

ADMINISTRATIVE INDEPENDENCE IN THE NORDIC STATES – EU LAW REQUIREMENTS AND NATIONAL TRADITIONS

HENRIK WENANDER*

EU law increasingly requires that the Member States establish independent administrative bodies in various fields. Examples include market supervision, non-discrimination, and data protection. This article addresses the realisation of such requirements in the five Nordic states. The West Nordic systems of Denmark, Iceland, and Norway feature a traditional hierarchic organisation of the administrative authorities under the relevant ministries, albeit with examples of independent administrative bodies. Contrastingly, the East Nordic systems of Finland and Sweden have a long-standing constitutional tradition of organising the entire state administration with a considerable degree of independence from the governmental level. The study of the constitutional frameworks and traditions contributes to understanding the impact of EU law requirements on independence in different national systems. The relatively uncritical reception of requirements on administrative independence in the Nordic states may be explained by both the practical orientation of Nordic legal thinking and the long-standing existence of arrangements of independent authorities in the legal systems. This attitude is contrasted with the sceptical views on administrative independence in continental Europe, especially Germany, as exemplified by Case C-518/07 Commission v Germany (on independent national data protection authorities). Also the Nordic experiences, however, highlight the tension between the ideals of total independence and the needs for the authorities to be linked to, and funded by, the public sector. The legal comparison may help to understand the impact of EU law and reveal the various 'Europeanisations' of general administrative law, given the national preconditions.

1 INTRODUCTION

During the last few decades, the concept of administrative independence has gained interest in European administrative legal discourse.¹ Inspired in part by long-standing practices in US law, provisions in the EU Treaties and secondary law in certain limited fields require that the Member States establish independent administrative bodies for supervision.² Examples include such varying matters as market supervision for railways, enforcement of competition

* Professor of Public Law, Faculty of Law, Lund University.

* This work was supported by Riksbankens Jubileumsfond within the project 'The Constitutional Role of Public Administration in the Nordic Countries: Democracy, Rule of Law and Effectiveness under European Influence' under Grant number P18-0532:1. Thanks for valuable help and comments to Björg Thorarensen, Reykjavík and Graham Butler, Aarhus.

¹ Matthias Ruffert, *Law of Administrative Organization of the EU. A Comparative Approach* (Elgar 2020) 97; Roberto Caranta, Mads Andenas, and Duncan Fairgrieve (eds), *Independent Administrative Authorities* (British Institute of International and Comparative Law 2004).

² Matthias Ruffert, 'National Executives and Bureaucracies' in Peter Cane, Herwig CH Hofmann, Eric C Ip, and Peter L Lindseth (eds), *The Oxford Handbook of Comparative Administrative Law* (OUP 2021) 523 on the US concept of independence.

law, the promotion of non-discrimination, and compliance with the rules for data protection. Concerning this last field, the ECJ has clarified the scope of independence requirements in the seminal cases *Commission v Germany*³ and *Commission v Austria*⁴. This article addresses the realisation of such requirements on the five Nordic states of Denmark, Finland, Iceland, Norway, and Sweden. Being well-established democracies and highly ranked concerning the rule of law, these legal systems may provide insights into the operation of administrative independence under EU law in the Member States.⁵ These states are also interesting from a general point of view, given their varying affiliation with EU law, either directly as EU member states (Denmark, Finland, and Sweden) or via the EEA Agreement (Norway and Iceland).

The point of departure for discussions on administrative independence in the EU setting is that the opposite of independence applies: in Europe and as a rule, public administration is organised as part of the executive in the separation-of-powers scheme.⁶ Theoretically, administrative decision-making is democratically legitimised through the governmental ministers, who are accountable to parliament and delegate power to the administrative level.⁷ Independence, then, entails an exception to this chain of democratic legitimacy. From this perspective, the use of independent authorities may give rise to problems in relation to constitutional values such as democratically founded governance, rule of law, and accountability in decision-making.⁸ However, already at the outset it should be mentioned that the ideal of a clear-cut distinction along those lines has never quite been fulfilled in the actual design of European administrative systems.⁹ Still, the tripartite conceptualisation of the state structure as consisting of a legislative, an executive, and a judicial branch is an important feature in most European states, and can serve as a point of departure for the discussion.

EU law has traditionally relied on the idea that each Member State may freely organise its public administration responsible for applying EU law, be it in the form of indirect administration or as a part of composite administrative structures.¹⁰ The same point of

³ Case C-518/07 *Commission v Germany* EU:C:2010:125.

⁴ Case C-614/10 *Commission v Austria* EU:C:2012:631.

⁵ Ran Hirschl, 'The Nordic Counternarrative' (2011) 9 *ICON* 449, 469, concludes that that 'the Nordic countries' unique constitutional scenery is a largely unexplored paradise for theory building in the field of comparative constitutional law and politics'; cf, however, Graham Butler, 'The European Rule of Law Standard, the Nordic States, and EU Law' in Antonina Bakardjieva Engelbrekt, Andreas Moberg, and Joakim Nergelius (eds), *Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall* (Hart 2021) 263, referring to factors in 'the constitutional and institutional features of the Nordic states that leave them susceptible to rule of law slippages'.

⁶ Giovanni Biaggini, 'Legal Conceptions of Statehood' in Armin von Bogdandy, Peter M Huber, and Sabino Cassese (eds), *The Max Planck Handbooks in European Public Law. The Administrative State. Volume 1* (OUP 2017) 571.

⁷ Paul Craig, *EU Administrative Law* (OUP 2018) 151 f.

⁸ cf Daniel Halberstam, 'The promise of comparative administrative law: a constitutional perspective on independent agencies' in Susan Rose-Ackerman, Peter L Lindseth, and Blake Emerson, *Comparative Administrative Law* (2nd edn, Elgar 2017) 139 f.

⁹ Ruffert (n 2) 518 ff with historical examples from Germany, the UK, and France; Biaggini (n 6) 570 fn 81 with references to country reports; see also Bruce Ackerman, 'Good-bye Montesquieu' in Susan Rose-Ackerman, Peter L Lindseth, and Blake Emerson, *Comparative Administrative Law* (2nd edn, Elgar 2017)

¹⁰ Case 97/81 *Commission v Netherlands* EU:C:1982:193, para 12: 'It is true that each Member State is free to delegate powers to its domestic authorities as it considers fit [...]'; Case 51–54/71 *International Fruit Company* EU:C:1971:128, para 4: '[...] when provisions of the Treaty or of regulations confer power or impose obligations upon the States for the purposes of the implementation of Community law the question of how

departure applies to EEA law.¹¹ From a practical point of view, this is understandable: given the constitutional and historical differences, it would be an immense task to replace the existing national administrative structures in various fields. Furthermore, the reliance on national administrative structures may be linked to the character of the EU as a cooperation among sovereign states.¹²

The principle of institutional autonomy is well established in EU law as a parallel to the principle of procedural autonomy.¹³ The principle implies that in the absence of provisions in EU law, Member States may themselves decide which bodies will be responsible for implementing and applying EU law, unless there are provisions in Union law stating otherwise. Furthermore, the selected national form of organisation shall not be less favourable to the individual relying on EU law than similar national provisions (the principle of equivalence) and the form shall not make it impossible or excessively difficult in practice to exercise rights under EU law (the principle of effectiveness).¹⁴ In EEA law, the EFTA Court has similarly held that the national administrative proceedings ‘must be conducted in a manner that does not impair the individual rights flowing from the EEA Agreement’.¹⁵

As is indicated by the reference to provisions in EU law in the definition set out above, the institutional autonomy is not to be understood as a principle *stricto sensu*, limiting the EU legislator.¹⁶ Rather, under the ‘principle’, there may be provisions in primary or secondary law prescribing the kind of national institutions that shall exist to handle matters relating to

the exercise of such powers and the fulfilment of such obligations may be entrusted by Member States to specific national bodies is solely a matter for the constitutional system of each State’; Herwig Hofmann, Gerard C Rowe, and Alexander Türk, *Administrative Law and Policy of the European Union* (OUP 2011) 99 f.

¹¹ Case E-1/04 *Fokus Bank* [2004] EFTA Ct Rep 11, para 41.

¹² Stéphanie De Somer, *Autonomous Public Bodies and the Law. A European Perspective* (Elgar 2017) 25; cf art 4(2) TEU with its reference to ‘national identities, inherent in their fundamental structures’; cf Case 205–215/82 *Deutsche Milchkontor* EU:C:1983:233, para 17: ‘According to the general principles on which the institutional system of the Community is based and which govern the relations between the Community and the Member States, it is for the Member States, by virtue of Article 5 of the Treaty [now art 4(3) TEU], to ensure that Community regulations, particularly those concerning the common agricultural policy, are implemented within their territory. In so far as Community law, including its general principles, does not include common rules to this effect, the national authorities when implementing Community regulations act in accordance with the procedural and substantive rules of their own national law ...’.

¹³ Case C-82/07 *Comisión del Mercado de las Telecomunicaciones* EU:C:2008:143, para 24, referring to this autonomy: ‘Although the Member States enjoy institutional autonomy as regards the organisation and the structuring of their regulatory authorities [...]’

¹⁴ Case 33/76 *Rewe* EU:C:1976:188, para 13; JH Jans, S Prechal, and RJGM Widdershoven, *Europeanisation of Public Law* (2nd edn, Europa Law Publishing 2015) 19; Saskia Lavjrisen and Annetje Ottow, ‘The Legality of Independent Regulatory Authorities’ in Leonard Besselink, Frans Pennings, and Sacha Prechal (eds), *The Eclipse of the Legality Principle in the European Union* (Kluwer Law 2011) 73; Koen Lenaerts, Piet van Nuffel, and Tim Corthaut, *EU Constitutional Law* (OUP 2021) paras 5.049, 23.018, and 12.067.

