1. The concept of an administrative act and its classification as ‘foreign’

1.1. In Brazilian, Estonian, Finnish, French, German, Greek, Hungarian\(^1\), Norwegian, Spanish, Portuguese, Swedish, Swiss and Turkish law, an administrative act – either “unilateral” or “individual” administrative act - could be defined as an individual decision taken by a public authority to rule an specific case, submitted to public law and immediately executive without judicial intervention, understanding that, except in the case of a specific statutory reserve, it refers to the decision, the final act – the one that finishes a process – and not to the intermediary ones. Even without a formal legal recognition of it, this concept is also known in Russian – as the administrative species of the general category of “legal acts” –, Australian - under the form of “administrative action” or, more exactly, “non statutory administrative action” - and US laws – in which the US federal law concept of “order” largely operates as equivalent of the “administrative act” even though in this case judicial review, if any, is restricted to the record made by the administrative authority that issued the order. Usually, the concept of “administrative act” is equated with “decision”, the act that finish a procedure. However, law tends to enlarge the concept up to include – at least for the purpose of judicial review – intermediate acts that harm individual rights and interests and could be, for this reason, directly challengeable.

1.2. Many countries differentiate between administrative and state, political or cabinet acts that are not – or, at least, non entirely – submitted to judicial review due to its political nature. Other countries, like Hungary, differentiates the acts produced by public institutions – i.e., in the educational field – from the ones issued by general administration, submitting the formers to specifics review systems and not recognizing them the attribute of enforceability.

1.3. Can be said that, in general, administrative decisions enjoy presumption of validity and have immediate enforceability since they are published or notified to its addressees, at least those whose efficacy don’t depend on the help of an judicial authority which is, in countries like Australia or Norway, the general case.

1.4. Another relevant issue is the scope of judicial review, considering that the very concept of administrative act was built in response to this question. From this point of view, the European space counts with a broadly accepted definition of administrative act, contained in the Recommendation Rec(2004)20 of the Committee of Ministers of the Council of Europe on judicial review of administrative acts, including both individual and normative administrative acts, identification not shared in many countries’ laws for which only the former ones can be considered properly as administrative acts. According to this Recommendation, judicial review,

\(^1\) The hungarian Administrative Procedure Code (APC) uses the term "administrative affaire".
conducted by an impartial tribunal of judicial or administrative nature, should be available at a reasonable a non-discouraging cost, through adversarial and public proceedings.

1.5. In general, administrative acts issued by (and in the name of) a foreign administrative authority and/or submitted to a foreign law are considered to be foreign administrative acts. However, should be stressed that the conceptual and practical differences between transnational or transboundary – an administrative act issued by the authority of one country which aims to have effects in the territory of a different country – and international or global – an administrative act produced by an international, regional or global, organisation – are commonly recognised.

2. General considerations on the usual administrative procedure for adopting an administrative act

2.1. Taking in account the great diversity between them, a general regulation of administrative procedure exists in most countries except Australia, France and Turkey. However, this general regulation has very different scopes depending on the legal tradition and the Unitarian or federal form of State. Expressing that can be defined as universal principles, often recognized at a constitutional level – “due process”, “fair procedure” or “good administration” –, those procedure statutes use to guarantee the parts’ rights to initiate a procedure, to be heard, to be informed, to make submissions, to propose evidences, to access to files and documents, to express themselves in their mother tongue, to get a reasoned decision, to be personally notified and to challenge the decision before impartial judicial or administrative courts. Addressees of an administrative act are usually considered parts as well any other person whose interest is “direct” or, anyway, deems to be legally protected. Some countries’ laws, like the Finnish, Norwegian and Swedish ones, recognize the rights of non-direct interests holders to intervene, in a limited way, in the procedure enjoying, inter alia, the right to be heard or even to appeal the decision.

2.2. In relation with the international taking of evidences in penalty procedures, this possibility is generally non regulated in internal law but in international agreements of mutual recognition and enforcement of decisions in the field of traffic licenses and offences.

3. The service of administrative acts: special consideration for their service in other countries

3.1. The service of administrative act is, normally, regulated as part of the administrative procedure in the correspondent general administrative procedure acts or, less often, in specific acts on service and notification of administrative acts. There are, as well, countries when this issue is indirectly treated, by remission or analogy, thru judicial procedure statutes.

