delay. In this case or upon a joint request from the national regulatory authorities concerned, the decision on the investment request as well as the way the cost of the investments are reflected in the tariffs shall be taken by the Agency within three months of the date of referral to the Agency.

[55] Various approaches have been chosen regarding this issue by different national administrative authorities. The coordinated decision on the cross-border cost allocation for the *Shannon* gas interconnection pipeline was issued on 26th June 2014 as *one* and *single* administrative decision by three competent authorities, which was enabled *inter alia* by a common official language of all three concerned authorities. In contrast to this, other national administrative authorities issue separated administrative decisions, basically due to the fact, the national law governing administrative proceedings requires issuance of a decision in the official language of the particular administrative proceedings. This was the case by deciding on the cross-border cost allocation for the *Val de Saône* interconnector project, where French and Spanish authorities were involved in the decision-making. It is a matter of fact that also the Czech and Polish authorities ruled similarly in the case of the cross-border cost allocation for the *Czech – Polish* interconnector project.

the administrative proceedings. At the same time, when issuing a *coordinated decision*, the competent authority must also apply the law governing issuance of the corresponding decision, i.e. *foreign law.* Consequently, by requiring the issuing of coordinated decisions, the Regulation contains a *delimiting rule* in its Art. 12.

3. FOREIGN LAW AND ADMINISTRATIVE AUTHORITIES: APPLICATION ISSUES

3.1. Nature of foreign law

Scholarship on administrative law paid only rare attention to the application questions arising from the application of foreign law by administrative authorities.[56] In contrast, scholarship focused on private international law dealt extensively with this question.[57] Consequently, a question arises as to what extent the outcomes of existing research can be applicable on the decision-making of administrative authorities in trans-territorial cases. In *private* international law, foreign law has traditionally received different treatment in various jurisdictions. Either it has been considered as a fact, or has been granted a legal nature. Accordingly, the legal or factual consideration granted to foreign law directly influences its treatment by competent courts. Questions of law considered *ex officio* by the court are subject to the principle of *iura novit curia* and their application is subject to judicial review by higher courts. In contrast, questions of *fact* are beyond the scope of court notice and therefore must be pleaded by the parties, as they are the subject of *evidence* provided by parties and therefore binding upon higher courts.[58] As a matter of principle, the *legal*

[56] Dolzer, R., *Extraterritoriale Anwendung von nationalem Recht aus der Sicht des Völkerrechts*, in: *Globale Wirtschaft – nationales Recht: Chancen, Risiken, Konflikten, 41. Bitburger Gespräche,* München, 2003, pp. 71 – 90; Lalive, P., *Sur l'application du droit public étranger*, Annuaire suisse de droit international, *vol.* 28, 1971, pp. 103 – 142; Strebel, F., *The Enforcement of Foreign Judgements and Foreign Public Law*, Loyola of Los Angeles International and Comparative Law Review, *vol.* 21, 1999, pp. 55 – 129; Walter, C., *Anwendung deutscher Recht im Ausland und fremden Recht in Deutschland*, in: Isensee, J; Kirchhof, P. (eds.), *Handbuch des Staatsrecht, Band XI., Internationale Bezüge*, Heidelberg, 2013, pp. 429 – 452; Wengler, W., *Fragen der Faktizität und der Legitimität bei der Anwendung fremden Rechts*, in: Lewald, H.; Gerwig, M.; Simonius, A.; Spiro, K. (eds.), *Festschrift Hans Lewald bei Vollendung des vierzigsten Amtsjahres als ordentlicher Professor*, Basel, 1953, pp. 615 – 625; etc.

[57] E.g. Esplugues, Iglesias, Palao (eds.), *op. cit.* (fn. 8).

