Preface

The growing differentiation of the administration of the European Union is one of the most pertinent developments in the European integration process. The ongoing ‘agencification’ is the most visible change, but there are also other important features, such as the structural change of the European Commission, the establishment of an administrative framework for the European Council, the transferral of administrative tasks to the European Central Bank and the establishment of new administrative ‘satellites’ beyond these phenomena. The analysis of this development is far advanced in terms of description and scrutiny of single matters, such as judicial review, liability and legitimacy. There is, however, no comprehensive conceptualization. This situation is in considerable contrast to constitutional issues of organizing European integration, the discussion of which is widely settled around well-established concepts of federalism and the law of international institutions. This book aims to fill that lacuna in developing a law of administrative organization for the European Union following a comparative study of the US administration.

In many member states’ administrative jurisdictions a law of administrative organization can be discerned. Member states’ laws provide a conceptual toolbox that served European administrative law in different ways throughout the history of European integration. Nonetheless, the relevant European law cannot be considered as a synthesis of those jurisdictions. New insights can be drawn from a comparison with the legal structure of the US administration, given that it represents an administration comparable in size and with prima facie structural parallels such as the existence of independent agencies, the problem of oversight, the construction of interagency relationships and the issue of administrative federalism.

This book does not perform a schematic transfer of institutions and models from one legal system to the other, but strives for the advancement of European law mirrored in an analysis of the US law of administrative organization. This aim is reached in three steps.

First, the conceptual, that is, terminological, basis is established. What is an institution, a department or an agency under European law? Where is the power to establish any of these derived from? The Treaties are not conclusive on these questions, which creates a wide range of conceptualization by doctrinal and comparative work. It is helpful to study how the US successfully deals with a considerable measure of plurality within their administrative frame-
work. Second, how can the European administration achieve legitimacy? What elements of oversight and control are needed to reach a level of legitimacy that is immune from unjustified contestation in respect of the standards of the Treaties and to general legitimacy standards? It is again worth considering how the US system of administrative organization achieves legitimacy in a pluralist system. Third, what is the effect of federalism in administrative organization? The contrast with the specific shape of US (administrative) federalism is most revealing.

The concepts developed in this comparative study will be useful for all scholars working in the field, but also for practitioners in the institutions of the European Union and the member states who strive for a better administrative framework for European integration. The manuscript was finalized in early 2020, so the profound changes in all areas of EU law expected at the early time of the pandemic could not be considered.