¹⁵ Case E-1/04 *Fokus Bank* [2004] EFTA Ct Rep 11, para 41.

¹⁶ Case C-82/07 *Comisión del Mercado de las Telecomunicaciones* EU:C:2008:143, para 24: ‘Although the Member States enjoy institutional autonomy as regards the organisation and the structuring of their regulatory authorities within the meaning of Article 2(g) of the Framework Directive [Directive 2002/21 on a common regulatory framework for electronic communications networks and services], that autonomy may be exercised only in accordance with the objectives and obligations laid down in that directive’; Malte Kröger and Arne Pilniok, ‘Unabhängigkeit zählt: Amtliche Statistik zwischen Politik, Verwaltung und Wissenschaft’ in Malte Kröger and Arne Pilniok (eds), *Unabhängiges Verwalten in der Europäischen Union* (Mohr Siebeck 2016) 148; cf Michal Bobek, ‘Why there is no Principle of “Procedural Autonomy” of the Member States’ in Hans-W Micklitz and Bruno De Witte (eds), *The European Court of Justice and the Autonomy of the Member States* (Intersentia 2012) 320.

EU law in various fields. Requirements of independent national administrative authorities is one such example.

The main question for this article is how EU law requirements for administrative independence have been realised in the five Nordic states of Denmark, Finland, Iceland, Norway, and Sweden. The ambition is thus to shed light on the interplay between EU law and national constitutional and administrative law when it comes to the institutional setting for applying EU law on the national level.

The article focuses on the independence of administrative bodies on the national level as required by EU law. As an important background to this, it may be noted that ideas of administrative independence are not limited to the EU Member State (or EFTA-EEA state) level. The organisation of the EU itself entails such features. Under Article 17(3) TEU the Commission shall be ‘completely independent’, and its members ‘shall neither seek nor take instructions from any Government or other institution, body, office or entity’. This provision is mirrored in Article 245 TFEU, which requires the Member States to respect the independence of the Members of the Commission.¹⁷ The European Central Bank may not ‘seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body’ (Article 130 TFEU). Furthermore, Article 298 TFEU refers to ‘an open, efficient and independent European administration’, indicating at least some degree of independence of EU agencies and other bodies.¹⁸ Finally, looking beyond EU law, international law may require or recommend the establishment of independent administrative bodies on the national level.¹⁹

The study examines national bodies formally organised within the public organisation under the national constitutional system. Given the special character of these bodies, which does not necessarily qualify as ‘administrative’ in either EU or in national law, the national central banks are not covered.

As will be seen, the central problem in the field is not whether a certain body is administrative in character, but whether it is independent. There is no generally accepted definition of administrative independence in EU law, and requirements may be framed differently in different legal acts, as elaborated below. The terminology used in legal scholarship reflects the conceptual uncertainty surrounding the field, discussing both ‘autonomous public bodies’, ‘independent agencies’, and ‘independent administrative authorities’.²⁰ Given that the EU treaties and legal acts generally use the latter term, this article does the same. As a point of departure for discussions on the concept of independence, the conclusions of the ECJ in *Commission v. Poland* can be reiterated. Because the relevant

¹⁷ Lenaerts, van Nuffel, and Corthaut (n 14), para 12.067; Wouter Wils, ‘Independence of Competition Authorities’ (2019) 42 *World Competition* 149, 151 f

¹⁸ Lenaerts, van Nuffel, and Corthaut (n 14), para 13.043 ff; Ruffert (n 1) 97 f. notes that this provision was suggested by Sweden in the Constitutional Convention.

¹⁹ Eg, GA Resolution 48/134, ‘Principles relating to the Status of National Institutions (The Paris Principles)’ 20 December 1993; Council of Europe, Recommendation Rec R(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector; see for further examples Mads Andenas, ‘Independent Administrative Authorities in Comparative Law: Scandinavian Models’ in Roberto Caranta, Mads Andenas, and Duncan Fairgrieve (eds), *Independent Administrative Authorities* (British Institute of International and Comparative Law 2004) 246 ff.

²⁰ De Somer (n 12) 5 ff discusses the ‘terminological chaos’ and uses the term ‘Autonomous Public Bodies’ as an umbrella term for the purposes of her study.

secondary law did not define ‘independence’, the Court held that the concept should be ‘construed in its usual meaning’. As to this ‘usual meaning’, the Court concluded:

Thus, as regards public bodies, independence usually refers to a status that ensures that the body in question is able to act completely freely in relation to those bodies in respect of which its independence is to be ensured, shielded from any instructions or pressure.²¹

This contribution aims at deepening understanding of this kind of requirements under EU law by examining the reactions of Nordic legal systems. As this is a group of European states with similar basic values regarding democracy, the rule of law, and transparency in their legal systems, but different traditions when it comes to administrative organisation (see Section 2), this comparative study may provide new insights of general interest for EU law and constitutional law. Previous research, including the important monograph by De Somer, has examined only to a limited extent the Nordic experiences concerning independent authorities.²² The addition of the Nordic legal systems with their special features may add an important dimension to the European debate in this field. The comparative approach may illustrate the plurality (the different ‘Europeanisations’) stemming from different realisations of the European goals and standards affecting the administrative systems.²³ Furthermore, the comparative study may also contribute to the scholarly debates in the Nordic countries by highlighting features that are not apparent when the national systems are studied separately. In this way, the comparison in relation to the impact of EU law may deepen the understanding of the national legal systems.

2 THE CONSTITUTIONAL FRAMEWORK IN THE NORDIC STATES

In order to understand the impact of EU requirements of independent authorities, it is necessary to give a brief background to the constitutional framework in the Nordic states when it comes to the position of administrative authorities.²⁴ As a point of departure, the five states are joined by historical, linguistic, and legal bonds linked to historical unions among the countries.²⁵ In traditional groupings of ‘legal families’ and the like, the Nordic systems are often treated as a distinct group.²⁶ A common denominator among the countries is the emphasis put on the role of the democratically legitimate national parliament as the primary legal actor, with the judiciary taking a deferential role. Linked to this, legislative

²¹ Case C-530/16 *Commission v Poland* EU:C:2018:430, para 67.

²² See, for an important overview, Andenas (n 19); cf De Somer (n 12), which focuses on examples from Belgium (Flanders), France, the Netherlands, and the United Kingdom.

²³ Biaggini (n 6) 578.

²⁴ See, generally, Halberstam (n 8) 140 underlining the need for exploring the national constitutional architecture in comparative administrative studies of independent agencies.

²⁵ Uwe Kischel, *Comparative Law* (OUP 2019) 544 ff; Markku Suksi, ‘Common Roots of Nordic Constitutional Law? Some Observations on Legal-Historical Development and Relations between the Constitutional Systems of Five Nordic Countries’ in Helle Krunke and Björg Thorarensen (eds), *The Nordic Constitutions: A Comparative and Contextual Study* (Hart 2018) 40 ff.

²⁶ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn OUP 1998) 273; Michael Bogdan, *Concise Introduction to Comparative Law* (Europa Law Publishing 2013) 76.

materials play an important role for legal argumentation.²⁷ None of the countries features a constitutional court.²⁸ Comparative legal research often highlights a certain degree of practically oriented legal thinking as typical for the Nordics ('Nordic pragmatism'), as opposed to the alleged conceptualised and formalistic thinking of continental Europe.²⁹ All Nordic states are either members of the EU or parties to the EEA Agreement. Concerning the latter, the secondary law applicable to the EFTA states applying the EEA Agreement shall be interpreted in the same way as under EU law.³⁰ Below, references to EU law include the EEA dimension, where applicable.

In contrast to the commonalities among the Nordic constitutional systems concerning basic principles and ideals, there are important differences on the more detailed level, not least concerning the position of administrative authorities. Nordic states feature two distinct systems for administrative organisation, viz the West Nordic (Denmark, Iceland, and Norway) and the East Nordic (Finland and Sweden) models.³¹ Below, the constitutional framework for the position of administrative authorities, especially more independent such bodies, is outlined for the West and East Nordic states respectively.

In Denmark, the 1953 Constitution establishes a separation of powers. The legislative power lies with the Folketing (Parliament) and the King (ie the Government) jointly, the executive power lies with the King, and the judicial power lies with the courts. This continues the tradition from its predecessor, the 1849 Constitution, through which absolute monarchy was abolished.³² Under the current 1953 Constitution, which largely follows the structure established in 1849, the executive is organised under the ministries. These are headed by ministers (formally appointed by the King or reigning Queen, in practice the Prime Minister under the principles of parliamentarianism) who are under a political leadership of the Prime Minister, but individually responsible for making decisions in their ministries. The central state authorities are organised within the ministries, with hierarchical chains of command from the minister to the civil servant. The minister may thus engage in individual matters and give directions or even take over the decision-making competence.³³ Apart from these central state authorities, the Folketing may also establish independent administrative authorities such as councils (*råd*) and boards (*navn*), which operate outside the ministerial hierarchies. As a rule, the minister may not give instructions to such bodies.³⁴ A few special

²⁷ Jaakko Husa, 'Constitutional Mentality' in Pia Letto-Vanamo, Ditlev Tamm, and Bent-Ole Gram Mortensen (eds), *Nordic Law in European Context* (Springer 2019) 58.

²⁸ Helle Krunke and Björg Thorarensen, 'Concluding Thoughts' in Helle Krunke and Björg Thorarensen (eds), *The Nordic Constitutions. A Comparative and Contextual Study* (Hart 2018) 206 f.

²⁹ Helle Krunke and Björg Thorarensen, 'Introduction', in Helle Krunke and Björg Thorarensen (eds), *The Nordic Constitutions. A Comparative and Contextual Study* (Hart 2018) 1, 7 f; Markku Suksi, 'Markers of Nordic Constitutional Identity', (2014) 36 *Retfærd* 66, 88.