3.2. Can be said that, generally, notification does not affect to validity and existence of administrative acts but to its effectiveness regarding, especially,
periods in which challenges can be filed. The most countries provide for personal – thru official or police agents, depending on the nature of the matter -, postal – normal or registered mail -, less often electronic means and, when all the other are unworkable, thru publication of edicts in a official journal.

3.3. As regards service of administrative acts abroad, it is necessary to take into account different assumptions:

- Notification to an addressee who lives abroad in case of procedures initiated by him or herself: in this case, the most countries’ laws use to require the indication of a domicile of a representative inside the country or, if not possible, proceed to publication of an edict in a official journal. When it comes to nationals who live abroad, the service of administrative acts use to be made thru diplomatic or consular means. It is, also, the normal way of notification when the addressees are public agents of the State that issued the act.

- Apart from those cases, national laws do not regulate, normally, the service of administrative acts abroad. This issue is regulated, more frequently, in international agreements like the European Convention on the Service Abroad of Documents relating to Administrative Matters (CETS no. 094), the agreement on the legal assistance concerning service and testimony between Nordic countries (SopS 26/75) or the already mentioned in the field of traffic licenses and offences.

However, those agreements have a limited scope due to the scarce number of countries that have ratified them or to the limited range of materials covered by them. This reality contrasts with the wide scope enjoyed by international agreements on service of documents in judicial matters which point the way ahead in many fields, especially in relation with the language – or the translation – of the documents serviced.

4. About the recognition and execution of administrative acts.

4.1. In the majority of legal systems to which the national reporters refer to, the National Law doesn’t regulate in general terms, the issues related to validity, efficacy and execution of the foreign administrative acts. Hungary is the only country that owns general regulations about matter related to validity, efficacy and execution of foreign administrative acts, this is included in the articles 137 and 138

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3 The European Convention on the Service Abroad of Documents relating to Administrative Matters has only been ratified by eight countries (Spain, Belgium, France, Germany, Austria, Italy, Estonia and Luxembourg).

4 That is the case, for example, of the Schengen Convention of 1990 that supplies the former Schengen Agreement, in the field of free movement of persons.

of the *Code Général de la Procedure Administrative*, of 2014 (from this point forward CPA).

In many cases, the recognition of foreign administrative acts is supported over the standards of international agreements.

In the USA, recognition depends first and foremost on whether the foreign administrative act is subject to mutual recognition agreements (MRAs) that the United States enters into with its trading partners. In the absence of an MRA or a treaty like a MRA, recognition depends on the common law, which does not provide as clear a basis for recognition.

In Russia, the *Code of Administrative Offenses* (CAO) regulates in its chapter 29.1, issues related to legal assistance in cases of administrative infractions. Also, the Federal Law of 22.07.2008, nº 134-F3 has ratified the convention on the mutual recognition and enforcement of judgments in administrative traffic violation cases.

The opinions about the convenience of incorporating national law that regulates the validity, efficacy and execution of foreign administrative acts, the maintained positions held by the reporters are many, even in cases where the proposed legislation is considered to be convenient, they also differ in regard to the type of rule that should contain those provisions.

The majority of reporters express the convenience of the law regulating this issue. In multiple cases, regulations of International Law are alluded, even though it is pointed out that it will be an excessively general and principal regulation, if it aspires to adapt to the different internal rules, in which the concepts of the foreign administrative acts may turn out to be very different. In the case of Switzerland, over the presented adversities that approving this regulation of International range, this country considers as a realistic alternative, the implementation of a system that is based on reciprocity.

In the case of France, it’s affirmed that there is no national rule referred to validity, efficacy or execution of foreign administrative acts. There’s a principle that foresees that foreign administrative acts aren’t applicable or able to be executed directly over French territory, unless an internal rule foresees this situation, an almost inexistent hypothesis; except in the case of the UE or in the case of a forecast included in that sense in a special regulation. The Norwegian adopts a position in a similar sense.

Some reporters alluded to the existence of rules that aren’t general about the recognition of sectorial administrative acts that are also specified in another section of the report. For example, in the field of education, there are national rules for the recognition of Diplomas, degrees, foreign professionals, and driver’s license. (Finland); or the authentication processes and apostille of foreign acts that must be taken into account in national notarial documents. (Estonia).