[58] *Ibid.*, p. 5.

condition of foreign law is recognised by most Member States. This was also supported by the Declaration in the "Equality of Treatment of the Law of the Forum and of Foreign Law", issued by the *Institut de Droit International (IDI)* in 1989 in its Session of Santiago de Compostela. In this regard, the IDI also required the competent courts to apply *ex officio* the foreign law determined by any applicable conflict-of-law rule.[59] On the other hand, some Member States uphold the consideration of foreign law as a *pure fact* before national courts. Basically, all these countries have usually been linked to the British legal tradition: the United Kingdom, Malta, Cyprus and Ireland.[60] Further, the existence of a third approach to the treatment of foreign law, which grants it a *hybrid nature*, was also upheld in Europe. Consequently, in some Member States, foreign law is neither clearly considered as law nor as a pure fact, but treated as having a hybrid nature, thus becoming a kind of *tertium genus.*[61]

However, the situation is very much different when analysing the implications of the *delimiting rules*, requiring an application of foreign law by the competent administrative authorities. The model of delimiting rules in trans-territorial administrative relations is based on the principle of *reciprocity*. In this model, competent authorities are called upon to protect the public interests of the home Member States, as well as those public interests of the host Member States.[62] In this model, the single administrative authority of the home Member State protects the interests of several other Member States, as well as the interests of the Union as such.[63] This administrative model of mutual protection is based on the principle of *loyal cooperation* (Art. 4 Par. 3 of the Treaty on European Union). Consequently, the relations between the competent authorities of the home and the host Member States must be based on *mutual trust.*[64] "Without concrete measures to increase the level of mutual trust, therefore, the obligation of loyalty (…) remains dead letter and cannot serve as a basis for a system of

[59] II(a) of the Declaration.

[60] In addition to them, two other Member States belonging to the continental law family (Spain and Luxembourg) also share this factual approach.

[61] Esplugues, Iglesias, Palao (eds.), *op. cit.* (fn. 8), p. 5.

[62] David, A., *Inspektionen als Instrument der Vollzugskontrolle im Europäischen Verwaltungs--verbund*, in: Schmidt-Assmann, E.; Schöndorf-Haubold, B. (ed.), *Der Europäische Verwaltungsverbund*, Tübingen, 2005, pp. 250 – 252.

[63] David, A., *Inspektionen im Europäischen Verwaltungsrecht,* Berlin, 2003, pp. 264 – 266.

[64] Snell, J., *The Single Market: Does Mutual Trust Suffice?*, in: Brouwer, E.; Gerard, D. (ed.), *Mapping Mutual Trust. Understanding and Framing the Role of Mutual Trust in EU Law*, Badia Fiesolana, 2016, pp. 11 – 14.

effective enforcement."[65] In this regard decision-making by the Court of Justice argues[66] for the necessity of mutual trust in those areas where a high degree of harmonisation by means of EU law has been already achieved. Consequently, in this system there is no place for alternative perceptions of foreign law.

A system similar to the situation in private international law, where different approaches to foreign law exist, would not contribute to the desired mutual trust among the competent administrative authorities. In this regard, one may argue that the *delimiting rules* in the sources of EU law request not only the application of foreign law, but also contain an obligation to apply this foreign law as a *legal condition*. Any other approach (i.e. to consider foreign law as a *pure fact* or to confer a *hybrid nature* to the foreign law) would jeopardise the model of administrative relations, which is based on trans-territorial enlargement of the legal effects of administrative acts. Further, these delimiting rules do implicitly require for application of the principle *iura novit curia* in relation to the foreign law.

3.2. *Ordre public*

In the fourth volume of his monumental work on administrative international law, *Karl Neumeyer* argued for several situations in which the application of foreign law, as required by the delimiting rules, must be restricted or avoided by the administrative authorities (*Grenzen der Überwirkung).*[67] These were situations where application of foreign law would contradict public interests that are protected by the criminal law of the State. Further, *Neumeyer* argued that should such application be excluded in specific cases, it would contradict the principles of international law, in particular the *comity* of mutual relations.[68] Lastly, *Neumeyer* mentioned cases where the foreign law itself contained rules restricting its application in specific cases.[69] In fact, since *Neumeyer* the science of administrative law paid only marginal attention to restrictions on the applica-

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[65] Majone, G., *Mutual Trust, Credible Commitments and the Evolution of Rules for a Single European Market,* Florence, 1995, p. 24.