³⁰ Dag Wernø Holter, 'Legislative Homogeneity' in Carl Baudenbacher (ed), *The Fundamental Principles of EEA Law. EEA-ities* (Springer 2017).

³¹ Henrik Wenander, 'Public Agencies in International Cooperation under National Legal Frameworks. Legitimacy and Accountability in Internationalised Nordic Public Law' in Maria Grahn-Farley, Jane Reichel, and Mauro Zamboni (eds), *Governing with Public Agencies – The Development of a Global Administrative Space and the Creation of a New Role for Public Agencies* (Stockholm University 2022) 176 ff.

³² Constitution of the Kingdom of Denmark 1953, art 3; Helle Krunke, 'Constitutional identity – seen through a Danish lens' (2014) 37 *Retfærd* 24, 28 ff.

³³ Constitution of the Kingdom of Denmark 1953, arts 12–14; Søren H Mørup et al, *Forvaltningsret. Almindelige emner* (7th edn DJØF 2022) 22, 39 ff.

³⁴ Sten Bønsing, *Almindelig forvaltningsret* (4th edn, DJØF 2018) 80; Mørup et al (n 33) 54.

bodies are organised under the Folketing, such as the Parliamentary Ombudsman and the audit organ Rigsrevisionen.³⁵

In Iceland, the constitutional system is very similar to that of Denmark: the current 1944 Icelandic Constitution, its predecessors, and administrative structure were largely modelled on the Danish system.³⁶ Consequently, the constitutional structure comprises a tripartite separation of powers and a parliamentary system.³⁷ The President appoints governmental ministers according to the majority in the parliament (*Alþingi*). They head their respective ministries and have individual responsibility over their respective fields of competence.³⁸ As in Danish constitutional law, administrative authorities as a rule are organised hierarchically within the ministry, with a low degree of autonomy for the civil servants.³⁹ However, like the Danish Folketing, the Alþingi may establish other, more independent forms of administrative bodies outside the ministerial hierarchies.⁴⁰

The Norwegian constitution is based on a separation of powers, with the state administration as part of the executive.⁴¹ To be sure, the state administrative bodies in Norway are generally described as being organised into separate entities (*ytre etater*) outside the ministerial departments. Still, the state administration is organised hierarchically under the Government and its ministries. The Norwegian administrative system, therefore, and in a similar fashion as in Denmark and Iceland, is based on ministerial rule.⁴² Apart from these bodies, a state audit body (*Riksrevisjonen*) and a parliamentary ombudsman (*Sivilombudet*) are appointed by the Storting (Parliament) as special organs.⁴³ The default position for Norwegian legislative policy, following a Storting decision in 1977, is that public administration shall be organised under the government and the ministries in order to promote governmental control, unless there are special reasons to do otherwise; however, there are no constitutional limitations to establishing independent administrative bodies.⁴⁴ The core aspect of this form of independence is that the scope for the government and ministries to give instructions is limited by explicit legislative provisions.⁴⁵ This form of independent administrative bodies is widely used in Norwegian law. A commission of inquiry concluded in 2019 that there were over 100 such bodies.⁴⁶ Among the reasons put forward

³⁵ Henrik Wenander, 'Förvaltningsorgan under parlamenten i Norden' in Sebastian Godenhjelm, Eija Mäkinen, and Matti Niemivuo (eds), *Förvaltning och rättsäkerhet i Norden. Utveckling, utmaningar och framtidsutsikter* (Svenska litteratursällskapet i Finland – Appell 2022) 43 f.

³⁶ Björg Thorarensen, *Stjórnskipunarréttur: Undirstöður og handbafar ríkisvalds* (Codex 2015) English summary.

³⁷ Constitution of Iceland 1944, arts 1 and 2.

³⁸ Constitution of Iceland 1944, arts 13–15; Indriði H Indriðason and Gunnar Helgi Kristinsson, 'The role of parliament under ministerial government' (2018) 14 *Icelandic Review of Politics and Administration* 149, 152.

³⁹ Svanur Kristjánsson, 'Iceland: A Parliamentary Democracy with a Semi-presidential Constitution' in K Strøm, W C Müller, and T Bergman (eds), *Delegation and Accountability in Parliamentary Democracies* (OUP 2006) 410.

⁴⁰ cf Gustaf Petrén, 'Government and Central Administration' in Erik Allardt et al (eds), *Nordic Democracy. Ideas, Issues, and Institutions in Politics, Economy, Education, Social and Cultural Affairs of Denmark, Finland, Iceland, Norway, and Sweden* (Det danske Selskab 1981) 177.

⁴¹ Constitution of Norway 1814, arts 3, 12, and 27 ff.

⁴² Eivind Smith, *Konstitusjonelt demokrati. Statsforfattningen i prinsipielt og komparativt lys* (5th edn, Fagbokforlaget 2021) 231 ff.

⁴³ Constitution of Norway 1814, arts 75 k and l.

⁴⁴ Parliamentary gazette *Stortingstidende* (1976–77) 4076; Eivind Smith, *Stat og ret. Artikler i utvalg 1980 – 2001* (Universitetforlaget 2002) 513 f.

⁴⁵ Torstein Eckhoff and Eivind Smith, *Förvaltningsrett* (11th edn 2018) 157.

⁴⁶ Commission of inquiry report NOU 2019: 5 *Ny förvaltningslov* 511 f.

for establishing such bodies are the need for the political (governmental) level to focus on general policy matters, separation of various functions (rule-making and supervision), and the need for expertise.⁴⁷ There is also a link to developments in administrative policy, including ideas of New Public Management. Notably, political scepticism has been directed towards establishing independent authorities in certain fields.⁴⁸ Norwegian legal discourse has remarked in this context that administrative independence never can be total, since all public bodies are dependent on legislation and the state budget.⁴⁹

Whereas the West Nordic systems all show varieties of seeing administrative bodies as an integrated part of the executive by default, the East Nordic constitutional systems organise the state administrative bodies as separate entities within the state with a considerable degree of independence in decision-making in individual cases (see below).⁵⁰ This reflects a historical tradition dating back to the establishment of the constitutional and administrative structures in the Swedish Realm (of which Finland was a part until 1809) in the 17th and 18th centuries. In 1634, a number of collegiate bodies were established, whose formal hierarchical links to the Royal Council ('the Government' in today's terms) were eventually severed in 1719.⁵¹

The Constitution of Finland, in spite of its reference to a tripartite separation of powers and parliamentarianism, establishes that the state administrative authorities are organised separately from the Government.⁵² In addition, they have an independent position in their decision-making. This may be explained by the historical developments. In the early 20th century, when Finland was a grand duchy under Russia and struggled for independence, Finnish legal scholarship established that the administrative authorities should be independent of the (Russian) political leadership, building on old traditions from the Swedish Realm.⁵³ Finnish legal discourse underlines the principle of legality as a general guarantee for administrative independence. Furthermore, an unwritten principle of independence in the use of discretion applies, meaning that a minister may not give directions as to the authority's application of law in an individual matter.⁵⁴ The ministries are responsible, however, 'for the appropriate functioning of administration' within their fields of competence.⁵⁵ As a rule, the government makes collective decisions, but the constitution also allows for ministers making individual decisions in certain matters of less importance.⁵⁶ Some parts of the administrative authorities, such as the leadership of the police forces, may be organised within the relevant

⁴⁷ Inge Lorange Backer, 'Uavhengige forvaltningsorganer i Norge' in Iris Nguyen Duy and others (eds), *Uten sammenligning. Festskrift til Eivind Smith 70 år* (Fagbogforlaget 2020) 40.

⁴⁸ Commission of inquiry report NOU 2019: 5 *Ny forvaltningslov* 511 f.

⁴⁹ Eckhoff and Smith (n 45) 155 f.

⁵⁰ Shirin Ahlbäck Öberg and Helena Wockelberg, 'Nordic Administrative Heritages and Contemporary Institutional Design' in Carsten Greve, Per Lægreid, and Lise H Rykkja (eds), *Nordic Administrative Reforms: Lessons for Public Management* (Palgrave Mcmillan 2016) 63.

⁵¹ Patrik Hall, 'The Swedish Administrative Model' in Jon Pierre (ed), *The Oxford Handbook of Swedish Politics* (OUP 2015) 300 f.

⁵² Constitution of Finland 1999, art 119: 'In addition to the Government and the Ministries, the central administration of the State may consist of agencies, institutions and other bodies.'

⁵³ Henrik Wenander, 'Den statliga förvaltningens konstitutionella ställning i Sverige och Finland - pragmatism och principer' (2019) 155 *Tidskrift utgiven av Juridiska föreningen i Finland* 103, 110.

⁵⁴ Olli Mäenpää and Niels Fenger, 'Public Administration and Good Governance' in Pia Letto-Vanamo, Ditlev Tamm, and Bent Ole Gram Mortensen (eds), *Nordic Law in European Context* (Springer 2019) 164; Antero Jyränki and Jaakko Husa, *Konstitutionell rätt* (Talentum 2015) 209.

⁵⁵ Constitution of Finland 1999, art 68.