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6 Signed on March 28, 1997 (Moscow). Contracting parties were: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia and Tajikistan. Russia ratified the Convention with the proviso that it shall, in accordance with Article 3 of the Convention, receive and consider materials concerning violations of traffic rules provided in the Annex to the Convention.
As a general consideration, the reporter from Switzerland emphasizes that the process of globalisation has given rise to an even higher number of request and a diversification of cases. In particular, the developments in the financial sector following the financial crisis of 2007-2009, the increasing roles of administrative assistance both in the fields of finance and taxes represent important economic issues. Thus, on the one side the sovereign position of the state should be reinforced, on the other side the country should be in a position to cooperate with other countries in particular when handing transnational matters.

4.2. In general basis, the reports in which the existence of a forecast about the competent authority to recognize and execute administrative acts to other states is denied or for the processing of applications for recognition and enforcement from other states. In some cases, the reporters are inclined to depend the response on the subject matter on which the application for recognition and enforcement is about.

In some States there is a specific provision in this regard. Thus, in the case of Hungary, where there is a law that directly addresses this issue, provides that the Government shall designate an authority (Art. 137 CPA), but still this designation hasn’t been done.

In Russia, the issues of legal assistance in the case of administrative offenses regulated by the CAO are issued via the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, the Ministry of Justice of the Russian Federation and via the Ministry of Internal Affairs, the Prosecutor General’s Office and the Federal Service.

In Brazil, competence is attributed to the Ministry of Justice to mediate and enforce the requirements of other states, and the Ministry of Foreign affairs to submit requests to another state. In the case of MERCOSUR, the Protocol of “LAS LEÑAS” foresees the designation for each State of a "central authority" to receive and follow up on requests for judicial assistance in civil, labor, commercial and administrative matters.

In the case of Estonia, a Minister of Justice has been appointed as the competent authority to receive and process applications before requests from other states, under the Convention on the Service Abroad of Documents relating to Administrative Matters’ (art. 2), but it does not indicate who is competent to make a requests to another State. The reporter deduces that any administrative authority holds that competence.

In Switzerland, the competent authorities for requesting the recognition and execution of administrative acts in other countries in Switzerland are either the Federal Department of Justice and/or the specialised competent authorities based on the application of the federal statutes they are in charge of. The competent authorities for handling requests from other countries are determined by the subject matter.

7 It was signed in Strasbourg on November 24, 1977, and entered into force on November 1, 1982. The Contracting parties were Austria, Belgium, Germany (FRG), Greece, Spain, Italy, Luxembourg, Malta, Portugal, France, Switzerland, Estonia.
In any case in which the competence is not attributed, the reporter proposes formulas for this attribution. For example, in the case of Finland, it is understood that the Council of State is the competent authority, to whom the domestic law attributes by default all powers not constitutionally attributed to the President of the Republic.

4.3. Generally, all the reports that refer to the general requirements to provide validity and effectiveness of national administrative acts: that respect certain formal matters, jurisdiction of the court, motivation, signature or signatures of the competent authority, service of process...

Brazil refers to four conditions that a foreign administrative act should accomplish in order to display effects in the national territory; it shall be issued by the competent authority; according to the required form specified in the law of the venue; the act should be authenticated in the Brazilian Embassy or Consulate of the country where the act was signed; and it shall be registered with the Brazilian notary.

In the report from France a "presumption of authenticity" of foreign acts in the absence of a specific regulation about this matter is invoked. So, unless there is doubt about its authenticity, it cannot be demanded an apostille to give validity to a foreign act. This statement included in the French Civil Code related to acts of private law (art. 47), could be applied by analogy to administrative acts.

In the case of Hungary, the Article 52 CPA requires the authentication by the agent of the Hungarian diplomatic mission in the country where the act was issued.

Russia contains specific provisions about the requests for legal assistance in cases of administrative offenses directed to a foreign country: the request and the annexed documents must be accompanied by a certified translation into the official language of the requiring State.

In regard of the role that the EU could play in this area, the answers are diverse. In some cases, it is considered that the EU has problems to manage these issues, because of the important differences between the various countries that are members of this organization, as well as on the very concept of administrative acts; probably its role does not exceed on developing simple recommendations. For other reporters, the EU could regulate these issues on the basis of the Article 298 of the TFEU (Poland), and it’s shown that there have already been some legislative initiatives to develop a law on administrative procedures for the EU.