[66] Judgement of the Court of 25th January 1977, *Bauhuis* 46/76, EU:C:1977:6, supra 22, Judgement of the Court of 23th May 1996, *The Queen vs. Ministry of Agriculture, Fisheries and Food* C-5/94, EU:C:1996:2553, supra 19, Judgement of the Court of 19th June 2003, *Tennah-Durez* C-110/01, EU:C:2003:357, supra 34 etc.

[67] Neumeyer, *op. cit.* (fn. 11), pp. 407 – 430.

[68] *Ibid*., p. 420.

[69] *Ibid*., p. 424.

tion of foreign law by administrative authorities. Basically, the authors[70] merely referred to the concept of *ordre public,* as developed by private international law.

Consequently, a question arises as to whether the concept of *ordre public* is also applicable *vis-á-vis* the application of foreign law, originating from the delimiting rules as laid down in the EU law. In this regard, the *competitive model* of administrative surveillance shifts competencies to protect public interests to the competent authority of the home Member State. It is, in principle, this authority, that protects the public interests of the host Member State.[71] This protection is executed during the *notification proceedings* by means of enabling a "blockade" of trans-territorial effects (*rejection of trans-territorial effects*).[72] In this regard, Directive 2009/65/EC provides in its Art. 17 that "where the competent authorities of the management company's home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the management company's host Member State, they shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts in the management company's home Member State." Similarly, the Directive 2011/61/EU provides in its Art. 31, that "the competent authorities of the home Member State of the AIFM shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Directive or the AIFM otherwise does not or will not comply with this Directive."[73]

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[70] Beitzke, G., *Ordre Public*, in: Strupp, K.; Schlochauer, H. (ed.), *Wörterbuch des Völkerrechts*, Berlin, 1961, pp. 665 – 672; König, *op. cit.* (fn. 49), pp. 90 – 94; Magerstein, *op. cit.* (fn. 49), pp. 424 – 426.

[71] Sydow, *op. cit.* (fn. 18), pp. 138 – 142.

[72] David, *op. cit.* (fn. 62), p. 265.

[73] In the area of markets in financial instruments, the Directive 2014/65/EU also provides for a similar competence to "block" trans-territorial effects. Here, the Art. 35 provides, that unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure or the financial situation of a credit institution, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State designated as contact point in accordance and inform the credit institution concerned accordingly. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the credit institution concerned within three months of receiving all the information. Directive 2013/36/EU provides for similar measures in its Art. 35.

Subsequently, when not using this opportunity to "block" the trans-territorial effects of the issued administrative act, the competent authority of the home Member State is further *obliged* to use its surveillance powers *vis-á-vis* the addressee of the act. When required to use foreign law by a corresponding delimiting rule, any reservation of *ordre public* is not foreseen in the provisions of the applicable EU law and would be contrary to the system of *mutual trust.* Directive 2011/61/EU provides for another demonstration of why the use of the concept of *ordre public* is excluded from trans-territorial administrative relations. Here the Directive provides in its Art. 21 that the competent administrative authority of the host Member State has the power to review an act issued by authority of another Member State if having "clear and demonstrable grounds for disagreement with the authorisation of a non-EU manager of alternative investment funds by the Member State of reference."

Consequently, in this case the competent authority of the host Member State protects not only its own public interests, but also the interests of the State that issued the authorisation.[74] Use of any reservation of *ordre public* by the required application of foreign law must also be excluded in this case, as it would contradict the notion of *mutual trust* among both States concerned.

4. CONCLUSIONS

The scope of this article was the *delimiting rules* (*Grenznormen*) that determine whether or not the administrative law of the Member State is to be applied. These rules limit the application of the law of the home State and require application of foreign law by the administrative authorities of the Member States. Such delimiting rules are provided in provisions of several EU norms that establish the competence of administrative authorities to issue decisions with trans-territorial effects.