⁵⁶ Constitution of Finland 1999, art 67.

ministry but with the limitation on giving directions mentioned above.⁵⁷ The overall picture is that the legal relation between the ministries and the administrative authorities is complex and in part uncertain. One of the central textbooks of Finnish constitutional law concludes that the scope for governing the activities of the administrative authorities is ‘one of today’s major constitutional questions’.⁵⁸ A small number of separate administrative authorities are further organised under the Eduskunta/Riksdag (Parliament), including the Parliamentary Ombudsman and the National Audit Office.⁵⁹

In political science, the constitutional-administrative system of Sweden is commonly described as a ‘Swedish administrative model’ based on a distinction between the Government level and the administrative authority level, concretised in separate and partly independent administrative authorities.⁶⁰ The constitutional structure of Sweden differs from the other Nordic states in that it is not based on the idea of separation of powers. The Swedish constitutional tradition, going back to previous constitutional acts in place since the 17th century, has not sharply distinguished between courts and administrative authorities.⁶¹ Still, the constitutional theory of ‘distribution of functions’ includes the Government’s function to govern the Realm, and the Parliament’s legislative function, which in a practical perspective comes close to a separation of the executive and the legislative.⁶² The Instrument of Government now establishes that the administrative authorities are organised as separate bodies under either the Riksdag (Parliament) or the Government.⁶³ The legal consequences of this are elaborated below.

Clearly deviating from a strict separation of powers scheme, a small number of administrative authorities are thus organised under the Riksdag. This category includes bodies such as the *Riksbank* (Swedish Central Bank), the *Riksdagens ombudsmän* (Parliamentary Ombudsmen), and *Riksrevisionen* (the National Audit Office).⁶⁴ As is the case for similar administrative authorities under the parliaments in the other Nordic states, this form of organisation offers a special kind of independence to these Swedish administrative authorities because they are formally not linked to the Government and its ministers, and the Riksdag and its members lack both practical and formal means of steering these administrative authorities.⁶⁵

The organisation under the Government, which applies to the vast majority of the Swedish administrative authorities, means that these must follow directions from the

⁵⁷ Jyränki and Husa (n 54) 209.

⁵⁸ Jyränki and Husa (n 54) 209; the work is a Swedish translation of the same authors’ *Valtiosääntöoikeus*.

⁵⁹ Ilkka Saraviita, ‘Finland’ in André Alen and David Haljan (eds), *IEL Constitutional Law* (Kluwer 2012) <kluwerlawonline.com/EncyclopediaChapter/IEL+Constitutional+Law/CONS20190017> accessed 24 May 2022 para 310 ff.

⁶⁰ Hall (n 51) 300 ff.

⁶¹ Henrik Wenander, ‘Administrative Constitutional Review in Sweden – Between Subordination and Independence’ (2020) 26 EPL 987, 992; Jacques Ziller, ‘The Continental System of Administrative Legality’ in B Guy Peters and Jon Pierre (eds), *The SAGE Handbook of Public Administration* (Concise 2nd edn SAGE 2014) 285.

⁶² Olle Nyman, ‘The New Swedish Constitution’ (1982) 26 Scandinavian Studies in Law 170, 176; Lena Enqvist and Markus Naarttijärvi, ‘Administrative Independence under EU Law – Stuck between a Rock and Costanzo’ (2021) 27 EPL 707, 711 f.

⁶³ Instrument of Government 1974, ch 12 art 1.

⁶⁴ Instrument of Government 1974, ch 9 art 13 and ch 13 arts 6 and 7.

⁶⁵ Wenander (n 35) 58.

Government, which decides as a collective.⁶⁶ The individual ministers therefore do not have an individual decision-making power regarding the activities of the authority. Because these ministers are responsible for the drafting of proposals, eg, on appointments to leadership roles of the authorities under their ministries (*Departement*), they still have considerable power over the authorities.

Furthermore, it is constitutionally established that the ministers or their representatives may maintain informal contacts with the leadership of the administrative authorities, among other things through recurrent meetings about current developments and the political objectives of the Government. The Committee on the Constitution of the Riksdag, which supervises the Government's activities, has underlined that such meetings are documented.⁶⁷ In addition, the appropriation directions (*regleringsbrev*), ie yearly documents setting the goals, priorities, and financial means available for an administrative authority are an important form for a constitutionally accepted governmental steering of the state authorities.⁶⁸

However – and this is a point where Swedish law is unusual – the Government and its ministers, as well as the Riksdag, are constitutionally prohibited from determining how an administrative authority shall decide in a particular case ‘relating to the exercise of public power vis-à-vis an individual or a local authority, or the application of an act of law’.⁶⁹ The introduction of this provision in the total revision of the central fundamental law (the Instrument of Government) in 1974 aimed at codifying legal principles that already applied. According to the legislative materials, the provision serves the interest of protecting legal certainty for individuals in more important matters, beyond the requirements of legal support for measures against individuals.⁷⁰

This provision places a general limitation on the scope for formal and informal directions concerning the mentioned types of activities. In this way, all Swedish state administrative authorities are independent by default when it comes to individual decision-making. In relation to EU law, legal scholarship has regarded this general independent status as well suited for the role of national administrative authorities to promote the effective implementation of EU provisions (‘administrative direct effect’ or ‘the *Costanzo* doctrine’).⁷¹ At the same time, Swedish law has encountered some difficulties in accommodating requirements of far-reaching administrative independence. In 1993, discussions arose about a proposal that the Swedish Agency for Government Employers (*Arbetsgivarverket*, the employer organisation for state authorities in the Swedish labour market system) should be organised as independently as possible from the Government, limiting Government steering to a minimum. The legal experts in the Council on Legislation (*Lagrådet*), advising the legislative process, held that the proposal was not in conformity with the constitutional rule that requires state administrative authorities to be organised under the Government. In the

⁶⁶ Instrument of Government 1974, ch 7 art 3.

⁶⁷ Committee Report Bet 2012/13:KU10 *Granskning av statsrådets tjänstestövning och regeringsärendenas handläggning* 100; on the role of this standing committee, see Thomas Bull, ‘Institutions and Division of Powers’ in Helle Krunke and Björg Thorarensen (eds), *The Nordic Constitutions: A Comparative and Contextual Study* (Hart 2018) 56 f.

⁶⁸ Vilhelm Persson, ‘Regleringsbrev ur rättslig synvinkel’ [2011] *Förvaltningsrättslig tidskrift* 635, 640 ff.

⁶⁹ Instrument of Government 1974, ch 12 art 1; quotation from the unofficial English language version available on <www.riksdagen.se> accessed 7 June 2022.

⁷⁰ Commission of inquiry report SOU 1972:15 *Ny regeringsform. Ny riksdagsordning* 195 f.; Government Bill Prop 1973:90 *med förslag till ny regeringsform och ny riksdagsordning m. m.* 397 f.; Nyman (n 62) 199.

⁷¹ Wenander (n 35) 1007; Enqvist and Naarttjärvi (n 62) 717.

view of the Council on Legislation, the proposal compromised the role of the Government to ‘govern the Realm’. The Government amended the proposal according to the criticism from the Council on Legislation.⁷²

3 REQUIREMENTS OF ADMINISTRATIVE INDEPENDENCE IN EU LAW

Requirements of administrative independence follow from a number of EU provisions in either the EU Treaties or secondary law. This section aims at summarising the central legal content of these requirements, the reasons for requiring this form of organisation, and the central points of the criticism put forward regarding independent authorities under EU law.

Administrative independence constitutes an exception to the default position of Member State institutional autonomy. Whereas the judiciary has to be independent in European tradition, most European systems at the outset organise the state administration as a hierarchically subordinate part of the executive (see Section 1).⁷³ The concept of independence for the administrative bodies is not as clear as for the courts. As noted by the ECJ in *Commission v. Poland*, the meaning of independence for administrative bodies is dependent on the – fairly vague – general meaning of ‘independence’ etc, denoting the legal possibility to act ‘completely freely’ and to be ‘shielded from any instructions or pressure’.⁷⁴ At least at the present stage of development, there is no single model for administrative independence under EU law.⁷⁵ The different realisations of this concept are therefore dependent on the specific provisions in the Treaties and in the various acts of secondary law. This means that there are degrees of authority independence under EU law, ranging from the requirement of ‘complete independence’ regarding data protection, to limited requirements of independence in other pieces of secondary legislation.⁷⁶ Although these differences may be explained in part by the different needs of different sectors, legal scholarship has argued that such differences in autonomy requirements create legal uncertainty.⁷⁷

In spite of the uncertainties, it is possible to identify a number of recurrent features of administrative independence in the relevant legal provisions and the case law of the ECJ. In this way, legal scholarship has distinguished between requirements of institutional,

⁷² Government Bill Prop 1993/94:77 *En ombildning av arbetsgivarorganisationen för det statliga området* 19 ff, 33 ff; Erik Holmberg et al, *Grundlagarna: RF, SO, RO* (3 July 2019, Version 3 A, JUNO, <<https://juno.nj.se>>), Commentary to ch 12 art 1 of the Instrument of Government, under the heading ‘Den statliga förvaltningsorganisationen’.

⁷³ Jörg Philipp Terhechte, ‘Equal or Diverse?: Richterliche und exekutive Unabhängigkeit im Vergleich’ in Malte Kröger and Arne Pilniok (eds), *Unabhängiges Verwalten in der Europäischen Union* (Mohr Siebeck 2016) 36 ff.

⁷⁴ Case C-530/16 *Commission v Poland* EU:C:2018:430, para 67.

⁷⁵ Edoardo Chiti, ‘Towards a Model of Independent Exercise of Community Functions?’ in Roberto Caranta, Mads Andenas, and Duncan Fairgrieve (eds), *Independent Administrative Authorities* (British Institute of International and Comparative Law 2004) 223; AG Bobek in Case C-530/16 *Commission v Poland* EU:C:2018:29, para 32.

⁷⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR), art 52.