Among the possible actions that can be undertaken by the EU, it means it could adopt measures oriented to standardize procedures and facilitate the simplification, by introducing defined criteria to establish the authenticity of administrative acts, for example. In a case, it goes a step further and states that the EU may be provided with certification competence of administrative acts of authorities corresponding to the countries considered as members of this entity, competence that could be exercised even by an on line procedure in favour of rapid response to requests of certification.

Some reporter (Switzerland) proposes that the standardization and codification of these issues should come from an international instrument, while recognizing some important fields of action that could be undertaken within the EU.
4.4. In a few cases, usually the law of the countries that have been informed does not establish substantive requirements for foreign administrative acts to have an effect in the national territory.

Some reports allude certain limitations that must be considered: respect of public policies, the defense of national sovereignty, decency or morality (Brazil); the respect of fundamental rights (Sweden); the respect of the law and international treaties, the sovereignty and national security (Russia); among others.

In the case of Switzerland, the basic requirement is the compliance with the criterion of double criminal liability. However, there are some rare exceptions to its application such as in the case of an embargo.

In the case of France, at a theoretical level because it doesn’t exist and it’s not even considered to have a general rule in that sense. Two conditions are established for the recognition of foreign acts: first, the authenticity of the act, ruling in his favor a presumption of authenticity that would, only in case of doubt, and by the French authorities require certification by the public authorities of the State of origin; second, the respect of the “règles impératives du droit public français”, of course, between them, including those enclosed in the constitutional law, general principles of law, fundamental rights guaranteed by international treaties to which France is party and other rules that may be included depending on the affected sector.

4.5. Public order is recognized, not only as unique but as an important limit of recognition of the effects of a foreign administrative act.

Although only one report recognizes that the respect for public policies is a legal requirement for the recognition of foreign administrative acts (Brazil), in almost all cases public order is declared as enforceable limit, even in the absence of legal forecast about it. The act shall not contravene the public order of the state where it should be enforced (Switzerland).

The report from the USA defines this issue sustaining that the recognition of foreign court judgments is universally subject to an exception for judgments that violate the enforcing state’s public policy (ordre public), so of course the same rule should apply to recognition of foreign administrative acts. International systems of obligation for nations generally provide some kind of escape valve so that nations can protect their most vital interests. Thus the exception for public policy is necessary and reasonable as long as it is construed narrowly so that it applies only to matters that are truly so important that recognition of the foreign administrative act would effectively frustrate the host jurisdiction’s protection of its most fundamental values, like basic aspects of democracy and environmental protection and other fundamental human rights.

Now, as the U.S. reporter states, the public policy exception is a limit on the doctrine of the State Acts: the exception for public policy (ordre public) applies only in those cases where there is a true conflict of law, but this exception is itself subject to the important exception created by the Act of State doctrine, which in effect eliminates the exception of public policy for the cases to which it applies. As the Supreme Court held in Banco Nacional de Cuba v. Sabbatino, “[T]he Judicial Branch will not examine the validity of a taking of property within its own territory by
a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law”. It is the executive branch, not the courts, that should have control of the conduct of relations with other countries, and the point of the doctrine is to prevent litigants from pursuing lawsuits in the United States that might hinder the executive branch in its conduct of foreign affairs. The effect of the doctrine is to remit litigants who claim to be harmed by illegal acts by foreign governments to their remedies either in the courts of the foreign country or through the U.S. executive branch’s diplomats. The chief effect of the doctrine applied to foreign administrative acts is thus to override the public policy defense and related defenses that challenge the legality of the foreign administrative act like lack of jurisdiction or competence. If the doctrine is not a constitutional requirement, then it is a prudential limitation the federal courts have adopted as part of the federal common law.

Under the proposals de lege ferenda, the reporter from Turkey proposes that the legislator is inspired by a law that is already in force (Act No. 5718) where it is stated that for the Turkish court to recognize a foreign judgment, the judge must verify that it is does not clearly disagree with the public order. The jurisprudence of the Turkish Court of Cassation whereby to reject a demand of recognition it requires that the judgment contains an order of execution or enforcement that is “clairement inconvenable par les règles fondamentales juridiques, morales et consciencielles qui sont à respecter obligatoirement pour que la vie de la société soit harmonieuse et béat”.

6. In the case of foreign administrative acts with punitive effects, in some of the reports the Recommendation No. R (91) of the Committee of Ministers of the Council of Europe concerning the repressive administrative sanctions, which has been adopted all European states is cited.

