

# Recognition of Foreign Administrative Decisions

## Balancing International Cooperation, National Self-Determination, and Individual Rights

*Henrik Wenander\**

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\* Doctor of Laws (*juris doktor*), Associate Senior Lecturer, Lund University, Sweden. The article develops some topics discussed in the author's doctoral thesis *Erkännande av utländska förvaltningsbeslut* (Recognition of Foreign Administrative Decisions), Lund 2010, published in Swedish with a summary in German. The author conducted part of his research as a guest researcher at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg. He wishes to thank the Institute and its staff for a fruitful research stay.

## Abstract

In public international law, EU law, and national law there are numerous rules and principles stipulating the recognition of foreign administrative decisions. The article explores duties to recognise foreign administrative decisions, the possible limitations of such duties and the handling of cases involving recognition. Recognition of a foreign administrative decision means a form of transfer of public power from one state to another in an individual case. In this way, the traditional limitation of administrative law to the state and its territory becomes less important. Issues related to recognition of foreign administrative decisions could be understood as a balancing of interests between the involved legal orders and the affected individuals. The article puts forward a categorisation of recognition mechanisms in the light of this balancing of interests. It is concluded that the degrees of transfer of public power through the different recognition mechanisms make it possible for legislators and legal decision-makers to find an appropriate level of cooperation.

## I. Introduction

Traditionally, administrative law has been regarded as a field of law limited to a certain state and to the territory and legal system of that state. However, the development of international cooperation has changed this perception. Legal scholarship has gradually become aware of the need for clarifying the international aspects of administrative law.<sup>1</sup> This article looks into one such aspect, the recognition of foreign administrative decisions. The article deals with the not uncommon situation that a national administrative authority is called upon to assess the legal significance of a foreign administrative decision in an individual case. If, for example, a credit institution with a German authorisation seeks to establish a branch in Sweden, should the foreign authorisation be recognised as fulfilling the requirements under Swedish law? Or, should the Swedish Financial Supervisory Authority be entitled to demand a Swedish authorisation for the activities?<sup>2</sup> Questions of this kind could arise also in relation to foreign qualifications, such

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<sup>1</sup> Cf. *E. Schmidt-Aßmann*, *The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship*, GLJ 9 (2008), 2061 (2068 et seq.). See below, Section II. 1.

<sup>2</sup> See also the example concerning marketing authorisations for medicines in *A. M. Keesen*, *European Administrative Decisions*, 2009, 3.

as academic degrees, or even to foreign prohibitions, such as administrative expulsion decisions. In all the situations mentioned here, there are rules concerning the recognition of administrative authorisations, qualifications or prohibitions.<sup>3</sup> Under rules laid down in public international law, European Union (EU) law, and national law, there are numerous other such recognition duties.<sup>4</sup> Furthermore, principles of equal treatment and mutual recognition sometimes mean that national authorities are precluded from demanding the holding of a domestic decision when there is an equivalent foreign decision.<sup>5</sup> These kinds of rules and principles raise theoretical and practical questions as to the cooperation of national administrative bodies in individual cases. Neither public international law nor EU law stipulates generally applicable rules on the treatment of recognised foreign administrative decisions.<sup>6</sup> As already mentioned, however, there are specific rules concerning certain sectors of administrative law. By discussing examples from different fields where recognition issues arise, this article aims at clarifying the scope and function of rules and principles regarding recognition of foreign administrative decisions.<sup>7</sup>

<sup>3</sup> See Art. 23 Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions; Arts. IV-VI Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Lisbon, 11.4.1997, Council of Europe Treaty Series (CETS) No. 165 (Lisbon Recognition Convention); Arts. 1 and 3 Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals.

<sup>4</sup> E.g. concerning driving licenses Art. 41 Convention on Road Traffic, Vienna, 8.11.1968, 1042 UNTS 17 (Vienna Convention on Road Traffic); decisions allowing the release of genetically modified organisms Art. 19 Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms; passports (under Swedish law) Ch. 2 Sec. 4-6 Utlänningsförordningen (Aliens Ordinance) (SFS [Svensk författningssamling, Swedish Code of Statutes] 2006:97); cf. *M. Bogdan*, Admission of Foreign Tourists and the Law of Nations, *ZaöRV* 37 (1977), 87 (95); see also *R. Lavin/L.-G. Malmberg*, Administrative Law, in: *M. Bogdan* (ed.), *Swedish Legal System*, 2010, 66 (76); See, for unofficial English translations of certain Swedish statutes and ordinances, the website of the Government and the Government Offices of Sweden ([www.sweden.gov.se](http://www.sweden.gov.se)); cf. *H.-H. Vogel*, Sources of Swedish Law, in: *M. Bogdan* (ed.), *Swedish Legal System*, 2010, 20 et seq.

<sup>5</sup> See, in the EU context, the Court of Justice of the European Union (formerly the Court of Justice of the European Communities) (ECJ) Cases 188/84 *Commission v. France* (1986) ECR 419 para. 30; C-65/03 *Commission v. Belgium* (2004) ECR I-6427 para. 29; 110/78 and 111/78 *van Wesemael* (1979) ECR 35 paras. 29 and 30. See below Section III. 2. a).

<sup>6</sup> Cf. the EU regulations on private international law, e.g. Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation); Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II bis Regulation).

<sup>7</sup> See, concerning this methodology, *E. Schmidt-Aßmann*, *Das allgemeine Verwaltungsrecht als Ordnungsidee*, 2<sup>nd</sup> ed. 2006, 111.

Recognition of a foreign administrative decision means a form of transfer of public power from one state to another.<sup>8</sup> Thus, recognition constitutes a challenge to the traditional views mentioned above regarding administrative law as a legal field confined to the territory and legal system of the state.<sup>9</sup> This article focuses on administrative decisions concerning legal relationships between individuals and public bodies. It does not discuss the constitutional aspects of the transfer of public power implied in rules on recognition of foreign administrative decisions.<sup>10</sup> Nor will repercussions of administrative decisions on relationships between individuals, such as the effects of foreign confiscations or expropriations, be dealt with. Such issues are traditionally discussed in private international law.<sup>11</sup>

After some notes on terminology and the basic interests involved in the field (part II.), the article discusses duties to recognise foreign administrative decisions (part III.), the possible limitations of such duties (part IV.), and the handling of cases involving recognition (part V.). In part VI., some general observations are made concerning the legal function of recognition of administrative decisions.

## II. Background

### 1. Terminology

Concerning terminology in this article, *recognition* takes place when a foreign decision is treated as valid in an individual case.<sup>12</sup> Here, the state

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<sup>8</sup> See *K. Nicolaidis*, Globalization with Human Faces: Managed Mutual Recognition and the Free Movement of Professionals, in: F. Kostoris Padoa Schioppa (ed.), *The Principle of Mutual Recognition in the European Integration Process*, 2005, 129 (133); *V. Neßler*, *Europäisches Richtlinienrecht wandelt deutsches Verwaltungsrecht*, 1994, 79 et seq.

<sup>9</sup> See *M. Akehurst*, *Jurisdiction in International Law*, BYIL 46 (1972/1973), 145 (179 et seq.); *W. Meng*, *Extraterritoriale Jurisdiktion im öffentlichen Wirtschaftsrecht*, 1994, 34 et seq.; *C. Obler*, *Die Kollisionsordnung des Allgemeinen Verwaltungsrechts*, 2005, 43 et seq.

<sup>10</sup> The constitutional aspects in relation to Swedish law are dealt with in *H. Wenander*, *Erkännande av utländska förvaltningsbeslut*, 2010, 91 et seq. See also, in relation to the legality of EU secondary legislation on recognition, *M. Möstl*, *Preconditions and Limits of Mutual Recognition* CML Rev. 47 (2010), 405 (413).

<sup>11</sup> Cf. *C. von Bar/P. Mankowski*, *Internationales Privatrecht I*, 2<sup>nd</sup> ed. 2003, § 4 margin number 130.

<sup>12</sup> Cf. *M. Ruffert*, *Recognition of Foreign Legislative and Administrative Acts*, in: R. Wolfrum (ed.), *MPEPIL*, 2008, online edition, ([www.mpepil.com](http://www.mpepil.com)), margin number 2; *H. L. A. Hart*, *Kelsen's Doctrine of the Unity of Law*, in: S. Paulson/B. Litschewski Paulson, *Normativity and Norms*, 1998, 580.

recognising a foreign decision is called the *host state*. Legal literature has identified two basic types of recognition mechanisms found in international, EU, and national legislation.<sup>13</sup> The first type – recognition in the strict sense – implies that the foreign decision achieves its legal effect through a formal decision by the host state. This type will be labelled here as *explicit recognition*.<sup>14</sup> Through the second type of recognition mechanism, the legal effects of the foreign decision follow from a rule or principle in the legal system of the host state, without any decision in the individual case. This type of recognition mechanism will be called *single licence recognition*.<sup>15</sup> In EU law, secondary law sometimes provides that certain national decisions shall be valid throughout the Union (Community).<sup>16</sup> German legal scholarship has used the term *transnationaler Verwaltungsakt* (transnational administrative decision) in this context, indicating a decision taking legal effects in all the EU Member States at once.<sup>17</sup> However, the use of this term is contested.<sup>18</sup>

<sup>13</sup> See *G. Biscottini*, L'efficacité des actes administratifs étrangers, Collected Courses of the Hague Academy of International Law 104 (1961), 635 (664); *M. S. Nguyen*, Droit administratif international, ZSR 125 (2006) II, 75 (122 et seq.); cf. *G. Sydow*, Verwaltungskooperation in der Europäischen Union, 2004, 122 et seq.