⁷⁷ De Somer (n 12) 247.

functional, personnel, and financial independence.⁷⁸ In a similar way, the Commission recommendation on standards for equality bodies establishes that

[t]o guarantee the independence of the equality bodies in carrying out their tasks, Member States should consider such elements as the organisations of those bodies, their place in the overall administrative structure, the allocation of their budget, their procedures for handling resources, with particular focus on the procedures for appointing and dismissing staff, including persons holding leadership positions.⁷⁹

Concerning the *institutional requirements*, several directives relating to market supervision require that the national regulatory body is ‘legally distinct’.⁸⁰ This requirement relates to the formal organisation of the bodies. The focus of market-supervision bodies’ independence has traditionally been on the relationship to the market actors that are to be supervised.⁸¹ Increasingly, however, EU legislation has aimed at also securing independence from the governmental and ministerial level.⁸² This latter aspect has direct implications for the organisation of the administrative bodies concerned. The exact requirements of EU law in this respect may vary between different sectors, reflecting the needs in the specific field.⁸³ Concerning supervision bodies, the ECJ has held that a requirement of independence does not exclude the organisation within a governmental ministry.⁸⁴ The ECJ has even held that a national legislature may act as a national regulatory body

provided that, in the exercise of that function, it meets the requirements of competence, independence, impartiality and transparency laid down by [the relevant directives] and that its decisions in the exercise of that function can be made the object of an effective appeal to a body independent of the parties involved.⁸⁵

In contrast, the reference to ‘complete independence’ as regards data protection is difficult to reconcile with the organisation of a data-protection body within a governmental ministry (see below on the question of functional independence). The requirement of ‘complete

⁷⁸ Miroslava Scholten, ‘Independent, hence unaccountable? The Need for a Broader Debate on Accountability of the Executive’ (2011) 4 REALaw 5, 10; Malte Kröger, ‘Unabhängiges Verwalten in der Europäischen Union – eine Einführung’ in Malte Kröger and Arne Pilniok (eds), *Unabhängiges Verwalten in der Europäischen Union* (Mohr Siebeck 2016) 5.

⁷⁹ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

⁸⁰ eg, Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, art 6(1); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, art 57(4) (a); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, art 39(4)(a).

⁸¹ eg, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, art 22: ‘Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators.’

⁸² Lavrijssen and Ottow (n 14) 81 ff.

⁸³ cf AG Bobek in Case C-530/16 *Commission v Poland* EU:C:2018:29, para 32.

⁸⁴ Case C-369/11 *Commission v Italy* EU:C:2013:636, para 64; Case C-530/16 *Commission v Poland* EU:C:2018:430, para 76.

⁸⁵ Case C-389/08 *Base* EU:C:2010:584, para 30.

independence' shall further be construed autonomously from the requirements on independent tribunals under Article 267 TFEU.⁸⁶

The separation from the government or ministry is closely linked to *functional independence*, which aims at excluding influence over the actual decision-making. The administrative bodies responsible for supervision of markets or human rights may both make decisions in individual matters and adopt general, legally binding rules after legislative delegation, dependent on the national constitutional framework. This power may additionally include discretion to use coercive powers and administrative sanctions within the scope of the existing legislation.⁸⁷ Several directives prohibit seeking or taking instructions from the government or other public or private bodies.⁸⁸ This kind of requirement expresses the core of independent decision-making: the absence of steering from government.⁸⁹ In *Commission v Austria*, the ECJ held that the existing functional independence, barring direct influence through instructions to the authority, was not enough to constitute the complete independence required. It was also necessary to consider that the 'managing member' (being responsible for the day-to-day business) of the supervisory authority for data protection was subject to supervision, that the authority was integrated with the Federal Chancellery, and that the Federal Chancellor had an unconditional right to information on the work of the authority. Taken together, this meant that the authority did not fulfil the requirements of independence.⁹⁰ In other words, the complete independence for the supervisory authority required for data protection also calls for an assessment of the scope for indirect influence from the governmental level.

The requirements concerning *personnel* relate to the ability of the independent body to carry out its assigned tasks in practice.⁹¹ The directives regulating market supervision bodies link the staffing and management of the regulatory bodies to independence.⁹² In this way, the legislation seemingly presupposes that educated and experienced staff are less prone to undue influence. There are, furthermore, examples of provisions relating to both the recruiting and dismissal of staff that reduce the scope for indirect steering.⁹³ Concerning both market supervision and data protection, the ECJ has held that there are limitations to the

⁸⁶ Case C-614/10 *Commission v Austria* EU:C:2012:631, para 40.

⁸⁷ De Somer (n 12) 61 ff.

⁸⁸ eg, Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, art 55(3); GDPR, art 52(2); Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, art 4(2)(b).

⁸⁹ Kröger (n 78) 5; Terhechte (n 73) 39.

⁹⁰ Case C-614/10 *Commission v Austria* EU:C:2012:631, para 66.

⁹¹ eg, Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations, art 5(2): '... an appropriate number of staff with qualifications, experience and expertise necessary'.

⁹² eg, Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, art 55(3): 'Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence'.

⁹³ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, art 4(4): 'Member States shall ensure that the members of the decision-making body of national administrative competition authorities are selected, recruited or appointed according to clear and transparent procedures laid down in advance in national law'.

dismissal of staff in connection with reorganisation of the national administrative authorities.⁹⁴

Concerning the *financial dimension*, several of the directives call for the independent authorities to have separate budgets.⁹⁵ From the case law of the ECJ, however, this would not seem to be a necessary element for constituting independence if there is no such explicit requirement in secondary law. Still, it would seem that the sufficient funding of the activities of an authority is necessary for its independence, even though the authority does not have a separate budget.⁹⁶ The requirement of sufficient funding is sometimes explicitly stated in the legal acts.

Previous research has identified several reasons for requiring the establishment of independent authorities. This form of administrative organisation entails a kind of outsourcing – although still within the wider organisation of the state – of administrative activities.⁹⁷ Some of the central motives for requiring independent authorities are to provide preconditions that are stable for a long time beyond changes in Government (especially for market supervision), offer decision-making resting on expertise, and avoid conflicts of interest. The latter two motives are relevant for both market and human-rights supervision and have been described by De Somer as the primary motives.⁹⁸ Furthermore, the development of independent authorities on the national level is linked to the expansion of independent EU agencies. In *Commission v Germany*, the ECJ interpreted the requirements of administrative independence in the Data Protection Directive homogeneously with the requirements on the EDPS under Regulation No 45/2001 (both legal acts are now replaced with the GDPR).⁹⁹ In the words of Chiti, the national independent authorities, together with the union level bodies, form ‘a European concert of regulators’ allowing for complex decision-making and contacts both between the national and the EU authorities within the relevant field.¹⁰⁰ In this way, the autonomy of national administrative bodies simplifies the integration of the national level in European networks for market regulation led by the Commission.¹⁰¹

Reasons for introducing administrative independence in this way include the ambition to provide consistent, long-term, and predictable preconditions, especially for market regulation. Furthermore, the existence of independent authorities may be motivated when the state is among the actors in a market. For the protection of human rights and data protection, the interest in maintaining a distance between the supervision and the political representatives of the state has been highlighted in legal scholarship. De Somer has

⁹⁴ Case C-424/15 *Garai* EU:C:2016:780, para 47 ff; Case C-288/12 *Commission v Hungary* EU:C:2014:237, para 61 ff.

⁹⁵ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, art 57(5) (c); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, art 39(5); GDPR, art 52(6).

⁹⁶ Case C-530/16 *Commission v Poland* EU:C:2018:430, para 100; Case C-614/10 *Commission v Austria* EU:C:2012:631, para 58; AG Bobek in Case C-530/16 *Commission v Poland* EU:C:2018:29, para 37.

⁹⁷ Biaggini (n 6) 569.

⁹⁸ De Somer (n 12) 74 ff and 99 f.

⁹⁹ Case C-518/07 *Commission v Germany* EU:C:2010:125, para 26 ff.

¹⁰⁰ Chiti (n 75) 213 ff.

¹⁰¹ De Somer (n 12) 81; Christoffer Conrad Eriksen and Halvard Haukeland Fredriksen, *Norges europeiske forvaltningsrett. EØS-avtalens krav til norske forvaltningsorganers organisering og saksbehandling* (Universitetsforlaget 2019) 201.

concluded that the general interest in basing administrative decisions on expertise and impartiality are the most central interests motivating requirements of independent authorities.¹⁰²

French, Dutch, Belgian, and UK legal and political discourse have, with some variations relating to their constitutional traditions, identified risks relating to the principles of legality, political ministerial responsibility, the democratic control of the administration by the Parliament, and the central role of Parliament in a democracy.¹⁰³ Apart from considerations on administrative policy, these arguments also have clear constitutional dimension. In German legal scholarship, the judgment of the ECJ in *Commission v Germany* ‘created uproar’, because the Court rejected arguments relating to ministerial oversight for the administrative authorities. This German criticism of the EU requirements focused on the severing of the democracy and legitimacy link between the parliament, the minister, and the administrative authority.¹⁰⁴

4 REALISATIONS OF ADMINISTRATIVE INDEPENDENCE IN THE NORDIC STATES

As in other European states, the administrative procedure in the Nordic states in part has had to be adapted to EU law.¹⁰⁵ Concerning the administrative organisation, EU law has had a limited impact in the five countries. However, on a very detailed level of internal organisation, the distribution of tasks within the Ministries and the lower administrative authorities has been adapted to fit the tasks related to drafting, implementing, and applying EU law.¹⁰⁶ In this way, the demands of the European cooperation have had an indirect impact on public law. This section examines the realisation of the direct requirements of administrative independence in the five countries.

In the West Nordic countries, with their tradition of ministerial rule, the independent functions of administrative bodies have had to be allocated to public bodies outside the hierarchies of the ministries. As described above (Section 2), this in itself is nothing new to Danish, Icelandic, or Norwegian law, as their legal systems have featured ‘councils’ etc of different kinds. In Denmark, the national legislation implementing the Single European Railway Directive with its provisions on independent supervision highlighted the independence of the supervisory body (the railway board, *Jernbanenævnet*).¹⁰⁷ The board is explicitly independent and not under the instruction power of the Minister of Transport. Furthermore, it shall be independent from other actors in the field in its composition, organisation, and activities.¹⁰⁸ In a similar manner, the Norwegian legislation on railways establishes that the supervisory authority cannot be given instructions, either generally or in an individual matter.¹⁰⁹ This technique of explicit requirements of independence and prohibition of

¹⁰² De Somer (n 12) 74 ff, 99 f; see also Craig (n 7) 152.

