# Contents

## Chapter 1

**Introduction**  
Roberto Caranta and Anna Gerbrandy

2. Two Models: Top-Down v. Bottom-Up 4  
3. A Comparison Between the Two Models 7  
4. Why Move Courts Away From Substantive Review and Let the ‘Field’ Decide the Substance? 8  
5. The Research 11  
6. The Contributions in this Volume 13  
7. The Resulting General Picture 13

## Chapter 2

**Evolving Patterns and Change in the EU Governance and their Consequences on Judicial Protection**  
Roberto Caranta

1. Introduction 17  
2. The EU: An Experiment in the Rule of Law without Democracy 18  
3. The Theory and Practice of Judicial Review of Measures Taken by EU Institutions 21  
   3.1 General 21  
   3.2 Breaches of Formal and Procedural Rules 23  
   3.3 Substantive Review 26  
   3.3.1 CAP Cases 27  
   3.3.2 Competition Cases 28  
   3.3.3 Fight against Terrorism Cases 34  
   3.4 What Developing Trends? 39  
3. Attempts at Dialogue with Civil Society, Citizens, and Market Operators 42  
4. Judicial Review over Measures taken Following Dialogue 49  
5. Conclusions 52

## Chapter 3

**Administrative Law and the Dialogue Model in France. The Administrative Courts’ Contribution**  
Anna Simonati

1. Introduction 65  
2. *Enquêtes Publiques* 66  
   2.1 Elements and Legal Rules 66  
   2.2 The Administrative Courts’ Contribution 68  
   2.2.1 Breach of Procedural Rules and Protection of Interests 68
TRADITIONS AND CHANGE IN EUROPEAN ADMINISTRATIVE LAW

2.2.2 The Completeness of the Information: the Contents of the Dossier Submitted to Enquête
2.2.3 The Enquête as an Example of Dialogue?
3 Zones d’Aménagement Concerté
3.1 Elements and Legal Rules
3.2 The Administrative Courts’ Contribution
3.2.1 The Creation of a Z.A.C.: Selfbinding Obligation for Public Authorities?
3.2.2 The Legal Link between Public Law Decision and Convention d’Aménagement
3.2.3 The Z.A.C. as an Example of Dialogue?
4 The Préfet as a ‘Dialogue Model Promoter’
4.1 Legal Rules and Institutional Role
4.2 The Administrative Courts’ Contribution
4.3 The Préfet’s Preference for Dialogue
5 Final Observations

CHAPTER 4 Judicial Review of Administrative Action: Procedure vs. Substance. Germany
Margherita Poto

1 Brief Introductory Remarks
1.2 The Discretionary Powers in the Rechtsstaat
2 Social Welfare in the Constitution
3 Judicial Review and Different Techniques
4 The Influence of Private Law
4.1 Public Administration and Private Tools
4.2.1 An Example of Participative Democracy: Mediation in the Public Sector
4.2.2 Negotiations and Cooperative Administrative Activity
4.2.3 Criticism of Informal Settlements
4.2.4 The Way Forward
4.2.5 Practical Experiences with Assisted Negotiation
4.2.6 Admissibility of Negotiations
4.2.7 The Circle of Participants
4.2.8 Access to Information
4.2.9 The Use of Mediators
4.2.10 Implementation of the Consensus
5 The Judicial Review
6 Procedural Guarantees Provided Within the Traditional Model
7 The Proportionality Principle
8 Examples of Dialoguing Administration
8.1 The E-participation: A Successful Model in Germany
9 Conclusions
CHAPTER 5
Traditional Model vs. Dialogue Model in UK Legal System
Silvia Mirate

1 Introduction
2 What is a ‘Public Authority’ in English Law?
3 The Traditional Model: Judicial Review and the Control on the Form and the Substance of the Administrative Action
4 Procedural Impropriety
4.1 Procedural Fairness and Participation as Consultation: The Public Inquiries
4.2 Form and Substance in the Protection of the Legitimate Expectations
5 Substantive Review: the Control on the Discretion and the Ground of Illegality
5.1 Substantive Review: From the Ground of Irrationality to the Proportionality Test
6 The Growing ‘Dialogue-model’ in English Public Administration
7 Judicial Review Meets the New ‘Dialogue Model’ of Public Administration: What’s the Role of the English Courts?
8 The ‘Dialogue-model’ Outside the Judicial Review: other Ways of Controlling the Administrative Action
9 Final Remarks