<sup>14</sup> See *M. Ruffert* (note 12), margin number 3. The terminology varies, see cf. *M. S. Nguyen* (note 13), 122 et seq. (“*décision de reconnaissance*”); *A. M. Keessen* (note 2), 28 (“*mutual recognition decision*”), *E. Schmidt-Aßmann*, Verwaltungskooperation und Verwaltungskooperationsrecht in der Europäischen Gemeinschaft, EuR 1996, 270 (301) (“*Vermittelte Transnationalität*”), *S. Michaels*, Anerkennungspflichten im Wirtschaftsverwaltungsrecht der Europäischen Gemeinschaft und der Bundesrepublik Deutschland, 2004, 75 (“*konkret-aktuelle Anerkennung*”); *B. Raschauer*, Transnationale Verwaltungsakte, in: *M. Stelzer/B. Weichselbaum* (eds.), Demokratie und sozialer Rechtsstaat in Europa: Festschrift für Theo Öhlinger, 2004, 672 (“*Nostrifikation*”). See, for examples of this recognition mechanism, Art. 11(1) Directive 2006/126/EC on driving licences (exchange of a foreign driving licence to a domestic one); Art. 28(2) Directive 2001/83/EC on the Community code relating to medicinal products for human use (recognition of a marketing authorisation for a medicinal product from another EU Member State); Arts. I and VI Lisbon Recognition Convention (note 3).

<sup>15</sup> See *A. M. Keessen* (note 2), 28. Also here, the terminology varies, cf. *M. S. Nguyen* (note 13), 122 et seq. (“*reconnaissance de par la loi (ex lege)*”); *S. Michaels* (note 14), 75 (“*abstrakt-antizipierte Anerkennung*”). See, for examples of this recognition mechanism, Art. 9(2) Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (export authorisations); Art. 33 Convention on International Civil Aviation, Chicago, 7.12.1944, 15 UNTS 295 (certificates of competency and licences of aircraft personnel); Art. 10 Convention implementing the Schengen Agreement, OJ 2000 L 239/19 (visas from other Schengen states).

<sup>16</sup> See e.g. Art. 4(5) Directive 95/18/EC on the licensing of railway undertakings; Art. 19(1) Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms; Art. 2(3) Regulation (EC) No. 116/2009 on the export of cultural goods.

<sup>17</sup> See *V. Neßler* (note 8), 5; *M. Ruffert* (note 12), margin number 3; *G. Sydow* (note 13), 141 et seq.

<sup>18</sup> The debate on this issue of terminology is summarised by *B. Raschauer* (note 14), 662.

It should be mentioned that foreign administrative decisions could also have consequences in situations where they are not attributed legal effects in a narrow sense. This is the case if a foreign administrative authorisation from state A is used as evidence when the administrative authorities of state B decide on an application for an authorisation under the legislation of state B. It seems to be highly difficult to draw a clear distinction between the recognition of a foreign decision and the probative value of such a decision.<sup>19</sup>

As pointed out above, the subject of this article is an example of the impact of internationalisation in administrative law.<sup>20</sup> The article discusses recognition of foreign administrative decisions as a legal mechanism under *international administrative law*. As in other Scandinavian legal writing, this term denotes a field of law covering issues of administrative jurisdiction and recognition of foreign decisions, as well as other legal dimensions of international cooperation structures relevant to national and international administrative bodies.<sup>21</sup>

## 2. Cooperation, Self-Determination, and Individual Rights

A point of departure for discussions on recognition of foreign administrative decisions is the sovereignty of states under public international law. Under state sovereignty, every state autonomously adopts rules and principles through its legal order. Those rules apply only to that legal order and in the territory of that state. Owing to the principle of sovereignty in public international law, states decide independently on the rights and obligations

<sup>19</sup> See C. Linke, *Europäisches Internationales Verwaltungsrecht*, 2001, 30 et seq.

<sup>20</sup> See G. Teubner, *Societal Constitutionalism. Alternatives to State-Centred Constitutional Theory?*, in: C. Joerges/L.-J. Sand/G. Teubner, *Transnational Governance and Constitutionalism*, 2004, 3 (5 et seq.); G. della Cananea, *Beyond the State: The Europeanization and Globalization of Procedural Administrative Law*, *European Public Law* 9 (2003), 563 (576); B. Kingsbury/N. Krisch/R. Stewart, *The Emergence of Global Administrative Law*, *Law & Contemp. Probs.* 68 (2005) 15 (20 et seq.).

<sup>21</sup> See in Finnish law O. Mäenpää, *Internationaliseringen av förvaltningen och förvaltningsrätten*, JFT 1986, 89 et seq.; in Norwegian law F. Seyersted, *Interlegal offentlig rett, særlig internasjonal forvaltningsrett*, in: A. Bratholm/T. Opsahl/M. Aarbakke (eds.), *Samfunn, Rett, Rettferdighet: Festskrift til Torstein Eckhoffs 70-årsdag*, 1986, 599 (603 et seq.); in Swedish law V. Persson, *Rättsliga ramar för gränsöverskridande samarbete*, 2005, 228 et seq.; H. Wenander, *Erkännande av utländska förvaltningsbeslut*, 2010, 44 et seq.; cf. W. Meng (note 9), 186 et seq.; C. Ohler (note 9), 2 et seq.; E. Schmidt-Aßmann (note 1), 2076; M. S. Nguyen (note 13), 80 et seq.; C. Breining-Kaufmann, *Internationales Verwaltungsrecht*, ZSR 125 (2006) II, 5 (10 et seq.); see also the discussion on Global Administrative Law in B. Kingsbury/N. Krisch/R. Stewart (note 20), 15 et seq.

in their respective legal orders, e.g. concerning the fields of banking, academic degrees or migration mentioned above. Through rules on authorisations, qualifications, and prohibitions, the states seek to maintain certain levels of protection concerning public order and safety. Those levels of protection may differ considerably due to historical, societal, and political differences between the states.<sup>22</sup>

As is well known, lack of coordination between administrative systems of different states can impair international trade and exchange. Someone offering goods or services in several states might be subject to different or even conflicting authorisation requirements in the involved legislations. Under public international law, states are not under any obligation to eliminate such double burdens for individuals.<sup>23</sup> Nevertheless, in an economically interlinked world, states have an interest in providing a legal framework for economic exchange across borders. Recognition of foreign decisions that are favourable to the individual, such as authorisations or qualifications, constitutes a means of simplifying international trade and mobility. The foreign decisions, however, are founded upon foreign law and foreign considerations, which might differ from those of the host state.

Another aspect of recognition concerns decisions that are burdensome to the individual. In a society with far-reaching international contacts, a state might have difficulties in maintaining public order and safety if its decisions, e.g. on prohibition of undesired activities, cannot take effect in other states. A possible solution to such problems is the recognition of foreign prohibitions and other burdensome administrative decisions.<sup>24</sup>

Rules and principles on recognition of administrative decisions can thus be seen as the result of a balancing of conflicting interests – on the one hand, international cooperation and free movement, and on the other hand, national self-determination and maintenance of certain levels of protection.<sup>25</sup>

In addition, the interests of persons affected by the foreign decision must be taken into account when discussing recognition of foreign administrative decisions. In cases involving foreign decisions, there are separate legal relationships between the individual and the involved national legal orders. The

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<sup>22</sup> Cf. *J. Schwarze*, *European Administrative Law*, Rev. 1<sup>st</sup> ed., 2006, 85 et seq.

<sup>23</sup> See *K. Vogel*, *Der räumliche Anwendungsbereich der Verwaltungsrechtsnorm*, 1965, 335; *W. Meng* (note 9), 99; *M. S. Nguyen* (note 13), 129.

<sup>24</sup> See *M. Möstl* (note 10), 409 et seq.

<sup>25</sup> See *J. Weiler*, *Mutual Recognition, Functional Equivalence and Harmonization in the Evolution of the European Common Market and the WTO*, in: *F. Kostoris Padoa Schioppa* (note 8), 25 (25): “The Creation of a Common Market Place, indeed all trade liberalization regimes, produces an inevitable tension; a tension between the discipline of free trade and the regulatory autonomy of states.”

individual would most likely welcome the host state recognising favourable decisions such as authorisations or qualifications. In such situations, the interests of the individual and of international cooperation would coincide. Regarding burdensome decisions such as prohibitions, however, it would be in the interest of the individual that such decisions are not recognised. Moreover, when the legal rules demand recognition of burdensome decisions, it is in the interest of the individual that the host state does not recognise decisions founded upon procedural errors or breaches of fundamental rights.

### III. Recognition Duties

When the question regarding effects of a foreign administrative decision is raised before a national administrative authority, this organ will have to assess the issue in the light of international law and, in EU Member States, EU law. The balancing of the interests of international cooperation and national self-determination is apparent in this field. In the following sections, recognition duties under public international law and EU law are discussed. In each field, a general background on international administrative cooperation precedes the discussion on specific recognition duties.

#### 1. Public International Law

##### a) Administrative Cooperation

In public international law, the interest of national self-determination is expressed through the principles of *sovereignty* and *non-intervention*. Sovereignty, a disputed concept of public international law, can be understood in this context as the right of a state to exercise public power independently of other states. This public power could take the form of legislation, the issuing of judgments and administrative decisions, and the carrying out of executive measures. The principle of sovereignty in this sense means that there is no general duty for the states to cooperate in administrative matters.<sup>26</sup> The principle of non-intervention entails a duty of a state to refrain from involving itself in the internal matters of other states.<sup>27</sup>

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<sup>26</sup> Cf. *M. Akehurst* (note 9), 235; *I. Brownlie*, *Principles of Public International Law*, 6<sup>th</sup> ed. 2003, 297 et seq.