¹⁰³ De Somer (n 12) 133–162; Emmanuel Slautsky, ‘Independent Economic Regulators in Belgium’ (2021) 14 REALaw 37.

¹⁰⁴ Matthias Ruffert (n 2) 522; see also on the Belgian legal resistance to the use of independent agencies relating to the economic, social, and political traditions Slautsky (n 103) 62 f.

¹⁰⁵ Henrik Wenander, ‘Europeanisation of the Proportionality Principle in Denmark, Finland and Sweden’ (2020) 13 REALaw 133, 143 ff; Eriksen and Fredriksen (n 101).

¹⁰⁶ Niels Fenger, *EU-rettens påvirkning af dansk forvaltningsret* (3rd edn DJØF 2018) 45; Jane Reichel and Henrik Wenander, *Europeiske förvaltningsrätt i Sverige* (Norstedts Juridik 2021) 109.

¹⁰⁷ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.

¹⁰⁸ Railway Act (Lov 686 af 27/05/2015, Jernbaneloven), s 103.

¹⁰⁹ The Railway Act 1993 (Lov om anlegg og drift av jernbane, herunder sporvei, tunnelbane og forstadsbane m.m., jernbaneloven, LOV-1993-06-11-100), s 11 a.

instructions from the minister has been used in several other fields in Denmark, Iceland, and Norway, such as supervision of energy markets and competition.¹¹⁰

In addition, the requirements of complete independence for data-protection authorities under the GDPR have been implemented by such explicit provisions on independence.¹¹¹ Concerning data-protection supervision, the EFTA Surveillance Agency (ESA) – the counterpart to the Commission within the EFTA system for non-EU Member States applying the EEA Agreement – opened cases against Iceland and Norway in 2015 regarding possible failures to ensure independence of the national data protection authorities.¹¹² The background was the development of the case law of the ECJ, notably *Commission v Germany* and *Commission v Austria*. Regarding Iceland, the focus of the ESA's investigation was whether the national data-protection authority (*Persónuvernd*) was sufficiently funded and staffed in relation to its tasks. After the Alþingi decided to increase funding to the authority, the ESA decided to close the case.¹¹³

In the case against Norway, the ESA examined whether Norway fulfilled the requirement of 'complete independence' as set out in the Data Protection Directive (now the GDPR). The legal framework at the time meant that the national Data Protection Authority in some respects was subordinate to the ministry, and that the annual grant letters from the Ministry laid down specific aims and priorities for the authority. After Norway, among other things, updated the employment contract for the Data Protection Commissioner and amended the grant letter to the Data Protection Authority so that it should have less specific aims, and focus more on financial aspects, the ESA closed the case.¹¹⁴

Especially Norwegian legal discourse has highlighted the developments towards a greater use of independent administrative authorities. This discussion has focused primarily on the establishment of such bodies by choice of the national legislator, but has also included obligations under EEA law. Legal scholarship has concluded that these bodies are established and organised in a disparate way, seemingly without a common concept of independence.¹¹⁵ This could be linked to the vagueness of the concept of administrative independence in Norwegian law. As mentioned, this problem of vagueness is also present on the European level (see Section 3). The 2019 proposal for a new Norwegian Administrative Procedure Act included rules on independent administrative authorities, aiming at establishing a unified concept.¹¹⁶ In relation to obligations under EEA law, however, Norwegian legal discourse has concluded that national legislation of this kind would not necessarily solve the problems associated with requirements of independence, since EU law requirements may differ from the Norwegian definitions of administrative independence. The same legal scholars have

¹¹⁰ The Danish Act on the Utility Regulator (Lov om Forsyningstilsynet, lov nr 690 af 08/06/2018), s 2; the Icelandic Act on the National Energy Authority (Lög um Orkustofnun Nr. 87/2003), s 1; the Norwegian Energy Act (Lov om produksjon, omforming, overføring, omsetning, fordeling og bruk av energi m.m. (energiloven) LOV-1990-06-29-50), s 2-3; the Danish Competition Act (Konkurrencelov, lov nr 384 af 10/06/1997), s 14 a; the Norwegian Competition Act (Konkurranselov LOV-2004-03-05 nr. 12), s 8; the Icelandic Competition Act (Samkeppnislög) 44/2005, s 5 (without an explicit prohibition of instructions from the minister).

¹¹¹ In Denmark, the Data Protection Act 2018 (Lov om supplerende bestemmelser til forordning om beskyttelse af fysiske personer i forbindelse med behandling af personoplysninger og om fri udveksling af sådanne oplysninger (databeskyttelsesloven) 2018 nr 502), s 27; in Norway, the Personal Data Act 2018 (Lov om behandling av personoplysninger (personopplysningsloven) 2018 nr 38), s 20; in Iceland, the Data Protection Act 2018 (Lög um persónuvernd og meðferð persónuupplýsinga, 90/2018), s 36.

¹¹² Halvard Haukeland Fredriksen and Gjermund Mathisen, *EØS-rett* (4th edn Fagbokforlaget 2022) 259.

¹¹³ ESA Decision No 025/19/COL of 2 April 2019 in Case 76950.

¹¹⁴ ESA Decision No 026/19/COL of 2 April 2019 in Case 77105.

¹¹⁵ Eivind Smith, 'Uavhengig myndighetsutøvelse. Statlige forvaltningsorganers rettslige status og posisjon overfor ledelsen av den utøvende makt (Kongen og departementet)', annex to report 2012:7 *Uavhengig eller bare navklart? Organisering av statlig myndighetsutøvelse* (Difi, Direktoratet for forvaltning og IKT 2012) 78 f.

¹¹⁶ Commission of inquiry report NOU 2019: 5 *Ny forvaltningslov*, ch 32.

further concluded that it is very likely that the (sometimes vague) independence requirements under EU law result in over-implementation in Norwegian law.¹¹⁷

In the East Nordic legal systems of Finland and Sweden, Finland has opted to a considerable extent for similar solutions as have the West Nordic states, ie to use references to the relevant supervisory body being independent. For example, the Act regulating the activities of the Non-discrimination Ombudsman explicitly states that the Ombudsman is organised under the auspices of the Ministry of Justice, but that the authority is ‘autonomous and independent in its activities’. According to the legislative materials, this was motivated by the requirements of EU law.¹¹⁸ Similarly, the Railway Traffic Act (implementing the Single European Railway Directive) establishes a regulatory body for the railway sector in connection with the Transport and Communications Agency (*Liikenne- ja viestintävirasto / Transport- och kommunikationsverket*, Traficom), which shall act as an independent authority in terms of organisation, function, hierarchy, and decision-making.¹¹⁹ In contrast, the Finnish legislative process has at times concluded that the general independent position of a state authority is sufficient to fulfil requirements of independence for market-regulation authorities.¹²⁰

Concerning the requirement of complete independence for data protection, Finnish legislation has explicit provisions on the Data Protection Ombudsman, who ‘works under the auspices of the Ministry of Justice’ but is ‘is autonomous and independent in his or her activities’.¹²¹ As was remarked in the legislative materials to the provision, the requirement of independence already follows from the directly applicable provision in Article 52 GDPR. Because the Data Protection Ombudsman also has other tasks not regulated by GDPR, the provisions on independence in the Act are motivated ‘also for this reason’.¹²² Whether this is a good reason or not, this is an example on how EU law requirements influence national arrangements on administrative independence.

Swedish legislative procedure has routinely referred to the constitutionally entrenched independence of administrative authorities when implementing EU legislation requiring administrative independence. An example of this kind of reasoning is found in the legislative materials for implementing the Single European Railway Directive, which also refers to the general rules and principles of constitutional and administrative law on objectivity, impartiality, disqualification, and public employment.¹²³ Similarly, the constitutionally founded independent role of the Non-Discrimination Ombudsman (*Diskrimineringsombudsmannen*) and the applicable general administrative law framework have been highlighted in legislative procedures implementing Directives in the field.¹²⁴ A further example of reference to the constitutional independence of administrative authorities is found in the legislative materials concerning the reinforced independence of national competition authorities.¹²⁵

Sweden has also followed this pattern concerning the position of the national data-protection authority under the GDPR. In the legislative process leading up to the adoption of the Data Protection Act, complementing the GDPR, the appointed commission of inquiry concluded that the

¹¹⁷ Eriksen and Fredriksen (n 101) 204.

¹¹⁸ Government Bill RP 19/2014 rd *med förslag till diskrimineringslag och vissa lagar som har samband med den* 113.

¹¹⁹ Rail Traffic Act 2018 (Raideliikennelaki/Spårtrafiklagen, 1302/2018), s 147; Government Bill RP 105/2018 rd *med förslag till spårtrafiklag och lag om ändring av lagen om transportservice* 120; Government Bill RP 13/2015 rd *med förslag till lagar om ändring av järnvägslagen och banlagen* 42.

¹²⁰ Government Bill RP 20/2013 rd *med förslag till ändring av lagstiftningen om el- och naturgasmarknaden* 33 ff.

¹²¹ Data Protection Act 2018 (Tietosuojalaki/Dataskyddslag, 1050/2018), s 8.

¹²² Government Bill RP 9/2018 rd *med förslag till lagstiftning som kompletterar EU:s allmänna dataskyddsförordning* 95 f.

¹²³ Government Bill Prop 2014/15:120 *Ett gemensamt europeiskt järnvägsområde* 98 ff.