The precepts of various national constitutions in which guarantees are established for the infringement procedure and particularly the defence rights are also cited. It is, for example, the case of the Brazilian Constitution (Articles 5 and 37) and the Swiss Constitution (art. 29).

Between the principles and procedural guarantees to be respected abroad the administrative act, the followings are invoked: legality, morality, impersonality, publicity, efficiency (Brazil); fairness, participation, right to present evidence, reasons for decisions, right to appeal (Poland); etc.

5. The EU’s role in progress towards the recognition and execution of foreign administrative acts: the principle of mutual recognition and the transnational nature of certain administrative acts

5.1. The EU has promoted the mutual recognition of national administrative acts and helped provide therefore extraterritorial efficacy to the administrative decisions of the Member States. The mutual recognition obligations have also achieved a significant development through international agreements.
This phenomenon has occurred in the EU through secondary legal norms, in areas where the EU has intense competence or powers. These community standards of secondary legislation are an expression of the principle of mutual recognition, which has been the axis around which the EU internal market has been built. The content and significance of this principle has been developed by the Court of Justice of the European Union, which has had an essential role in the development of a mutual recognition model of the European Union.

5.2. The EU or international rules based on legal models of mutual recognition endow to determined national administrative acts the automatic efficacy in other EU Member States. The transnational administrative acts are imperative for the States. The Member States must assume that these foreign administrative decisions take effect in their territory. They cannot submit to a process of preliminary recognition. This secondary legislation configures so that it has become known as "transnational administrative acts."

Without being exhaustive, we quote below a list of Community secondary legislation based on a model of mutual recognition that specifies the conditions of extraterritorial efficacy of certain administrative acts:

— Regulation No 883/2004 on the coordination of social security systems; Regulation No 987/2009 laying down the procedure for implementing Regulation No 883/2004 on the coordination of social security systems; Regulation No 1231/2010 extending Regulation (EC) No 883/2004 and Regulation No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.
— Directive 2010/24/EU of 16 march 2010 concerning mutual assistancefortherecovery of claimsrelatingtotaxes, duties and other mesures and

- Regulation No 952/2013, of 9 October 2013, laying down the Union Customs Code.

5.3. As noted by the German reporter, the community rights of secondary legislation developed several models of "transnational administrative acts." First, rules that recognize the extraterritorial effect of national acts and prohibits or limits the need for new mandatory decisions in the State of destination, when the activity or product has been authorized in another Member State. Second, we find ourselves with community rules that declare the validity of national administrative acts in the rest of member countries of the EU, but also it is foreseen a process of compulsory national recognition in the State of destination to verify the existence, content and comparability of the measure with national administrative decisions. This is the case of diplomas or degrees. In these assumptions we can speak of "transnational weakened effectiveness" of the administrative act, to the extent to which it is conditioned by an act of national recognition. Third, there will be the community rules that besides providing the extraterritorial effect of certain administrative acts, they materialize its contents and effects -the German reporter alludes in this case to a real transnational effect-. In this case the competent authorities of destination may review the issued administrative act in accordance in its case with the provisions contained in the applicable Community rules. The transnational nature of these acts extends to its control. An example of regulation by this perspective resides in the Regulation 810/2009 of July 13\textsuperscript{th} 2009 establishing Community on Visas or the legal norms of the space of Schengen.

5.4. The European secondary legislation based on mutual recognition models are closely linked to the internal market. They are designed to ensure the goods freedom of movement (Article 34 et seq. TFEU) and services (Articles 49 et seq., 56 et seq., TFEU). To this end, the secondary legislation obliges to the member states to recognize foreign administrative acts and to limit their objecting capacity to goods circulation or authorized services by the state members.

This model of mutual recognition eliminates or limits, in consequence, the wide margin of appreciation that characterizes the national recognition procedures of administrative acts, in those areas where the internal market is pursued. As noted by the Italian reporter, "there is (...) to change in the way to conceive structure and limit the discretionary powers of public administration". Also, as noted by the same author, this model can reduce or eliminate the costs, delays and uncertainty arising from the national recognition procedures.

Yet the EU rules recognize in some extent a space for the States to limit the effects of mutual recognition, refusing the recognition of administrative acts when overriding reasons of general interest are at risk, such as security or public health. Nevertheless, States are bound by the obligation to respect the principle of
proportionality. As pointed out by the reporter from Greece, administrative control requirements that are repetitive or overlapping with the ones already established by the State cannot be recognized, also the ones that disproportionately limit the freedom of communitarian movement.