<sup>27</sup> See *I. Brownlie* (note 26), 290 et seq.

In the context of international administrative law, the two principles mean that one state's legal rules and decisions lack legal effects in another state.<sup>28</sup> Consequently, for foreign administrative decisions to have legal effects in a certain state, that state has to attribute such effects to them through its own legal rules. Under the principles, the main rule would therefore be that national authorisation requirements can be met only through national authorisations. Traditionally, such views have been linked to ideas of *territoriality*, meaning that public law including administrative law, by the natural order of things, is linked to the state territory.<sup>29</sup> However, now there seems to be a general understanding that the sovereignty of states does not preclude them from cooperating with each other, e.g. by recognising foreign administrative decisions.<sup>30</sup> From a political perspective, it is conceivable that such cooperation normally is reciprocal, with all involved states recognising each others' decisions.<sup>31</sup> Nevertheless, public international law allows for states adopting such rules unilaterally.<sup>32</sup>

The interest of international cooperation is more obscure in general public international law. To be sure, there have been scholarly discussions on cooperation duties owing to monist ideas of the unity of international law and national law,<sup>33</sup> a principle of cooperation<sup>34</sup> or *courtoisie* (*comitas gen-*

<sup>28</sup> See K. König, *Die Anerkennung ausländischer Verwaltungsakte*, 1966, 24; C. Ohler (note 9), 50.

<sup>29</sup> See M. Akehurst (note 9), 179 et seq.; K. Vogel (note 23), 86 et seq., 113 et seq., 142; W. Meng (note 9), 34; C. Ohler (note 9), 43 et seq.

<sup>30</sup> See J. Bast, *Transnationale Verwaltung des europäischen Migrationsraums*, *Der Staat* 46 (2007), 1 (12). Occasionally, there are national constitutional provisions on international cooperation, see Sec. 1 para. 3 *Suomen perustuslaki/Finlands grundlag* (The Constitution of Finland); Ch. 1 Sec. 10 *Regeringsformen* (the Swedish Instrument of Government); the Preamble of the *Grundgesetz für die Bundesrepublik Deutschland* (Basic Law for the Federal Republic of Germany); cf. E. Schmidt-Aßmann (note 1), 2068 et seq.

<sup>31</sup> See M. Akehurst (note 9), 236 et seq.; H.-J. Papier/B.-D. Olschewski, *Vollziehung ausländischer Verwaltungsakte*, *DVBl.* 1976, 475 (476).

<sup>32</sup> Cf. B. Simma, *Reciprocity*, in: R. Wolfrum (ed.), *MPEPIL* (note 12), margin number 4; see for examples of such unilateral rules in Swedish law Ch. 6 Sec. 1 para. 2 *Körkortslagen* (Driving Licence Act) (SFS 1998:488) on the recognition of driving licences from countries not parties to the conventions on road traffic, Ch. 6 Sec. 7 *Högskoleförordningen* (Higher Education Ordinance) (SFS 1993:100), on transfer of credits from a course or study programme from a non-Nordic country or from a country not party to the Lisbon Recognition Convention (note 3).

<sup>33</sup> See A. Bleckmann, *Die Anerkennung der Hoheitsakte eines anderen Landes im Bundesstaat*, *NVwZ* 1986, 1 (3); A. Bleckmann, *Die völkerrechtlichen Grundlagen des internationalen Kollisionsrechts*, 1992, 7 et seq.; S. Burbaum, *Rechtsschutz gegen transnationales Verwaltungshandeln*, 2003, 28.

<sup>34</sup> See C. Tietje, *The Duty to Cooperate in International Economic Law and Related Areas*, in: J. Delbrück (ed.), *International Law of Cooperation and State Sovereignty*, 2002, 45 (63 et seq.); R. Wolfrum, *Cooperation*, *International Law of*, in: R. Wolfrum (ed.), *MPEPIL*

*tium*).<sup>35</sup> However, the notion of cooperation that possibly could be supported through such arguments is too vague to single-handedly support a duty to give effects to foreign administrative decisions. Those discussions could nevertheless point out the possibilities of cooperation available to states under public international law.

The principles discussed above mean that under public international law, there is neither a general duty to recognise foreign administrative decisions nor any substantial limitations to such recognition. Several fields of public international law contain specific rules entailing recognition, thus supporting the interest of international cooperation.

States may cooperate in regional organisations concerning recognition of decisions. In addition to the cooperation within the EU, which is dealt with below (Section III. 2.), one could mention the Nordic cooperation within the Nordic Council of Ministers and the Nordic Council.<sup>36</sup> The founding Helsinki Treaty stipulates that “Each High Contracting Party should endeavour to ensure the implementation of regulations to allow decisions by a court of law or other public authority in another Nordic country to be executed also in the territory of the said Party.”<sup>37</sup> This could be seen as an expression of the spirit of cooperation between the Nordic states. However, this spirit of cooperation does not amount to an actual duty of recognition of individual decisions. Rather, this principle of cooperation is specified in treaties on certain issues.<sup>38</sup> It should be noted that national rules based on Nordic agreements in some situations have to be set aside owing to the primacy of EU law.<sup>39</sup>

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(note 12), margin numbers 7 et seq.; A. Bleckmann, *Die völkerrechtlichen Grundlagen* (note 33), 25 et seq.

<sup>35</sup> See *W. Meng* (note 9), 102 et seq.

<sup>36</sup> See the Treaty of Co-operation between Denmark, Finland, Iceland, Norway and Sweden (*Samarbetsöverenskommelse mellan Danmark, Finland, Island, Norge och Sverige*) (Helsinki Treaty), Helsinki 23.3.1962, 434 UNTS 145.

<sup>37</sup> Art. 7 Helsinki Treaty (note 36).

<sup>38</sup> See examples under Section III. 1. b).

<sup>39</sup> See ECJ Case C-435/06 C. [2007] ECR I-10141 concerning the Brussels II bis Regulation (note 6) in relation to Nordic rules on the recognition and enforcement of administrative decisions on the taking into care and placement of persons; cf. Joint Declaration No. 28 on Nordic Cooperation, annexed to the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, OJ 1994 C 241/392: “The Contracting Parties record that Sweden, Finland and Norway, as members of the European Union, intend to continue, in full compliance with Community law and the other provisions of the Treaty on European Union, Nordic Cooperation amongst themselves as well as with other countries and territories.” Denmark, Finland and Sweden are members of the EU, whereas Norway, that eventually did not join the EU, and Iceland are members of

## b) Recognition Duties

Under international conventions regulating certain fields of law, there are explicit duties to recognise foreign administrative decisions. Below, some examples are discussed regarding recognition of favourable decisions concerning citizenship, higher education, transport, and international trade. The examples give an indication of the balancing of interests between the involved states in those fields.

In the field of *citizenship*, there are conventions and possibly also customary law demanding recognition of naturalisation decisions.<sup>40</sup> Concerning passports, which serve as *prima facie* evidence of citizenship, however, there is no generally accepted duty of recognition. Nevertheless, many states accept foreign passports to a certain extent for border passage. This practice could be attributed to practical considerations or the interest of maintaining international relations.<sup>41</sup>

Concerning *higher education*, regional conventions in some instances stipulate that foreign qualifications should be recognised, provided that the foreign decision is equivalent to the domestic one demanded.<sup>42</sup> The assessment of equivalence may be seen as a means of balancing the interests of control of the education system and cross-border mobility in higher education. Under the Nordic Agreement on Access to Higher Education, as well as the Council of Europe/UNESCO Lisbon Recognition Convention, there is a presumption of equivalence of qualifications from other convention parties. Such agreements express the interest of international cooperation and a considerable level of trust between the parties.<sup>43</sup> Furthermore, such

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the European Economic Area, see *K. Lenaerts/P. van Nuffel*, Constitutional Law of the European Union, 2<sup>nd</sup> ed. 2006, margin number 14-047.

<sup>40</sup> See Art. 1 Convention on Certain Questions Relating to the Conflict of Nationality, The Hague 12.4.1930, 179 LNTS 89; Art. 3(1) European Convention on Nationality, Strasbourg 6.11.1997, CETS 166; cf. *I. Brownlie* (note 26), 373 et seq.; see also ECJ Case C-369/90 *Micheletti* [1992] ECR I-4239 para. 10.

<sup>41</sup> See *M. Bogdan*, Admission of Foreign Tourists (note 4), 91 et seq.; *C. Hagedorn*, Passports, in: R. Wolfrum (ed.), MPEPIL (note 12), margin numbers 11, 32.

<sup>42</sup> See the Agreement between Denmark, Finland, Iceland, Norway and Sweden on the Access to Higher Education, Copenhagen 3.9.1996 (Överenskommelse mellan Danmark, Finland, Island, Norge och Sverige om tillträde till högre utbildning), 1984 UNTS 27; Arts. IV-VI Lisbon Recognition Convention (note 3).

<sup>43</sup> Cf. the Nordic Declaration on the Recognition of Qualifications Concerning Higher Education, Reykjavik 9.6.2004 (Nordisk deklARATION om erkännande av bevis avseende högre utbildning), stating that “the Nordic countries have established full confidence in the system of higher education in each other’s countries and consider them to be equal regarding recognition of studies and examinations”.