¹²⁴ Government Bill Prop 2002/03:65 *Ett utvidgat skydd mot diskriminering* 162; Government Bill Prop 2004/05:147 *Ett utvidgat skydd mot könsdiskriminering* 119; Government Bill Prop 2007/08:95 *Ett starkare skydd mot diskriminering* 369.

¹²⁵ Ministry Report Ds 2020:3 *Konkurrensverkets befogenheter* 84.

Swedish model provides strong guarantees for independent decision-making by administrative authorities under the government. In the view of this commission of inquiry, the requirements of independence under the legal acts were ‘without doubt fulfilled under the Swedish system.’¹²⁶ The development of case law by the ECJ, notably in the cases *Commission v Germany* and *Commission v Austria*, has not provoked any more general discussion on the limits of the administrative independence under the Swedish Instrument of Government 1974.¹²⁷

5 CONCLUSION

Requirements of administrative independence for national administrative authorities limit the scope for the Member States to arrange their public administration according to their political choices and constitutional and administrative traditions (the ‘institutional autonomy’). Still, study of the Nordic realisations of administrative independence indicates that the national traditions are important for understanding the EU concept of independent authorities.

Administrative independence means a departure from the theoretical separation of powers. Although this is certainly a relevant perspective, the study indicated that public organisation in a legal system may be more complex than this schematic outline. As stated in Section 1, the clear-cut tripartite separation of powers has never quite been fulfilled in European legal systems, which means that EU requirements of administrative independence are not as alien to some legal systems as they may seem at first glance. In all the Nordic states, important parts or (in Finland and Sweden) the whole organisation of state authorities rest on ideas of organisational independence. Notably, the Swedish constitutional structure, although being fully democratic and based on the rule of law, as a matter of theoretical foundation does not even in constitutional theory rest on a formal, tripartite separation of power.

The Nordic legal systems are often described as being ‘pragmatic’, denoting a practically oriented state of mind, rather than having foundations in strict, pre-defined categorisations. The requirements of establishing independent authorities have not met the same kind of national restraint as in other European countries, especially Germany. This may be explained by both the practical orientation of legal thinking and the long-standing existence of arrangements of independent authorities in the legal systems. The more principled arguments in constitutional law against independent authorities found in German discourse have not had the same impact in the Nordic countries. As discussed, however, the Nordic legal systems are by no means identical when it comes to the details beyond the general commonalities. It should be noted that Norwegian constitutional discourse generally emphasises the concept of separation of powers, which may explain the critical discussion regarding the establishment of independent authorities. These discussions, however, have focused primarily on the establishment of independent authorities initiated on the national level, and not prescribed by EU law.

It may be noted that none of the countries has used the possibility to meet requirements of independent authorities by organising administrative bodies under the parliaments. Even though this form of organisation would create independence from

¹²⁶ Commission of inquiry report SOU 2016:65 *Anpassningar med anledning av EU:s dataskyddsförordning* 146.

¹²⁷ cf, however, Reichel and Wenander (n 106) 111 f.

political actors (because the parliaments and their members cannot control the authorities in the same way as governments or ministers), this kind of organisation does not seem to be a viable option in practice for most administrative activities (see on the Swedish administrative authorities organised under the Riksdag in Section 2).

The various constitutional frameworks and traditions help one to understand the different impact of EU law requirements on independence in the legal systems discussed above. As mentioned, there are two major traditions of administrative law in the Nordic states, and this is also clear in this context. The West Nordic legal systems, with their default position of ministerial rule and hierarchical delegation from the ministry to the administrative authority, need to clarify the exceptional status of the independent authority. Explicit provisions barring the minister or department from engaging in the business of the supervisory authority are therefore necessary.

Somewhat surprisingly, there are also examples of such explicit provisions in Finnish law, even though the administrative authorities by default should be independent in their decision-making and use of discretion. This is an indication of the complex and uncertain status of the general administrative independence that is commonly assumed concerning Finnish constitutional law. Possibly, this form of explicit provisions may mean a kind of Europeanisation of how the administrative organisation is conceived in Finland in general. The clearly more typical East Nordic country in this context is Sweden, with its 'administrative model' codified in the written constitution, featuring independent organisation of administrative authorities and independent decision-making in more important matters. As shown above, Swedish legal discourse has routinely relied on this constitutional provision to guarantee administrative independence.

The concept of administrative independence has not been critically discussed in the Nordic legal systems to the same extent as in continental Europe. After all, the Nordic countries have all established independent authorities without EU requirements, and it seems the addition of such bodies has not raised any serious concerns. This may also be seen as a pragmatic position, as opposed to more principled views in continental Europe – especially in the German legal tradition.

However, this 'pragmatic' attitude is no guarantee that the implementation of EU requirements of administrative independence will always be unproblematic. Since the requirements of EU law do not follow one general concept of independence, it may be that the Nordic national implementation fails in one way or another to meet the requirements. As was observed in relation to the Norwegian proposal on regulating the concept of independent authorities in the new Administrative Procedure Act, a general national concept is especially vulnerable to deviating requirements under EU law. The same goes, of course, for the Swedish default recourse to the constitutionally founded administrative independence. The procedures initiated by the ESA against Iceland and Norway in 2015 illustrate that there may be tensions between the national legislative and budgetary choices and the requirements of EEA/EU law.

At the outset, the Swedish administrative model is especially well suited to fulfil the requirements of administrative independence, given its default position of independent administrative organisation and decision-making in more important matters. However, the scope for informal contacts inherent in the system could constitute a challenge in relation to the independent status of the Data Protection Authority, which could call for further

examination. In addition, the scope for budgetary steering through appropriation directions could in principle give rise to concerns about the independence of the Swedish Data Protection Authority, in a parallel to the ESA's investigation of Norway.

The EU Member States (and the EFTA-EEA States) need to adapt to the varying requirements and observe the differences between the requirements of mere independence in relation to market actors, independence of the market actors and the political level, and the complete independence of the GDPR. As has been observed in Norwegian legal discourse, there is an inherent risk of over-implementation of independence, as the national systems benefit from transparent structures that make it possible to navigate.

Both Nordic and other European legal discourses have highlighted the fact that the ambition of achieving administrative independence is a mirage – it would require the authority both to be linked to, and not least funded by, the public sector and at the same time be free in its activities. The solutions under EU law as implemented on the national level are therefore a balance of these interests. In this way, the Nordic examples illustrate the tensions in the field. As established in scholarship, comparative public law – including administrative and constitutional law – helps to fully understand the impact of EU law and reveals the various 'Europeanisations' of general administrative law, given the national preconditions.

LIST OF REFERENCES

Ackerman B, 'Good-bye Montesquieu' in Rose-Ackerman S, Lindseth P, and Emerson B, *Comparative Administrative Law* (2nd edn, Elgar 2017)

DOI: <https://doi.org/10.4337/9781849808101.00016>

Ahlbäck Öberg S and Wockelberg H, 'Nordic Administrative Heritages and Contemporary Institutional Design' in Greve C, Lægread P, and Rykkja LH(eds), *Nordic Administrative Reforms: Lessons for Public Management* (Palgrave Mcmillan 2016)

DOI: https://doi.org/10.1057/978-1-137-56363-7_4

Andenas M, 'Independent Administrative Authorities in Comparative Law: Scandinavian Models' in Caranta R, Andenas M, and Fairgrieve D(eds), *Independent Administrative Authorities* (British Institute of International and Comparative Law 2004)

Backer I.L., 'Uavhengige forvaltningsorganer i Norge' in Nguyen Duy I and others (eds), *Uten sammenligning. Festskrift til Eivind Smith 70 år* (Fagbogforlaget 2020)

Biaggini G, 'Legal Conceptions of Statehood' in von Bogdandy A, Huber P, and Cassese S (eds), *The Max Planck Handbooks in European Public Law. The Administrative State. Volume 1* (OUP 2017)

DOI: <https://doi.org/10.1093/law/9780198726401.003.0015>

Bobek M, 'Why there is no Principle of "Procedural Autonomy" of the Member States' in Micklitz HW and De Witte B (eds), *The European Court of Justice and the Autonomy of the Member States* (Intersentia 2012) 320

Bogdan M, *Concise Introduction to Comparative Law* (Europa Law Publishing 2013)

Bønsing S, *Almindelig forvaltningsret* (4th edn, DJØF 2018)

Bull T, 'Institutions and Division of Powers' in Krunke H and Thorarensen B (eds), *The Nordic Constitutions: A Comparative and Contextual Study* (Hart 2018)

DOI: <https://doi.org/10.5040/9781509910960.ch-003>

Butler G, 'The European Rule of Law Standard, the Nordic States, and EU Law' in Bakardjieva Engelbrekt A, Moberg A, and Nergelius J(eds), *Rule of Law in the EU: 30 Years After the Fall of the Berlin Wall* (Hart 2021)

DOI: <https://doi.org/10.5040/9781509941629.ch-011>

Caranta R, Andenas M, and Fairgrieve D (eds), *Independent Administrative Authorities* (British Institute of International and Comparative Law 2004)

Chiti E, 'Towards a Model of Independent Exercise of Community Functions?' in Caranta R, Andenas M and Fairgrieve D(eds), *Independent Administrative Authorities* (British Institute of International and Comparative Law 2004)

Craig P, *EU Administrative Law* (Oxford University Press 2018)

DOI: <https://doi.org/10.1093/oso/9780198831655.001.0001>

De Somer S, *Autonomous Public Bodies and the Law. A European Perspective* (Elgar 2017)

DOI: <https://doi.org/10.4337/9781785364686>

Eckhoff T and Smith E, *Forvaltningsrett* (11th edn, Universitetsforlaget 2018)

Enqvist L and Naartijärvi M, 'Administrative Independence under EU Law – Stuck between a Rock and Costanzo' (2021) 27 *European Public Law* 707