In these cases, the administrative authorities of the Member State concerned are required to apply the public law of *another* Member State (i.e. the foreign law). If such requirements arise from the source of EU law, the competent authority of the Member State is obliged to treat foreign law *ex officio* as law, rather than as mere fact.

Only this approach can guarantee an effective execution of EU law in the model of administrative pluralism, where competent authorities of the concerned Member States guarantee their public interests based on reciproc-

[74] Sydow, *op. cit.* (fn. 18), pp. 138 – 142.

ity. Consequently, the principle *iura novit curia* must also be applied by the competent administrative authorities of the concerned Member States when treating foreign law.

BIBLIOGRAPHY

Abraham, F., *Building Blocks of the Single Market. The Case of Mutual Recognition, Home Country Control and Essential Requirements,* Leuven 1991.

Alexander, G., "The Application and Avoidance of Foreign Law in the Law of Conflicts", *Nortwestern University Law Review* 70 (1976), 602-638.

Armstrong, K., "Mutual Recognition", in: *The Law of the Single European Market* (ed. C. Barnard, J. Scott), Oxford 2002, 225-268.

Bassi, N., *Mutuo riconoscimento e tutela guirisdizionale, La circolazione degli effeti del provvedimento amministrativo straniero fra diritto europeo e protezione degli interessi del terzo,* Milano 2008.

Beitzke, G., "Ordre Public", in: *Wörterbuch des Völkerrechts* (ed. K. Strupp, H. Schlochauer), Berlin 1961, 665–672.

Biscottini, G., "L'efficacité des actes administratifs étrangers", *Recueil des Cours de l'Académie de Droit International* (102) 1961, 638–696.

Biscottini, G., *Diritto amministrativo internazionale, Vol. 1,* Padova 1964.

Biscottini, G., *Diritto amministrativo internazionale, Vol. 2,* Padova 1966.

Bleckmann, A., "Zur Anerkennung ausländischer Verwaltungsakte im Europäischen Gemeinschaftsrecht", *Juristische Zeitschrift* 40 (1985), 1077–1086.

Clarizia, P., *Il mutuo riconoscimento dell' atto amministrativo nell' ordinamento europeo,* Roma 2010.

Comba, M., Richetto, S., "Horizontal Cross-Fertilization and Cryptotypes in EU Administrative Law", *Review of European Administrative Law* (5) 2012, 153–173.

David, A., *Inspektionen im Europäischen Verwaltungsrecht,* Berlin 2003.

David, A., "Inspektionen als Instrument der Vollzugskontrolle im Europäischen Verwaltungsverbund", in: *Der Europäische Verwaltungsverbund* (ed. E. Schmidt-Assmann, B. Schöndorf-Haubold), Tübingen 2005, 237-264.

De Lucia, L., "Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts", *Review of European Administrative Law* 5 (2012), 17–45.

De Lucia, L., "From Mutual Recognition to EU Authorization: A Decline of Transnational Administrative Acts?", *Italian Journal of Public Law* 8 (2016), 90–117.

Dolzer, R., "Extraterritoriale Anwendung von nationalem Recht aus der Sicht des Völkerrechts", in: *Globale Wirtschaft – nationales Recht: Chancen, Risiken, Konflikten, 41. Bitburger Gespräche,* München 2003, 71–90.

Esplugues, C., Iglesias, L., Palao, G., *Application of Foreign Law,* Munich 2011.

Gautier, M., "Acte administratif transnational et droit de l'Union européenne", in: *Traité de droit administratif européen* (eds. J. Auby, J. Dutheil de la Rochere), Bruxelles 2013, 1303–1315.

Gerontas, A., "Deterritorialization in Administrative Law: Exploring Transnational Administrative Decisions", *Columbia Journal of European Law* 19 (2013), 423–468.