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agreements sometimes include the establishment of administrative networks for exchange of information on recognition matters.<sup>44</sup>

When it comes to *transport*, national requirements on holding a national driving licence and the non-recognition of foreign licences could severely impede international communications. Concerning motor vehicles, international conventions provide for recognition of driving licences.<sup>45</sup> Correspondingly, the states shall recognise certificates of competency for pilots under the Convention on International Civil Aviation.<sup>46</sup> A general problem in this field is the risk of circumvention of legislation through so-called *driving licence tourism*. This term denotes the phenomenon that residents of one state acquire licences from another state, where licences can be obtained more easily because of corruption or lower standards of theoretical or practical tests.<sup>47</sup> In the perspective of the state of residence, such behaviour constitutes an unwanted parallel to the *forum shopping* of private international law.<sup>48</sup> In order to diminish such problems, conventions sometimes lay down structures for international administrative networks and the exchange of information.<sup>49</sup>

Concerning *international trade* in the legal framework relating to the World Trade Organization (WTO), situations can arise where foreign administrative decisions shall be recognised. In certain cases, the participating states shall take into account that goods or services are allowed under the laws of the state of origin. Under the Agreement on the application of Sanitary and Phytosanitary Measures (SPS), the states at the outset shall accept each others' sanitary measures, following international standards, as equivalent.<sup>50</sup> This acceptance in turn means that the importing state shall recognise

<sup>44</sup> See Arts. IX and X Lisbon Recognition Convention (note 3).

<sup>45</sup> See Art. 24 Convention on Road Traffic, Geneva 19.9.1949, 125 UNTS 3; Art. 41 Vienna Convention on Road Traffic (note 4); Art. 1 Agreement between Denmark, Finland, Norway and Sweden on Reciprocal Recognition of Driving Permits and Vehicle Registration Certificates (Överenskommelse mellan Danmark, Finland, Norge och Sverige om ömsesidigt godkännande av körkort och av registrering av fordon) (Nordic Agreement on Recognition of Driving Permits and Vehicle Registration), Mariehamn 12.11.1985, 1600 UNTS 265.

<sup>46</sup> See Art. 33 Convention on International Civil Aviation (note 15).

<sup>47</sup> Cf. Commission Interpretative Communication on Community driver licensing, OJ 2002 C 77/5.

<sup>48</sup> Cf. *C. von Bar/P. Mankowski* (note 11), § 5 margin number 156 et seq.

<sup>49</sup> See e.g. Art. 4 Nordic Agreement on Recognition of Driving Permits and Vehicle Registration (note 45), providing for direct contacts between the national authorities; Art. 21 Convention on International Civil Aviation (note 15), providing for the ICAO Secretariat to function as a central contact point.

<sup>50</sup> See Art. 4 Agreement on the Application of Sanitary and Phytosanitary Measures (SPS); see on the international standards of the Codex Alimentarius Commission, *B. Kingsbury/N. Krisch/R. Stewart* (note 20), 22; *M. Ruffert* (note 12), margin number 14.

actions of the exporting state in the form of individual decisions.<sup>51</sup> Furthermore, the states under the SPS Agreement shall establish enquiry points for the exchange of information on their respective national sanitary legislation and control procedures.<sup>52</sup> In this context, it should also be noted that states in certain sectors have entered *mutual recognition agreements*. Some such agreements entail provisions on recognition of foreign administrative decisions.<sup>53</sup>

## 2. European Union Law

### a) Administrative Cooperation

Under EU law, the balancing of the conflicting interests of self-determination and international cooperation differs from the situation in public international law. The central issue is here to balance the Member States' national interests against the interests of the Union as a whole. The *principle of sincere cooperation* provides a point of departure for striking this balance. Among other things, the principle functions as a framework for the administrative cooperation between the Member States.<sup>54</sup>

The principle of sincere cooperation expressed in Art. 4(3) of the Treaty on the European Union (TEU) provides a base for solidarity between the Member States, requesting cooperation of different kinds.<sup>55</sup> In the words of *Temple Lang*, the national administrative authorities should behave like “a

<sup>51</sup> See *M. Ruffert*, Der transnationale Verwaltungsakt, *Verwalt.* 2001, 453 (462). Cf. *J. Trachtman*, Embedding Mutual Recognition at the WTO, *Journal of European Public Policy* 14 (2007), 788 et seq.; see on the problems of this form of legal rules *A. Aman*, The Democracy Deficit: Taming Globalization through Law Reform, 2004, 165 et seq.

<sup>52</sup> See para. 3, Annex B to the SPS Agreement; *K. Nicolaidis/G. Shaffer*, Transnational Mutual Recognition Regimes: Governance without Global Government, *Law & Contemp. Probs.* 68 (2004/2005), 263 (294).

<sup>53</sup> See e.g. Art. 2 Agreement on mutual recognition between the European Community and Japan, 4.4.2001, OJ 2001 L 284/3; Art. 3 Agreement on mutual recognition between the European Community and the United States of America, OJ 1999 L 31/3; *K. Nicolaidis/G. Shaffer* (note 52), 277 et seq.

<sup>54</sup> See *J. Schwarze* (note 22), CLXXV; cf. also the legal foundation for EU coordination of administrative cooperation in Art. 197 Treaty on the Functioning of the European Union (TFEU).

<sup>55</sup> See *J. Temple Lang*, Community Constitutional Law, *CML Rev.* 27 (1990), 645 (671); Communication from the Commission to the Council and the European Parliament on the Development of Administrative Cooperation in the Implementation and Enforcement of Community Legislation in the Internal Market, COM(94) 29 final, para. 3; Cf. *K. Nicolaidis* (note 8), 139, 163.

flock of birds or a shoal of fish – not an uncoordinated assemblage of individuals, but a group orchestrated and linked by unseen links with a common direction.”<sup>56</sup> In this way, the relationship between the administrative authorities in different Member States resembles that of authorities within a state.<sup>57</sup> To a certain extent, the EU shows parallels to a federal state.<sup>58</sup> Therefore, it has been suggested that the relationships between states within a federation could provide guidance when assessing issues concerning recognition of foreign administrative decisions between the EU Member States.<sup>59</sup> However, there are important differences between the administrative structures in different federal systems. As is illustrated by the dissimilar administrative organisations of the federal states Belgium, Germany, and the USA, there is no inherent federal administrative system. Therefore, it is highly difficult to use federal parallels as a method to suggest principles for international administrative cooperation on a more detailed level. These difficulties also apply to questions including recognition of foreign decisions.<sup>60</sup>

Federal parallels aside, the principle of sincere cooperation has at least three important implications concerning administrative cooperation. First, the ECJ case-law in various fields clearly points out that the principle means that Member States shall rely on *mutual trust*, at least in harmonised areas of law.<sup>61</sup> Part of the case-law of the ECJ even suggests that mutual trust, sometimes referred to as a general principle in its own right, should also be prevalent in non-harmonised areas.<sup>62</sup> Second, the solidarity of the Member

<sup>56</sup> See *J. Temple Lang*, XIX F.I.D.E. Congress I, General Report: The Duties of Cooperation of National Authorities and Courts and the Community Institutions under Article 10 EC Treaty, 2000, 383.

<sup>57</sup> See e.g. in Swedish law Sec. 6 Förvaltningslagen (Administrative Procedure Act) (SFS 1986:223): “Every authority shall assist other authorities within the framework of its own activity.”; in Finnish law Sec. 10 Hallintolaki/Förvaltningslagen (Administrative Procedure Act) (Suomen säädöskokoelma/Finlands författningssamling [The Statutes of Finland] 434/2003); in German law Sec. 4 Verwaltungsverfahrensgesetz 25.5.1976 (Administrative Procedure Act).

<sup>58</sup> See *K. Lenaerts/P. van Nuffel* (note 39), margin number 14-047.

<sup>59</sup> See *C. Linke* (note 19), 171 et seq.; *J. Hofmann*, Rechtsschutz und Haftung im Europäischen Verwaltungsverbund, 2004, 45 et seq.

<sup>60</sup> Cf. *G. Sydow* (note 13), 145 et seq.

<sup>61</sup> See ECJ Cases 46/76 *Baubuis* [1977] ECR 5 para. 22; 25/88 *Bouchara* [1989] ECR 1105 para. 18; C-5/94 *Hedley Lomas* [1996] ECR I-2553 para. 19; C-110/01 *Tennah-Durez* [2003] ECR I-6239 para. 34; C-476/01 *Kapper* [2004] ECR I-5205 para. 37; see also *C. Barnard*, The Substantive Law of the EU, 3<sup>rd</sup> Ed. 2010, 189 et seq.

<sup>62</sup> In ECJ Case 25/88 *Bouchara* [1989] ECR 1105 para. 18, the ECJ held that the relevant rule in the case was “[...] a particular application of a more general principle of mutual trust between the authorities of the Member States [...]”. In several legal acts the issuing institutions have referred to mutual trust also in partly non-harmonised fields, cf. in *insolvency law* recital 22 in the preamble to Regulation (EC) No 1346/2000 on insolvency proceedings; in

States requires them to maintain quality in decisions with relevance to other Member States.<sup>63</sup> This in practice is a *sine qua non* for the functioning of rules on recognition of foreign administrative decisions.<sup>64</sup> If the quality of foreign decisions is considered to be low, the willingness of a host state to give effects to such decisions would seem to be limited.<sup>65</sup> Third, the principle of sincere cooperation entails obligations to establish direct and efficient contacts and to exchange information when needed.<sup>66</sup>

Through the aspects now mentioned, the principle of sincere cooperation paves the way for a larger degree of openness between the EU Member States. It implies that the legal orders of the EU Member States are inter-linked, forming networks of administrative authorities in different fields of law.<sup>67</sup> Thus, the principle challenges the traditional view of administrative law as firmly attached to the territory of the state.

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*family law* recital 21 in the preamble to the Brussels II bis Regulation (note 6); in *criminal law* recital 10 in the preamble to Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (“a high level of confidence between Member States”).