5.5. The principle of mutual recognition presupposes a high level of legal harmonization between national rules governing the administrative actions with transnational potential effect as authorizations of economic activities or the placing on the market of goods or ware. As it has been shown by some national reports, the legal harmonization is essential to ensure mutual trust among States, which is the basis of any system of mutual recognition of acts -as it has been highlighted by the reports of Germany, Italy and USA-, as well as to prevent harmful effects of this regulatory model and regulatory dumping. The legal harmonization facilitates the acceptance of reasonable differences between national rules and legal standards, on behalf of the States involved in a mutual recognition model, therefore, the elimination of national barriers for the free international movement of goods.

The Community secondary legislation -or international conventions- which are based on models of mutual recognition, should harmonize the material requirements for the adoption of administrative acts, setting a minimum and substantive and common standard -and in this way, it has been highlighted by national reports from Germany or Greece-. The shortages in this sense are appreciated in the Community secondary legislation establishing systems of mutual recognition of onerous administrative acts, which does not produce a substantive or procedural harmonization.

The reporter from the USA has stressed out that legal harmonization raises political issues arising from the reluctance of the states to accept common international standards rather than their own, and the fact that despite of legal harmonization, new national barriers can be derived from the inspections made by the country of destination. It also concludes that the signing of mutual recognition agreements is more viable among states with similar regulatory policies, well-funded government or low levels of political corruption.

5.6. As noted by the reporter from Italy the principle of mutual recognition allows the nationals of the Member States to use the opportunities offered by foreign national rules to enforce rights in their Nations or in third countries of the EU, such as obtaining an authorization in another country. National administrations and, lastly, national courts must avoid, within the range offered by the Community rules, abuses of power or any damage to the public interest.

5.7. The trans-European information exchange systems are essential to ensure transnational efficacy of administrative acts. Thus, the implementation of systems of mutual recognition of administrative acts -through European secondary law or international agreements- make it necessary to have a greater exchange of information between Member States and the implementation of a mechanism of inter-administrative cross-border cooperation. This need is clearly reflected in the Regulation No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State. This norm specifies requirements and procedures that competent authorities of a Member
State must follow when making or intending to make a decision, which would hinder the free circulation of a lawfully marketed product in another Member State, and establishes mechanisms of information exchange between Member States through national contact points.

Under the European Economic Area, the Information System of the Internal Market has been launched. It is an electronic tool that supports administrative cooperation in the field of internal market legislation, as Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, or Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. Member States have adopted national procedures for handling requests of administrative assistance and information provided by foreign administrative authorities.

Administrative cooperation and the trans-European exchange of information between administrative authorities have an equally important role in immigration matters. Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decision on the expulsion of third country nationals foresees measures to guarantee that the member states exchange information that is crystallized by the second generation Schengen information system (SIS II), developed by the Regulation (EC) No. 1987/2006 of 20 of December.

5.8. The German reporter has raised the issue of the control of transnational administrative acts held by States of destination. In general, EU law - or international law agreements - does not question the monopoly of a State in the judicial review of administrative acts. Judicial review is only possible by the courts of the State of the administrative decision making organ. According to the jurisprudence of the CJEU, only if it is obvious illegality the recognition of foreign administrative acts can be rejected. If the State of destination considers that the administrative act violates a Community rule, of general application, a proceeding for the breaching of Community law may be initiated before the CJEU, according to the provisions of Article 258 TFEU.

The control of transnational administrative acts raises, therefore, doubts and practical difficulties around ensuring effective judicial protection of third affections - for example, damages suffered from a defective product authorized in another Member State - to the extent in which the judicial review of administrative acts must be exercised by courts of the country of origin of the targeted act (Germany, USA).

However, EU law foresees mutual recognition systems that provide to the administrative acts of the states a transnational character, not only because of its effects, but also because of its jurisdictional review. These rules allow the national courts of the State of destination to control the legality of administrative acts issued by public authorities of other Member States of the EU. This is the case of Regulation 810/2009 of 13 July 2009 establishing Community on Visas (Visa Code) or the rules of space Schengen.
5.9. The questionnaire that was sent to national reporters referred to the Framework Decision 2005/214/JHA of February 24th related to the appliance of the principle of mutual recognition of pecuniary sanctions in order to assess the particularities which raises matters of mutual recognition of onerous administrative acts.