Gross, T., "Die administrative Föderalisierung der EG. Rechtsprobleme des grenzüberschreitendes Prüfungsrechts der Bankaufsichtsbehörden", *Juristen Zeitung* 49 (1994), 597–599.

Hartley, T., "Pleading and Proof of Foreign Law: The Major European Systems Compared", *International and Comparative Law Quarterly* 45 (1996), 271-292

Hausmann, R., "Pleading and Proof of Foreign Law – a Comparative Analysis", *European Legal Forum* 1 (2008), 1-18.

Hofmann, H., Rowe, G., Türk, A., *Administrative Law and Policy in the European Union,* Oxford 2011.

Hofmann, H., "Dealing with Trans-Territorial Executive Rule Making", *Missouri Law Review* 68 (2013), 423–442.

Janssens, C., *The Principle of Mutual Recognition in EU Law,* Oxford 2013.

Jarck, C., *Abänderung und Aufhebung ausländisches Staatshoheitsakte im internationalen Rechtsverkehr,* Göttingen 1954.

Jänterä-Jareborg, M., "Foreign Law in National Courts: A Comparative Analysis", *Recueil des courts* 204 (2003), 199-379.

König, K., *Die Anerkennung der ausländischen Verwaltungsakten*, Köln 1965.

Lalive, P., "Sur l'application du droit public étranger", *Annuaire suisse de droit international* 28 (1971), 103-142.

Lalive, P., "Sur l'application du droit public étranger", *Annuaire de l'Institut de Droit International* 56 (1975), 157–278.

Magerstein, W., "Hoheitsakte fremder Staaten und ordre public", *Juristische Blätter* 77 (1954), 424-436.

Majone, G., *Mutual Trust, Credible Commitments and the Evolution of Rules for a Single European Market,* Florence 1995.

Matscher, F., "Gibt es ein internationales Vewaltungsrecht?", in: *Festschrift für Günther Beitzke* (ed. O. Sandrock), Berlin 1979, 641-649.

Neßler, V., "Der transnationale Verwaltungsakt: zur Dogmatik eines neuen Rechtsinstituts", *Neue Zeitschrift für Verwaltungsrecht* 14 (1995), 863–873.

Neumeyer, K., *Internationales Verwaltungsrecht, Allgemeiner Teil,* München 1936.

Ohler, C., *Kollisionsordnung des Allgemeninen Verwaltungsrecht. Strukturen des deutschen internationalen Verwaltungsrechts,* Tübingen 2005.

Ohler, C., "Internationales Verwaltungsrecht – ein Kollisionsrecht eigener Art?", in: *Völkerrecht und Internationales Privatrecht* (ed. S. Leible, M. Ruffert), Jena 2006, 131–148.

Pernas García, J., "The EU´s Role in the Progress Towards the Recognition and Execution of Foreign Administrative Acts", in: *Recognition of Foreign Administrative Acts* (ed. J. Rodríguez-Arana Munoz), New York 2016, 15–33.

Ruffert, M., "Recognition of Foreign Legislative and Administrative Act", in: *Max Planck Encyclopedia of Public International Law* (ed. R. Wolfrum), Oxford 2008, 567–578.

Sass, S., "Foreign Law in Civil Litigation: A Comparative Survey", *American Journal of Comparative Law* 16 (1968), 332-371.

Silva Sampaio, J., *O acto administrativo pela estrada fora – os efeitos transnacionais do acto administrativo,* Lisboa 2014.

Schlag, M., *Grenzüberschreitende Verwaltungsbe-fugnisse im EG-Binnenmarkt. Eine Untersuchung zur Zulässigkeit und zu den rechtlichen Grenzen einer mitgliedstaatsübergreifenden Verwaltungstätigkeit anhand des Bankenaufsichtsrechts,* Baden Baden 1998.

Schlochauer, H., "Internationales Verwaltungsrecht", in: *Die Verwaltung* (ed. F. Giese), Köln 1956, 56-59.