<sup>63</sup> See ECJ Case C-202/97 *Fitzwilliam* [2000] ECR I-883 paras. 51-54 on the issuing of certificates on applicable legislation (E 301) under Regulation (EEC) No. 574/72 of the Council of 21.3.1972 fixing the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (now Regulation (EC) No. 987/2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems).

<sup>64</sup> Cf. Council Resolution of 28.10.1999 on mutual recognition, OJ 2000 C 141/5.

<sup>65</sup> See *J. Temple Lang*, Developments, Issues, and New Remedies – The Duties of National Authorities and Courts under Article 10 of the EC Treaty, *Fordham Int'l L.J.* 27 (2003/2004), 1904 (1938); cf. recital 22 in the preamble to Directive 2004/39/EC on markets in financial instruments.

<sup>66</sup> See *P. Mengozzi*, *European Community Law from the Treaty of Rome to the Treaty of Amsterdam*, 2<sup>nd</sup> ed. 1999, 88: “In short, Member States must open all parts of their respective national administrations in order to permit direct cooperation among them by modern and expeditious means”; see ECJ Cases 104/75 *De Peijper* [1976] ECR 613 para. 27; 272/80 *Biologische Producten* [1981] ECR 3277 para. 14; C-293/94 *Brandsma* [1996] ECR I-3159 para. 13 (concerning exchange of information on security checks of goods that have been carried out in another Member State), 42/82 *Commission v. France* [1983] ECR 1013 (concerning information to other Member States on changes in the practice of an administrative authority).

<sup>67</sup> See *A. von Bogdandy/P. Dann*, *International Composite Administration: Conceptualizing Multi-Level and Network Aspects in the Exercise of International Public Authority*, *GLJ* 9 (2008), 2013 et seq. ([www.germanlawjournal.com](http://www.germanlawjournal.com)); *J. Schwarze* (note 22), CLXXV et seq.; *T. von Danwitz*, *Europäisches Verwaltungsrecht*, 2008, 609 et seq.

## b) Recognition Duties

Under EU law, certain duties to recognise foreign administrative decisions derive from the founding treaties and from the general principles flowing from those treaties. Moreover, recognition duties are found in secondary law. This section highlights some examples of recognition duties under EU law.

To start with, the *principle of sincere cooperation* in itself hardly entails a legal duty to recognise foreign administrative decisions. However, the principle may serve as argumentative support for recognition duties under other rules and principles.<sup>68</sup> The most important principles in this context are the principle of equal treatment and the principle of mutual recognition.

The *principle of equal treatment* expressed in Art. 18 and other provisions of the TFEU may imply a recognition duty.<sup>69</sup> If Member State A demands the holding of a domestic authorisation or qualification for a certain activity, this could constitute indirect discrimination in relation to citizens of Member State B. In order for such a measure to be justified and allowed under EU law, the rule would have to meet the demands set out in ECJ case-law for pursuing a legitimate aim in a proportionate way.<sup>70</sup> The existence of an equivalent administrative authorisation or qualification from Member State B might mean that the demand for a domestic decision from Member State A is not proportional. In that case, the foreign administrative decision has to be treated as valid – recognised – in Member State A.<sup>71</sup> It should be noted that the principle of equal treatment cannot support recognition of burdensome foreign administrative decisions, such as prohibitions.<sup>72</sup>

This model for assessing foreign decisions is closely linked to the *principle of mutual recognition* established in ECJ case-law.<sup>73</sup> In the context dis-

<sup>68</sup> See *K. Lenaerts/P. van Nuffel* (note 39), margin number 5-047 concerning the lack of direct effect of the provision now found in Art. 4(3) TEU; *C. Linke* (note 19), 215 et seq.; *S. Michaels* (note 14), 215; *F. Wettner*, *Die Amtshilfe im Europäischen Verwaltungsrecht*, 2005, 240 et seq.

<sup>69</sup> See for example, concerning the Inner Market, Arts. 45 (Workers), 49 (Right of Establishment) and 56 (Services) TFEU.

<sup>70</sup> See ECJ Cases C-65/03 *Commission v. Belgium* [2004] ECR I-6427 para. 29; C-147/03 *Commission v. Austria* [2005] ECR I-5969 para. 46; C-382/08 *Neukirchinger*, judgment of 25.1.2011, not yet reported, paras. 38, 39.

<sup>71</sup> See *C. Linke* (note 19), 226.

<sup>72</sup> Cf. *M. Möstl* (note 10), 410.

<sup>73</sup> See ECJ Cases 120/78 *Rewe-Zentral* (“Cassis de Dijon”) [1979] ECR 649; 110/78 and 111/78 *van Wesemael* [1979] ECR 35, paras. 29 and 30; *M. Möstl* (note 10), 408 et seq.; cf. *P. Pescatore*, *Variations sur la jurisprudence “Cassis de Dijon” ou la solidarité entre l’ordre pub-*

cussed here, the principle means that Member States shall accept foreign favourable decisions relating to the exercise of free movement under the TFEU, unless certain strong interests (“mandatory requirements” or “overriding reasons relating to the general interest”) are at stake.<sup>74</sup>

In fields without harmonised rules, the assessment of equivalence between the relevant national decisions is essential to a possible recognition duty.<sup>75</sup> When a national authority evaluates the equivalence of a foreign decision, it naturally bases its conclusion on considerations specific to the subject matter of the decision. At least in some fields, the case-law of the ECJ suggests that there should be a presumption of equivalence.<sup>76</sup> In other situations, differences between the Member States concerning the economic, social, and legal structures could be relevant arguments.<sup>77</sup> In this way, the case-law takes national interests of order and security into account, adjusting the balancing of interests of national self-determination and cooperation in the relevant field of law.

The application of the principle of mutual recognition does not always lead to recognition in individual cases. In non-harmonised fields, national legislation demanding domestic authorisations may be considered justified and thus allowed under EU law.<sup>78</sup> However, even if the foreign decision is considered not equivalent, it shall still be taken into account by the host state’s authorities. This gives a *probative value* to the content of the foreign decision.<sup>79</sup>

The principle of mutual recognition in these situations constitutes a means of avoiding double burdens for individuals engaging in cross-border trade in different ways. Apart from being expressed in the ECJ case-law, the principle also underlies secondary legislation demanding the recognition of

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lic national et l’ordre public communautaire, in: M. Monti et al. (eds.), *Economic Law and Justice in Times of Globalisation: Festschrift for Carl Baudenbacher*, 2007, 543 (552 et seq.)

<sup>74</sup> See C. Barnard (note 61), 93 et seq.; J. Snell, *Goods and Services in EC Law*, 2002, 181 et seq.

<sup>75</sup> See C.-M. Happe, *Die grenzüberschreitende Wirkung von nationalen Verwaltungsakten*, 1987, 152 et seq.; S. Michaels (note 14), 224 et seq.; M. Möstl (note 10), 411 et seq.

<sup>76</sup> See ECJ Case 251/78 *Denkavit* [1979] ECR 3369; 124/81 *Commission v. United Kingdom* (“UHT Milk”) [1983] ECR 203 para. 30.

<sup>77</sup> Cf. ECJ Case 279/80 *Webb* [1981] ECR 3305 paras. 18, 19; 16/78 *Choquet* [1978] ECR 2293 para. 7; C-275/92 *Schindler* [1994] ECR I-1039 para. 61.

<sup>78</sup> Cf. ECJ Cases 16/78 *Choquet* [1978] ECR 2293 para. 7; C-224/98 *D’Hoop* [2002] ECR I-6191 para. 38; C-42/07 *Bwin* [2009] ECR I-7633 para. 69.

<sup>79</sup> See ECJ Cases C-340/89 *Vlassopoulou* [1991] ECR I-2357, paras. 15-19; 222/86 *Heylens* [1987] ECR 4097 para. 13; C-238/98 *Hocsman* [2000] ECR I-6623 paras. 39, 40; C-336/94 *Dafeki* [1997] ECR I-6761 paras. 18-21; cf. in the politically controversial field of recognition of gambling licences EFTA Court Case E-3/06 *Ladbroke’s*, EFTA Court Reports 2007, 89 paras. 86-88.

foreign administrative decisions in various fields.<sup>80</sup> Such recognition duties apply to a great number of favourable decisions, such as authorisations of biocidal products, driving licences, and professional qualifications, to name a few examples.<sup>81</sup>

Having its origins in the EU law on free movement, the principle of mutual recognition now also is firmly established in other fields of EU law.<sup>82</sup> Notably, the TFEU mentions the principle concerning judicial and extra-judicial cooperation in civil and criminal matters within the Area of Freedom, Security and Justice.<sup>83</sup> Under the principle, secondary legislation sometimes demands the recognition of foreign burdensome decisions.<sup>84</sup> Among them are sanctioning measures sometimes referred to as disqualifications, including revocation of authorisations. As noted by *Möstl*, the principle of mutual recognition in this context limits the freedom of individuals.<sup>85</sup> There now seems to be an increased political interest in developing mechanisms for recognition of such burdensome decisions.<sup>86</sup> At the same time, the interest of the states of self-determination is strong concerning

<sup>80</sup> See Completing the Internal Market, White Paper from the Commission to the European Council, COM(85) 310 final (White Paper on Completing the Internal Market), para. 65; cf. *J. Weiler* (note 25), 50 labelling this phenomenon as “adoption at the *legislative* level of the *Cassis* rationale”.