CHAPTER 6
Traditional Variations in the Dutch Administrative Judicial System
O.F. Essens and M.J.M. Verhoeven

1 Administrative Judicial Protection in the Netherlands
2 The Preliminary Administrative Procedure
3 Proceedings Before the Administrative Court
4 Judicial Review of Discretionary Powers and Competences Liées
5 Finalising Disputes Before the Court
6 The Principle Duty of Enforcement
7 Conclusions

CHAPTER 7
Romanian Administrative Law between Tradition and Dialogue
Dacian C. Dragoş, Bogdana Neamţu and Raluca Velişcu

1 Introduction
2 The Romanian Administrative Law System: A Short Introduction
Bound Competence and Discretion – The Traditional Model in Romanian Doctrine

Traditional Techniques of Judicial Review

Subjective and Objective Review

Subjective Review

Objective Review

Grounds for Annulment

An Atypical Review Technique

Review by Exception. The Plea of Illegality

Motivation (Duty to Give Reasons)

Hearings

Rulemaking and Adjudication

Presumption of Validity

Parties in procedure

The ‘Traditional’ and the ‘Dialogue’ model

Internal Administrative Appeals

An Invitation to Dialogue: The Prefect as Controller/Mediator

An Opportunity for Dialogue: Administrative Appeals Lodged by Citizens and Legal Persons

Another Opportunity for Dialogue: Granting Compensation in Administrative Appeals?

Mediation and Judicial Agreements

Public –Private Partnerships as a Dialogue Tool

Participation in Decision-Making as an Instrument for Advancing the Dialogue Model

Procedural Transparency in Local Public Administration: An Instance of the Dialogue Model, or Merely Legal Compliance?

Zoning Agreements – Effective Dialogue or a Path to Corruption?

Associations of Community Development as a Public-Public Dialogue Model

Public Authorities that Combine to a Certain Degree the Traditional Model and the Dialogue Model in Their Activity

The Economic and Social Council (ESC)

National Council of the Audiovisual (NCA)

The Romanian Agency for the Assurance of Quality for Higher Education (RAAQHE)

Territorial Authority for Public Safety (TAPS)

The National Council against Discrimination (NCAD)

Conclusions
CHAPTER 8

The Dialogue Model in the Italian Legal System
Silvia Mirate and Simona Rodriquez

1. The Form of Participation as Introduced by the Administrative Procedure Act No. 241/1990: An Example of the Traditional Model 239
2. The ‘Administration by Agreements’ 244
4. The Voluntary Agreements (VAs) and the Environmental Policy in Italy: Introductory Remarks 249
4.1. The Voluntary Agreements: Brief Remarks on the Environmental Policy in the EU 250
4.2. Voluntary Agreements and Waste Management in Italy: from the ‘Ronchi Decree’ to the New Environmental Code 252
5. Final Remarks 255

CHAPTER 9

Traditional Model vs. Dialogue Model in US Legal System
Simona Rodriquez

1. Introductory Remarks on American Administrative Law: The Traditional Model 269
2. The Traditional Forms of Agency Decisionmaking: Rulemaking and Adjudication. Formal and/or Procedural Rules to Limit the Risk of Arbitrariness 270
2.1. Rule-Making 271
2.2. Adjudication 272
3. The Abuse of Discretion and the Duty to Give Reasons 273
4. Judicial Review on Discretion 276
5. The ‘Arbitrary and Capricious Test’ 279
7. The Case of Negotiated Rulemaking: A Combination Between the Traditional Model and the Dialogue Model 283
7.1. Procedure of Neg-Reg 285
7.2. Judicial Review in Neg-Reg Cases 286
7.3. Neg-Reg and Scholars’ Opinion 288
8. The Case of Environmental Mediation 289
10. Final Remarks: Traditional Model vs. Dialogue Model 293
CHAPTER 10

Models of Judicial Review. The Search for Instances of the Dialogue-Model of Judicial Review in the USA or: USA, Part II

Anna Gerbrandy

1 Introduction 307
2 A Search for the Dialogue Model in the USA 309
3 Consent Decrees 310
3.1 Consent Decrees in Environmental Law 312
3.2 Consent Decrees in Antitrust 314
4 The Way of the Pontiac Radiator 318
5 The Administrative Law Judge 320
6 Conclusions 327