DOI: <https://doi.org/10.54648/euro2021035>

Eriksen C and Fredriksen H, *Norges europeiske forvaltningsrett. EØS-avtalens krav til norske forvaltningsorganers organisering og saksbehandling* (Universitetsforlaget 2019)

Fenger N, *EU-rettens påvirkning af dansk forvaltningsret* (3rd edn DJØF 2018)

Fredriksen H and Mathisen G, *EØS-rett* (4th edn Fagbokforlaget 2022)

Halberstam D, 'The promise of comparative administrative law: a constitutional perspective on independent agencies' in Rose-Ackerman S, Lindseth P, and Emerson B, *Comparative Administrative Law* (2nd edn, Elgar 2017)

DOI: <https://doi.org/10.4337/9781849808101.00021>

Hall P, 'The Swedish Administrative Model' in Pierre J(ed), *The Oxford Handbook of Swedish Politics* (Oxford University Press 2015)

DOI: <https://doi.org/10.1093/oxfordhb/9780199665679.013.17>

Hirschl R, 'The Nordic Counternarrative' (2011) 9 *ICON* 449

DOI: <https://doi.org/10.1093/icon/mor034>

Hofmann H, Rowe G, and Türk A, *Administrative Law and Policy of the European Union* (Oxford University Press 2011)

DOI: <https://doi.org/10.1093/acprof:oso/9780199286485.001.0001>

Holmberg E et al, *Grundlagarna: RF, SO, RO* (3 July 2019, Version 3 A, JUNO, <<https://juno.nj.se>>)

Holter D.W., 'Legislative Homogeneity' in Baudenbacher C (ed), *The Fundamental Principles of EEA Law. EEA-ities* (Springer 2017)

DOI: https://doi.org/10.1007/978-3-319-45189-3_1

Husa J, 'Constitutional Mentality' in Letto-Vanamo P, Tamm D and Gram Mortensen BO (eds), *Nordic Law in European Context* (Springer 2019)
DOI: https://doi.org/10.1007/978-3-030-03006-3_3

Indriðason I.H. and Kristinsson G.H., 'The role of parliament under ministerial government' (2018) 14 *Icelandic Review of Politics and Administration* 149
DOI: <https://doi.org/10.13177/irpa.a.2018.14.1.7>

Jans J.H., Prechal S, and Widdershoven R.J.G.M., *Europeanisation of Public Law* (2nd edn, Europa Law Publishing 2015)
DOI: <https://doi.org/10.54648/cola2008014>

Jyränki A and Husa J, *Konstitutionell rätt* (Talentum 2015)

Kischel U, *Comparative Law* (Oxford University Press 2019)
DOI: <https://doi.org/10.1093/oso/9780198791355.001.0001>

Kristjánsson S, 'Iceland: A Parliamentary Democracy with a Semi-presidential Constitution' in Ström K, Müller W C , and Bergman T (eds), *Delegation and Accountability in Parliamentary Democracies* (Oxford University Press 2006)
DOI: <https://doi.org/10.1093/019829784x.003.0012>

Kröger M and Pilniok A, 'Unabhängigkeit zählt: Amtliche Statistik zwischen Politik, Verwaltung und Wissenschaft' in Kröger M and Pilniok A(eds), *Unabhängiges Verwalten in der Europäischen Union* (Mohr Siebeck 2016)

Kröger M, 'Unabhängiges Verwalten in der Europäischen Union – eine Einführung' in Kröger M and Pilniok A(eds), *Unabhängiges Verwalten in der Europäischen Union* (Mohr Siebeck 2016)

Krunke H and Thorarensen B, 'Concluding Thoughts' in Krunke H and Thorarensen B(eds), *The Nordic Constitutions. A Comparative and Contextual Study* (Hart 2018)
DOI: <https://doi.org/10.5040/9781509910960.ch-008>

Krunke H and Thorarensen B, 'Introduction', in Krunke H and Thorarensen B (eds), *The Nordic Constitutions. A Comparative and Contextual Study* (Hart 2018)
DOI: <https://doi.org/10.5040/9781509910960.ch-001>

Krunke H, 'Constitutional identity – seen through a Danish lens' (2014) 37 *Retfærd* 24

Lavjrisen S and Ottow A, 'The Legality of Independent Regulatory Authorities' in Besselink L, Pennings F, and Prechal S (eds), *The Eclipse of the Legality Principle in the European Union* (Kluwer Law 2011)

Lenaerts K, van Nuffel P, and Corthaut T, *EU Constitutional Law* (Oxford University Press 2021)

DOI: <https://doi.org/10.1093/oso/9780198851592.001.0001>

Mäenpää O and Fenger N, 'Public Administration and Good Governance' in Letto-Vanamo P, Mørup S et al, *Forvaltningsret. Almindelige emner* (7th edn DJØF 2022)

Nyman O, 'The New Swedish Constitution' (1982) 26 *Scandinavian Studies in Law* 170
overfor ledelsen av den utøvende makt (Kongen og departementet)', annex to report 2012:7
Uavhengig eller bare uavklart? Organisering av statlig myndighetsutøvelse (Difi, Direktoratet for
forvaltning og IKT 2012)

Persson P, 'Regleringsbrev ur rettslig synvinkel' (2011) *Förvaltningsrättslig tidskrift* 635

Petrén G, 'Government and Central Administration' in Allardt E et al (eds), *Nordic Democracy. Ideas, Issues, and Institutions in Politics, Economy, Education, Social and Cultural Affairs of Denmark, Finland, Iceland, Norway, and Sweden* (Det danske Selskab 1981)

Reichel J and Wenander H, *Europeisk förvaltningsrätt i Sverige* (Norstedts Juridik 2021)

Ruffert M, 'National Executives and Bureaucracies' in Cane P, Hofmann H, Ip E and Lindseth P (eds), *The Oxford Handbook of Comparative Administrative Law* (Oxford University Press 2021)

DOI: <https://doi.org/10.1093/oxfordhb/9780198799986.013.31>

Ruffert M, *Law of Administrative Organization of the EU. A Comparative Approach* (Elgar 2020)

DOI: <https://doi.org/10.4337/9781800373617>

Saraviita I, 'Finland' in Alen A and Haljan D (eds), *IEL Constitutional Law* (Kluwer 2012)

Scholten M, 'Independent, hence unaccountable? The Need for a Broader Debate on Accountability of the Executive' (2011) 4 *Review of European Administrative Law* 5

DOI: https://doi.org/10.7590/real_2011_01_02

Slautsky E, 'Independent Economic Regulators in Belgium' (2021) 14 *Review of European Administrative Law* 37

DOI: <https://doi.org/10.7590/187479821x16190058548727>

Smith E, *Konstitusjonelt demokrati. Statsforfattningen i prinsipielt og komparativt lys* (5th edn, Fagbokforlaget 2021)

Smith E, *Stat og ret. Artikler i utvalg 1980 – 2001* (Universitetforlaget 2002)

Suksi M, 'Common Roots of Nordic Constitutional Law? Some Observations on Legal-Historical Development and Relations between the Constitutional Systems of Five Nordic

Countries' in Krunke H and Thorarensen B(eds), *The Nordic Constitutions: A Comparative and Contextual Study* (Hart 2018)

DOI: <https://doi.org/10.5040/9781509910960.ch-002>

Suksi M, 'Markers of Nordic Constitutional Identity' (2014) 36 *Retfærd* 66

Letto-Vanamo P, Tamm D, and Gram Mortensen B.O. (eds), *Nordic Law in European Context* (Springer 2019)

DOI: <https://doi.org/10.1007/978-3-030-03006-3>

Terhechte J.P., 'Equal or Diverse?: Richterliche und exekutive Unabhängigkeit im Vergleich' in Kröger M and Pilniok A (eds), *Unabhängiges Verwalten in der Europäischen Union* (Mohr Siebeck 2016)

Thorarensen B, *Stjórnskipunarréttur: Undirstöður og handhafar ríkisvalds* (Codex 2015) English summary.

Wenander H, 'Administrative Constitutional Review in Sweden – Between Subordination and Independence' (2020) 26 *European Public Law* 987

DOI: <https://doi.org/10.54648/euro2020074>

Wenander H, 'Den statliga förvaltningens konstitutionella ställning i Sverige och Finland - pragmatism och principer' (2019) 155 *Tidskrift utgiven av Juridiska föreningen i Finland* 103

Wenander H, 'Europeanisation of the Proportionality Principle in Denmark, Finland and Sweden' (2020) 13 *Review of European Administrative Law* 133

DOI: <https://doi.org/10.7590/187479820x15930701852283>

Wenander H, 'Förvaltningsorgan under parlamenten i Norden' in Godenhjelm S, Mäkinen E, and Niemivuo M (eds), *Förvaltning och rättssäkerhet i Norden. Utveckling, utmaningar och framtidsutsikter* (Svenska litteratursällskapet i Finland – Appell 2022)

Wenander H, 'Public Agencies in International Cooperation under National Legal Frameworks. Legitimacy and Accountability in Internationalised Nordic Public Law' in Grahn-Farley M, Reichel J, and Zamboni M (eds), *Governing with Public Agencies – The Development of a Global Administrative Space and the Creation of a New Role for Public Agencies* (Stockholm University 2022)

Wils W, 'Independence of Competition Authorities' (2019) 42 *World Competition* 149

DOI: <https://doi.org/10.54648/woco2019012>

Ziller J, 'The Continental System of Administrative Legality' in Guy Peters B and Pierre J (eds), *The SAGE Handbook of Public Administration* (Concise 2nd edn SAGE 2014)

DOI: <https://doi.org/10.4135/9781446200506.n21>

Zweigert K and Kötz H, *An Introduction to Comparative Law* (3rd edn Oxford University Press 1998)

DOI: <https://doi.org/10.3366/elr.1999.3.2.263>