<sup>81</sup> Art. 4 Directive 98/8/EC concerning the placing of biocidal products on the market; Art. 2 Directive 2006/126/EC on driving licences; cf. on driving licences *M. Möstl* (note 10), 427; Art. 21(1) Directive 2005/36/EC on the recognition of professional qualifications. For further examples, see Art. 28 Directive 2001/83/EC on the Community code relating to medicinal products for human use; Art. 10(3) Directive 2006/123/EC on services in the internal market; Art. 6(3) Directive 2004/39/EC on markets in financial instruments; cf. the examples in *B. Raschauer* (note 14), 667 et seq.

<sup>82</sup> See *M. Möstl* (note 10), 406; *E. Storskrubb*, Civil Procedure and EU Law, 2008, 66 et seq., 276 et seq.

<sup>83</sup> See Arts. 67, 81 and 82 TFEU; cf. concerning civil matters ECJ Case C-435/06 *C.* [2007] ECR I-10141 (note 39).

<sup>84</sup> See Arts. 1 and 3 Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals; Art. 6 Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (concerning deprivation of the right to stand as a candidate); Arts. 10-13 Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

<sup>85</sup> See *M. Möstl* (note 10), 409.

<sup>86</sup> Cf. the discussion on recognition of decisions regarding disqualification in the Commission's Green paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union COM(2004) 334 final, para. 2.2.4 et seq.; Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen, COM(2009) 262 final, para 3.1; European Council, The Stockholm programme – an open and secure Europe serving and protecting citizens, OJ 2010 C 115/1, para. 3.1.1.

sanctioning measures. The establishment of rules or principles demanding general recognition of such decisions between the Member States would therefore be unlikely in the foreseeable future.<sup>87</sup>

The many duties to recognise foreign administrative decisions under EU law break the traditional strong link between administrative decision-making and the nation state under the territoriality principle.<sup>88</sup> In the balancing of interests of cooperation and self-determination, EU law clearly promotes international cooperation and confidence in the legal systems and individual decisions of other Member States.

## IV. The Scope to Refuse Recognition

### 1. Introductory Remarks

When there is a recognition duty in a certain field, the administrative authority of the host state could find that the foreign decision at issue is deficient in some aspect, e.g. owing to errors by the issuing authority. This section deals with the scope for a national authority to refuse recognition when rules and principles on recognition are applicable.

There are several aspects to be taken into account when considering refusing recognition. The balance between conflicting interests of international cooperation and national self-determination is also relevant in this context. Furthermore, the individual affected by a decision has a legitimate interest in taking advantage of the rights conferred by a foreign favourable decision.

Against this background, there are several reasons not to allow refusal to recognise foreign decisions when there are applicable rules and principles on recognition. First, recognition is a means of avoiding situations where authorities in several states address the same legal issue. Quite simply, the founding idea of recognition is not to assess foreign decisions once more in the host state. Second, the authorities of the issuing state have thorough knowledge of the national legal order under which the decision was issued. Third, in many cases the possible errors of the issuing authority could be

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<sup>87</sup> Cf. Communication from the Commission to the Council and the European Parliament – Disqualifications arising from criminal convictions in the European Union, COM(2006) 73 final para. 22 et seq.

<sup>88</sup> See *J. Schwarze* (note 22), 1441.

addressed through appeal or other procedures in the issuing state.<sup>89</sup> Thus, the main rule when assessing foreign decisions where there is a recognition duty would be not to refuse recognition.

## 2. Grounds for Refusing to Recognise a Foreign Decision

In addition to the arguments for not refusing recognition set out above, there are also some reasons to allow refusal, in exceptional cases, of foreign decisions where there is a recognition duty. First, there could be a strong legal interest of correction in the host state if the foreign decision has been revoked, annulled or altered. Second, such an interest also applies if the foreign decision is founded on procedural or legal errors. These grounds for refusing to recognise a foreign decision are explored below.

### a) The Foreign Decision is Revoked, Annulled or Altered

In situations where the foreign decision has been revoked, annulled or altered, some areas contain legislation providing that such changes should also take effect in the recognising state.<sup>90</sup> However, such rules do not seem to be frequent. In the absence of such legislation, the distinction between the two main types of recognition mechanisms is relevant.

Concerning recognition mechanisms labelled here as *explicit recognition*, a foreign revocation or other such measure does not change the legal effects of the decision in the host state. In order for a foreign revocation or other change to take effect, the domestic decision recognising the foreign decision must itself be changed through a domestic decision by the host state.<sup>91</sup> However, because of limitations on revocation of decisions under national law, this is not always possible. Domestic administrative law may limit the full or partial revocation of favourable decisions.<sup>92</sup> The result could then be that an administrative decision, tracing its origins to another state, ceases to

<sup>89</sup> Cf. White Paper on Completing the Internal Market (note 80), para. 77; *M. S. Nguyen* (note 13), 133 and *B. Raschauer* (note 14), 681 et seq.

<sup>90</sup> See Art. 35 Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions; in Swedish law Ch. 6, sec. 2 para. 1 *Körkortslagen* (Driving Licence Act) (SFS 1998:488), providing that “a foreign driving licence is not valid in Sweden [...] if it is invalid in the state where it has been issued”.

<sup>91</sup> Cf. *K. König* (note 28), 56 et seq.

<sup>92</sup> See, in a European context, *J. Schwarze* (note 22), 1156 et seq.; concerning Swedish law *H. Ragnemalm*, *Administrative Justice in Sweden*, 1991, 140 et seq.

be valid in the issuing state, but remains valid in the host state. The result would be a special case of what has been called a *limping legal relationship* in private international law.<sup>93</sup>

When it comes to situations of *single licence recognition*, where there is no domestic decision in the host state, the situation is different. The foreign revocation or other change takes immediate effect in that state.<sup>94</sup> In these cases, the validity of the decision in the host state is directly linked to the validity in the issuing state.

## b) The Foreign Decision is Based on Procedural or Material Errors

Concerning procedural or material errors in the foreign decision, there is need for a distinction between errors in relation to public international law, EU law, and the domestic law of the issuing state.

Regarding errors in relation to *public international law*, there could be a certain scope to refuse to recognise a foreign decision if the issuing state lacks jurisdiction to issue such a decision. However, there seem to be few limits to the jurisdiction of states to issue administrative decisions.<sup>95</sup> A possible exception is naturalisation (citizenship) decisions.<sup>96</sup> Furthermore, in relation to recognition duties under conventions, the question of refusal might arise if the issuing state has deviated from the conditions set out in the convention. Occasionally, there are provisions covering this situation.<sup>97</sup> Where there are no such convention provisions, states will be under a duty to recognise decisions even if they do not fully comply with convention requirements. The practical solution to such problems could be to establish contacts between the competent authorities, making it possible for the issuing state to reconsider its decision.<sup>98</sup> Nevertheless, it might be argued that the host state should be entitled to refuse recognition in some situations.<sup>99</sup> If the deviation from convention requirements is a substantial one, the interest of the host state for maintaining certain levels of protection could justify a

<sup>93</sup> See *T. Pfeiffer*, Private International Law, in: R. Wolfrum (ed.), MPEPIL (note 12), margin number 14.

<sup>94</sup> See *V. Neßler* (note 8), 32 et seq.

<sup>95</sup> Cf. *G. Biscottini* (note 13), 681 et seq.; *W. Meng* (note 9), 216 et seq.

<sup>96</sup> See ICJ *Nottebohm Case (Liechtenstein v. Guatemala)*, ICJ Reports 1955, 4; *I. Brownlie* (note 26), 396 et seq.

<sup>97</sup> See Art. 33 Convention on International Civil Aviation (note 15).

<sup>98</sup> Cf. International Tribunal for the Law of the Sea Case No. 2 *The M/V "Saiga" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, paras. 81 et seq.; *I. Brownlie* (note 26), 411 et seq.

<sup>99</sup> Cf. *S. Michaels* (note 14), 100.

refusal to recognise a foreign decision. In some situations, arguments concerning public order (*ordre public*) may also justify the refusal to recognise a foreign administrative decision.<sup>100</sup> The possibility of invoking public order in exceptional cases could be considered an instrument for fine-tuning the balance between international cooperation and national self-determination.<sup>101</sup>

In addition, situations may occur where a foreign burdensome decision violates the *fundamental rights* of an individual in some respect. This could be the case if the foreign administrative procedure does not meet the procedural requirements of the European Convention of Human Rights. The case law of the European Court of Human Rights (ECtHR) indicates that the host state shall refrain from recognition if a foreign judgment or decision is the result of a “flagrant denial of justice”.<sup>102</sup>

Errors in relation to *EU law* should be assessed in the light of the mutual trust between the Member States under the principle of sincere cooperation. The ECJ case-law in different fields means that a state may not refuse to recognise a supposedly erroneous decision. The ECJ has pointed out that the action available to the host state in such a situation is to contact the issuing state to draw attention to the alleged error. As a last resort, the host state may bring infringement proceedings against the other Member State.<sup>103</sup> In other words, such a conflict should be addressed on the inter-state level and not in the individual case. However, if the errors in the foreign decision are so evident that that decision could be considered a nullity, the case-law of

<sup>100</sup> Cf. *J. Hofmann* (note 59), 176.

<sup>101</sup> See *E. Schmidt-Aßmann* (note 14), 297 et seq.

<sup>102</sup> See concerning decisions and judgments from states not parties to the convention ECtHR Cases *Drozd and Janousek v. France and Spain*, 26.6.1992, Series A No. 240 para. 110; *Iribarne Pérez v. France*, 24.10.1995, Series A No. 325-C para. 32; *Pellegrini v. Italy*, No. 30882/96, ECHR 2001-VIII paras. 40, 47; concerning decisions and judgments from convention states *T. I. v. United Kingdom* (dec.), No. 43844/98, ECHR 2000-III page 16; see *A. van Hoek/M. Luchtman*, *Transnational Cooperation in Criminal Matters and the Safeguarding of Human Rights*, *Utrecht Law Review* 1 (2005), 2, 10 et seq.