Schmidt-Aßmann, E., "The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship", *German Law Journal* 9 (2008), 2061–2079.

Snell, J., "The Single Market: Does Mutual Trust Suffice?", in: *Mapping Mutual Trust. Understanding and Framing the Role of Mutual Trust in EU Law* (ed. E. Brouwer, D. Gerard), Badia Fiesolana 2016, 11-14.

Steindorff, E., "Internationales Verwaltungsrecht", in: *Wörterbuch des Völkerrechts* (ed. K. Strupp), Berlin 1962, 581-592.

Strebel, F., "The Enforcement of Foreign Judgements and Foreign Public Law", *Loyola of Los Angeles International and Comparative Law Review* 21 (1999), 55-129.

Sydow, G., *Verwaltungskooperation in der Europäischen Union,* Tübingen 2004.

Sydow, G., "Jeder für sich oder einer für alle? Verwaltungsmodelle für die Europäische Union", in: *Pluralität des Rechts – Regulierung im Spannungsfeld der Rechtsebenen* (ed. G. Bauschke), Stuttgart 2002, 9-26.

Vogel, K., *Der räumliche Anwendungsbereich der Verwaltungsnormen,* Frankfurt am Main 1965.

Vogel, K., "Administrative Law. International Aspects", in: *Encyclopedia of Public International Law, 9. – International Relations and Legal Co-operation in General,* Amsterdam 1986, 2-7.

Trautmann, C., *Europäisches Kollisionsrecht und ausländisches Recht im nationalen Zivilverfahren,* Tübingen 2011.

Walter, C., "Anwendung deutscher Recht im Ausland und fremden Recht in Deutschland", in: *Handbuch des Staatsrecht, Band XI., Internationale Bezüge* (eds. J. Isensee, P. Kirchhof), Heidelberg, 2013, 429–452.

Wenander, H., "Recognition of Foreign Administrative Decisions", *Zeitschrift für ausländisches öffentliches Recht und V*ölkerrecht 71 (2011), 755-785.

Wengler, W., "Fragen der Faktizität und der Legitimität bei der Anwendung fremden Rechts", in: *Festschrift Hans Lewald bei Vollendung des vierzigsten Amtsjahres als ordentlicher Professor* (eds. H. Lewald, M. Gerwig, A. Simonius, K. Spiro, K.), Basel, 1953, 615–625.

Winkelmüller, M., *Verwaltungskooperation bei der Wirschaftsaufsicht im EG – Binnenmarkt,* München 2002.

Sažetak

Doc. JUDr. Jakub Handrlica, Ph.D. *

PRIMJENA STRANOG PRAVA OD STRANE UPRAVNIH TIJELA: DRUGI POGLED NA TEORIJU O *GRENZNORMEN*

*Činjenica je da pravila o rješavanju sukoba zakona često dovode do toga da sudovi u privatnopravnim sporovima primjenjuju pravila stranog prava. Stoga se pravna znanost vrlo često morala baviti tim problemom. S druge strane, o problemu primjene stranog prava od strane upravnih tijela nije u jednakoj mjeri raspravljano. Kad je o navedenom pitanju riječ, autori se uglavnom referiraju na njemačkog autora Karla Neumeyera koji je uveo sustav razgraničavajućih pravila (*Grenznormen*) prema kojima bi se određivalo u kojim će se slučajevima trebati primijeniti strano upravno pravo prilikom odlučivanja upravnih tijela. U ovom članku obrađuju se navedena razgraničavajuća pravna pravila u izvorima prava Europske unije te implikacije nekih od tih pravila. Nadalje, u radu se analizira pitanje u kojoj su mjeri načela o primjeni stranog prava pred sudovima upotrebljiva i glede primjene stranog upravnog prava od strane upravnih tijela u Europskoj uniji.*

Ključne riječi: primjena stranog prava, upravno međunarodno pravo, priznavanje stranih upravnih akata, upravni nadzor, kontrola upravnih akata

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