<sup>103</sup> See ECJ Cases 130/88 *van de Bijl* [1989] ECR 3039 paras. 22 et seq.; C-5/94 *Hedley Lomas* [1996] ECR I-2553 para. 20; C-115/00 *Andreas Hoves* [2002] ECR I-6077 para. 58; C-110/01 *Tennah-Durez* [2003] ECR I-6239 paras. 75 et seq.; C-111/03 *Commission v. Sweden* paras. 61 et seq.; cf. the conflict resolving mechanism under Regulation (EC) No 883/2004 on the coordination of social security systems set out in Administrative Commission for the Coordination of Social Security Systems Decision No. A 1 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004, OJ 2010 C 106/1.

the ECJ leaves some room for a refusal to recognise.<sup>104</sup> Furthermore, the ECJ case-law also suggests that a Member State may refuse to recognise a foreign decision when an individual invokes it to abuse EU law.<sup>105</sup>

An allegedly erroneous application of the *domestic law of the issuing state* should not constitute a ground for refusing recognition. It is not the task of the host state to control that the legal rules of the issuing state are applied correctly.<sup>106</sup> The issuing authority must be deemed to have greater knowledge of the legal system of the issuing state than the host state authority.

## V. Handling of Cases Involving Recognition of Foreign Administrative Decisions

When a national authority handles a case involving the recognition of foreign administrative decisions, that authority normally applies its domestic procedural rules.<sup>107</sup> This section deals with some general procedural issues when an authority or a court considers recognising a foreign administrative decision. The tripartite balancing of interests between international cooperation, national self-determination and individuals' rights outlined above is also relevant here.<sup>108</sup> Equally relevant is the distinction between *explicit recognition* and *single licence recognition*. Below, some aspects of recognition are highlighted in relation to the chronological stages of the handling of a matter involving recognition.<sup>109</sup> Thereafter, issues related to supervision of holders of foreign administrative decisions are discussed.

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<sup>104</sup> See ECJ Case 130/88 *van de Bijl* [1989] ECR 3039 para. 27; *Wiedemann* [2008] ECR I-4635 para. 60; *M. Möstl* (note 10), 427 et seq.; cf. regarding decisions from the EU Institutions ECJ Case 15/85 *Consorzio Cooperative d'Abruzzo v. Commission* [1987] ECR 1005 para. 10.

<sup>105</sup> See ECJ Case 115/78 *Knoors* [1979] ECR 399 para. 25; 130/88 *van de Bijl* [1989] ECR 3039 para. 25; C-206/94 *Paletta* [1996] ECR I-2357 para. 24; see also *K. Engsig Sørensen*, Abuse of Rights in Community Law: A Principle of Substance or Merely Rhetoric? CML Rev. 43 (2006), 423 (452 et seq.).

<sup>106</sup> See *B. Raschauer* (note 14), 681.

<sup>107</sup> See *S. Burbaum* (note 33), 78.

<sup>108</sup> See above Section II. 1.

<sup>109</sup> Cf. for this division of procedural stages of the handling of an administrative matter *H. Ragnemalm* (note 92), 156 et seq.

## 1. Stages of the Recognition Procedure

The *initiative* to recognise a foreign administrative decision could come from either an individual or a public authority. Examples of individuals' initiatives are a defendant invoking a foreign driving licence in a criminal case concerning unlawful driving, or someone applying for the recognition of a foreign academic degree. Public authorities, domestic or foreign, may take the initiative concerning decisions that are burdensome for the individual. This is the case with recognition of decisions on expulsion or of claims concerning administrative levies.<sup>110</sup>

Once the issue of recognition is brought up in a matter, the competent authority or court needs to assess the relevant foreign administrative decision. An important matter of consideration could then be the *international status* of the entity issuing that decision. If that state is not recognised by the government of the host state, it could be questioned whether the decision should be recognised. In some legal systems, notably those of the United Kingdom and the USA, constitutional law precludes recognition of private law judgements from state entities not recognised by the government of the host state.<sup>111</sup> In contrast, systems such as the German and Swedish ones lack this restraint and focus instead on the effective territorial control of the regime of the entity at issue.<sup>112</sup> As a general point concerning administrative law, it might be said that in many cases, recognition of favourable foreign decisions from contested areas, for example regarding academic degrees, would not be politically controversial or problematic. Furthermore, recognition is of course in the interest of the individual holding such a degree.<sup>113</sup> However, the recognition of administrative decisions from disputed state entities might nevertheless be difficult in practice. This might be the case if recognition presupposes cooperation and exchange of information with the issuing authorities.<sup>114</sup>

Concerning the *authenticity* of foreign documentation, domestic administrative principles on evaluation of evidence primarily apply. Under EU

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<sup>110</sup> See Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals; Arts. 10-13 Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures; *M. Berglund*, Cross-Border Enforcement of Claims in the EU, 2009.

<sup>111</sup> See *I. Brownlie* (note 26), 95 et seq.

<sup>112</sup> See *J. A. Frowein*, Recognition, in: R. Bernhardt (ed.), *EPIL*, Vol. IV (2000), 33, 36; in Swedish law *H. Eek*, *The Swedish Conflict of Laws*, 1965, 143 et seq.

<sup>113</sup> See further the reasoning in *ICJ Namibia Case*, *ICJ Reports* 1971, 16, para. 125.

<sup>114</sup> See under EU law ECJ Case C-432/92 *Anastasiou* [1994] ECR I-3087 paras. 38-40 concerning recognition of certain trade certificates originating from Northern Cyprus.

law, the principle of sincere cooperation in some cases entails a duty for the host state authority to contact the issuing state for clarifications.<sup>115</sup> Furthermore, certain rules under international conventions and EU law provide for standardised documentation. Such provisions simplify the administrative handling of recognition matters.<sup>116</sup>

When it comes to assessing the *content* of the foreign decision, three main models can be identified. First, the foreign decision can be attributed the same effects as a corresponding decision from the host state.<sup>117</sup> Second, the foreign decision can have the legal effects provided in the legal order of the issuing state.<sup>118</sup> Third, the foreign decision could be attributed effects found neither in the issuing state, nor in the host state. This could be the case when the host state limits the effects of a foreign decision in some respect.<sup>119</sup> Under the second and third model, the host state might need information on the legal system, under which the decision is issued.<sup>120</sup> Comparative legal studies in special administrative fields could then be useful for understanding the foreign decision.

The *decision* in matters of recognition takes various forms, depending on the recognition mechanism being used. When *explicit recognition* is applied, the host state has some room for scrutiny of the foreign decision before deciding on its legal effects in the host state.<sup>121</sup> Under *single licence recognition*, there is no such possibility. Both types of recognition mechanisms could be sub-divided into the further categories of *simple* and *coordinated recognition mechanisms*. Under *simple recognition mechanisms*, the host state decides alone on recognition within the legal framework provided. The recognition of foreign driving licences under international conventions and

<sup>115</sup> See ECJ Case 25/88 *Wurmser* [1989] ECR 1105 para. 18.

<sup>116</sup> See Art. 41(1) (b) and Annex 6 Vienna Convention on Road Traffic (note 4); Art. IX(3) Lisbon Recognition Convention (note 3); cf. recital 44 Directive 2006/123/EC on services in the internal market.

<sup>117</sup> In German legal literature, this has been labelled *Wirkungsangleichung* or *Wirkungsgleichstellung*, see *C. von Bar/P. Mankowski* (note 11) § 5 margin numbers 112 et seq.; *S. Burbaum* (note 33), 31.

<sup>118</sup> In German legal literature *Wirkungserstreckung*, see *C. von Bar/P. Mankowski* (note 11) § 5 margin number 112; *S. Burbaum* (note 33), 31.

<sup>119</sup> See *C. Linke* (note 19), 207 commenting on ECJ Case C-19/92 *Kraus* [1993] ECR I-1663 on the partial recognition of a foreign doctoral degree.

<sup>120</sup> See Art. 13 European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, Strasbourg 15.3.1978, CETS 100; cf. concerning the free movement of goods in the EU Commission interpretative communication on facilitating the access of products to the markets of other Member States, OJ 2003 C 265/2, heading 4.2.

<sup>121</sup> See, on the scope for refusing recognition, Section IV. above.

EU law constitutes an example of this mechanism.<sup>122</sup> *Coordinated recognition mechanisms* are found in some fields of EU law. These mechanisms involve the issuing administrative authority in the decision-making of the host state authority. An example is found in the directive on the deliberate release of genetically modified organisms (GMOs). This legal act provides for a dialogue between the competent authorities of the Member States preceding an authorisation valid in all the Member States. As a last resort, the Commission may resolve a dispute between the Member States.<sup>123</sup> In this way, the role of the Commission resembles that of a national government, acting as a supreme administrative body.<sup>124</sup>

## 2. Supervision of Holders of Foreign Administrative Decisions

When someone engages in an activity holding a foreign authorisation or qualification, the question arises as to which state should have competence to supervise the activities: the issuing state, the host state, or both?<sup>125</sup> Here, the term supervision is understood as a public control that activities are carried out in accordance with legal requirements.

The main rule under public international law and EU law is that every state under its state sovereignty is responsible for controlling activities in its territory. Accordingly, an administrative authority is precluded from carrying out supervisory measures in the territory of another state without the consent of that state.<sup>126</sup> Moreover, the legal effects of administrative sanctions are limited to the legal system of the state imposing the sanctions. If state B declares an authorisation issued in state A invalid, this does not affect the validity of the authorisation in the legal system of state A. This would be different only if the law of state A, through an international agreement or unilaterally, provided for such effects of the decisions of state B.<sup>127</sup> Administrative fines cannot be executed by force in another state,

<sup>122</sup> See Art. 41 Vienna Convention on Road Traffic (note 4); Art. 2 Directive 2006/126/EC on driving licences.

<sup>123</sup> See Arts. 18 and 30 Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms; cf. *G. Sydow* (note 13), 169 et seq.; *T. von Danwitz* (note 67), 630 et seq.; *A. M. Keessen* (note 2), 36 et seq.

<sup>124</sup> Cf. the role of the Government in the Swedish Constitution Ch. 12 Art. 1 Regeringsformen (Instrument of Government); *H. Ragnemalm* (note 92), 55 et seq.

<sup>125</sup> See *A. M. Keessen* (note 2), 86 et seq.

<sup>126</sup> See *D. Siegrist*, *Hoheitsakte auf fremdem Staatsgebiet*, 1987, 144 et seq.; cf. *A. M. Keessen* (note 2), 88.

<sup>127</sup> Cf. *K. König* (note 28), 101 et seq.; for an example of an international agreement, see the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on

unless there is an international agreement on mutual assistance. This kind of agreement seems to be rare in administrative law.

In some fields under EU law, there are rules on *home state supervision*. This means that the state that has issued an authorisation is responsible for supervision of the holder of that authorisation, including activities in other states.<sup>128</sup> Such rules constitute an exception from the division of competences between the states under the sovereignty of public international law. They can be seen as a means of avoiding the double burden of supervision measures in several Member States.<sup>129</sup> Under some home state supervision regimes, the host state is even entitled to carry out inspections on the territory of another state, normally in cooperation with the authorities of that state.<sup>130</sup> In legal literature, rules on home state supervision have been considered an expression of the principle of mutual recognition, and a revolutionary step in the development of international administrative relations.<sup>131</sup> Much in the same fashion as the principle of mutual recognition, rules on home state supervision express the interest of international cooperation at the cost of national sovereignty. Furthermore, such mechanisms are examples of national authorities forming part of administrative networks.

## VI. General Observations

This section first presents some comments on the general balancing of interests in the field of recognition of foreign administrative decisions. Thereafter, a categorisation of recognition mechanisms is suggested. Finally, the legal function of recognition of foreign administrative decisions as a legal mechanism is discussed.

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Driving Disqualifications OJ 1998 C 216/2; cf. Commission interpretative communication on Community driver licencing, OJ 2002 C 77/5, 13; see on the development in EU law concerning recognition of disqualifications Section III. 1. b) above.

<sup>128</sup> See recital 7 Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions; recital 22 Directive 2004/39/EC on markets in financial instruments; A. M. Keessen (note 2), 88 et seq.

<sup>129</sup> See *C. von Bar/P. Mankowski* (note 11), § 4 margin number 73; A. M. Keessen (note 2), 87; C. Barnard (note 61), 381 et seq.

<sup>130</sup> See Art. 32(8) Directive 2004/39/EC on markets in financial instruments; Arts. 43 and 141 Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions; Art. 33 Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); see *F. Wettner* (note 68), 110 et seq.

<sup>131</sup> See *M. Schlag*, Grenzüberschreitende Verwaltungsbefugnisse im EG-Binnenmarkt, 1998, 105; *T. Groß*, Die administrative Föderalisierung der EG, JZ 1994, 596 (596 et seq.).

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## 1. The Balancing of Interests

A point of departure for the discussions has been that recognition of foreign administrative decisions could, to begin with, be understood as a balancing of interests between the involved legal orders. Furthermore, such recognition calls for a balancing of interests between the involved legal orders and the affected individual.

The balancing of the conflicting interests of national sovereignty and international cooperation may be seen as a choice between control and trust. Traditionally, ideas of territoriality have meant that administrative law has not interacted to any larger extent with rules and decisions of other legal systems. National administrative authorities generally have had little reason to consider aspects relating to foreign administrative law.

However, under international conventions and EU law, there are now frequent examples of rules and principles on recognition of foreign administrative decisions. Such rules mean that national administrative law has to deal with foreign legal systems. When there are principles and rules demanding recognition, mutual trust has to replace the traditional scepticism or disinterest in foreign administrative law. Principles, rules, and individual decisions concerning recognition strike a balance between self-determination and cooperation, and between control and trust.

A frequent mechanism to fine-tune this balancing is to require that a foreign decision must be equivalent to a relevant domestic counterpart in order to be recognised. The assessment of equivalence makes possible a balancing between interests in the relevant field. The function of equivalence requirements is especially clear under the EU law principles on free movement in non-harmonised fields.

In addition, where rules and principles on recognition apply, there may be limits to the trust between the states, meaning that recognition should be refused. Of course, the main rule must always be that rules demanding recognition should not be set aside. Considering differences between administrative systems, it seems necessary to allow for a certain flexibility regarding the refusal to recognise. There are situations where the host state is allowed to refuse recognition owing to deficiencies in the foreign decision. The development in the case-law of the ECJ suggests that such a possibility to refuse recognition should be restricted to situations where errors are manifest.

With regard to the individual, the traditional balancing of interests between the state and the individual in administrative law has a further dimension when foreign administrative decisions are recognised. Here, the individual is confronted with two states and two separate, but cooperating, legal

systems. For rules stipulating the recognition of favourable decisions, the purpose is to facilitate the process for the individual in practice, in order to promote international trade and exchange. To this end, direct contacts and exchange of information between the national administrative authorities may be necessary. In the light of traditional ideas on administrative law as a predominantly national field of law, this kind of direct cooperation may constitute a practical and cultural challenge to administrative authorities.

When it comes to recognition of burdensome decisions, the cooperation and trust between the states might mean that the recognition of decisions infringes in some way the individual's fundamental rights. The ECtHR case-law indicates that the host state shall refuse recognition if the foreign decision is based on a manifest violation of procedural rights.

## 2. A Categorisation of Recognition Mechanisms

Against the background of the examples discussed in the preceding sections, it is possible to identify certain categories of legal mechanisms for recognising foreign administrative decisions. These mechanisms can be arranged in a scale ranging from ones based on national sovereignty and domestic control to ones based on international cooperation and trust.

On the one end of the scale there are rules meaning that the relevant authority should *ignore a foreign decision*. Under such rules, only the interests of national sovereignty and domestic control are deemed to be relevant. This constitutes the main rule in public international law and EU law. It should be noted that in some legal fields, this mechanism in practice is the only conceivable one. For example, this would be the case concerning building permits. Such decisions are closely linked to the issuing state and the conditions in a specific part of its territory. Their relevance in other places or states would be very limited in most cases.

Some principles and rules attribute slightly greater importance to the interest of international cooperation, providing for the possibility or duty of taking a foreign decision into account by attributing *probative value* to it. In the Nordic cooperation as well as in the EU, national authorities should act in a spirit of cooperation. This implies a basic trust in the actions and decisions of foreign authorities. Under such a cooperation regime, a national authority may not ignore the content of a decision from another state only because it is foreign. In this way, the EU in particular shows parallels to the situation between state authorities within a federal state. The tradi-

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tional limitation of administrative law to the state and its territory thus becomes less important, especially in the EU context.

Positioned a step away from the interest of national sovereignty are the rules and principles providing for *explicit recognition*. Under such rules, the contents of the foreign decision are transferred into a decision under the legal system of the host state by a recognising decision by that host state. To a certain extent, the host state then can assess the effects and content of the foreign decision and, if necessary, adapt it to the conditions of the host state.

Even further away from the interest of national sovereignty are rules and principles on *single licence recognition*. Here, the legislation provides for the legal effects of the foreign decision in the legal system of the host state without an individual decision. This constitutes a far-reaching transfer of sovereignty to another state.

Through mechanisms of *coordinated recognition*, the legislation makes it possible to fine-tune the balancing of international cooperation and national self-determination in politically and technically controversial fields. Above, the example of authorisations concerning the release of GMOs has been presented. Under such cooperative recognition regimes, an *international administrative network* is involved in deciding individual issues. Some coordinated recognition regimes contain a centralised dimension because of the Commission's role as arbiter between diverging views of the Member States.

At the furthest end of the scale, the interest of international cooperation is strongly expressed through rules entirely centralising the decisions. Under such rules, there is *no recognition* of foreign administrative decisions. Instead, the decision-making is concentrated to an international body, such as the EU Commission.

### 3. The Legal Function of Recognition of Foreign Administrative Decisions

In the light of the foregoing, the legal function of rules and principles on recognition is to balance the interests of international cooperation and national self-determination in administrative matters. The degrees of transfer of public power through the different recognition regimes make it possible for legislators and legal decision-makers to find an appropriate level of cooperation. Recognition of foreign administrative decisions would seem to be most important where there is a certain degree of mutual trust between the states, but at the same time no political interest in centralised decision-

making. This applies in many fields of EU law and is associated to the partly federal character of the EU. Recognition is also relevant in certain sectors of cooperation under international conventions.

Rules and principles on recognition mean that the role of national administrative authorities differs from traditional ones. Not only do the authorities form part of the national administrative system, but they are also involved in international administrative networks. Recognition of foreign administrative decisions implies what may be called a *horizontal internationalisation of administrative relationships*, providing for contacts in individual cases between administrative authorities with similar tasks.

The recognition mechanisms discussed in the article are expressions of the internationalisation of administrative law, meaning that to a certain extent, the traditionally close link between administrative law, state, and territory is weakened. Examples of this are found in rules and principles on administrative cooperation, recognition duties, and home state control. When such rules and principles apply, the traditionally nationally oriented administrative law also has to consider issues relating to other states and other legal orders.