The Decision of 2005/214 refers to administrative sanctions. However, it only refers to those that are actionable in the criminal law. It is a situation not covered by the law of the affected states, as in the case of France or Spain, since their administrative decisions are actionable in civil litigation or in contentious administrative proceedings but not in criminal proceedings. Therefore, in the Spanish regulation, the national development rules do not apply to administrative sanctions whose execution can be obtained in another State of the EU. Moreover, the issue of the recognition of punitive administrative acts does not even arise in those State rights where the imposition of sanctions under EU Decisions has an exclusively criminal character, as in the case of France.

On the other side, the Portuguese legislation related to the adaptation to the provisions of Decision 2005/214 is applicable to all kinds of sanctions, both criminal and administrative. It foresees the possibility of the transmission of administrative penalties imposed in Portugal to other Member States, as well as rules of recognition and enforcement of administrative decisions in Portugal from other Member States.

Other analyzed States provide a specific procedure of acceptance, transmission and register of the execution of foreign administrative acts of punitive nature. That seems to be the case of the Hungarian law XXXVI of 2007 that foresees the enforcement of foreign judgments upon request of the authorities of origin, if the offender has a domicile or residence, property or income in that country.

5.10. The Community principle of mutual recognition has also had an internal effect in the states of complex character, as Spain. Directly influenced by the approach of this principle, the recent Law 20/2013 of Warranty of the Spanish Market Unit has endowed "trans-territorial" character to personal authorizations of economic activities granted by regional administrations. We can speak, in this case of "trans-territorial administrative acts". This has raised doubts in the doctrine about the compatibility of the principle of extraterritorial efficacy of administrative acts and the constitutional distribution of powers between the State and the Autonomous Communities (regions).

Similarly, the Australian national report signalizes the issue of extraterritoriality of administrative acts that also arises internally. This country has been raising the need to give extraterritorial effect to administrative acts of the public authorities of the various states or territories that comprise it, for which efforts have been made to achieve greater harmonization of economic regulation.

5.11. The transnational or trans-territorial character of administrative acts raises matters of constitutional scope in various countries, as evidenced by reporters from Finland or Spain.
As it’s been pointed out, in the case of Spain, the compatibility of extraterritorial efficacy of authorizations with constitutional distribution of competence has been raised by the doctrine. On its site, the Italian report quotes two domestic court judgments where you can glimpse the impact of the principle of mutual recognition and its community development regulation in the constitutional content of university’s autonomy, in this case in relation to the margin of appreciation of Italian universities to deny the recognition of university degrees.

Finally, as it’s been indicated before, the transnational efficacy of administrative acts raise matters about the effective guarantee of the constitutional right to effective judicial protection. The States that participate in the framework of a mutual recognition system must offer an equivalent level of protection for this right. In this sense the role of international courts as the ECHR or the ECJ to ensure the reinforcement and gradual approximation of the national jurisdictions rights and guarantees of the European states.

5.12. The principle of mutual recognition gives transnational efficacy to the administrative acts that require a cross border approach, such as the safety of the products or the completion of the internal market. However, this is not the only possible approach to cross-border perspective that the administrative action must have in the market. As noted by the Italian report, the transnational nature of certain act not only can be derived from the recognition of its extraterritorial effect, but also because of its joint adoption by administrative authorities of different states or international organizations.

In this sense, beyond the outline of the models of direct recognition or of mutual recognition, in the EU a new transnational manifestation is perceived, one that is affecting the classical concept of an administrative act, as a unilateral act issued by the national competent administration. This new model has been named by an Italian reporter as a "transnational model". Administrative acts derived from this model are the result of an international adoption process in which various community authorities and also the ones from different countries intervene. The German national report refers to "composite administrative acts". Its distinctive characteristic is that acts are adopted through a transnational process, as noted by the National Report of Portugal.

This "model of international administrative co-decision" is embodied in certain Community rules that establish authorization regimes, trading or cross-border movement of goods. We quote the following:

As the Italian reporter has highlighted, the adoption of these "composite administrative acts" requires constant international intergovernmental cooperation in the adoption and enforcement of administrative decisions. In the words of the Italian reporter, "[m]utual trust, in other words, does concern only the moment in which a common rule of recognition is established, but extends to the entire administrative processes of adjudication". This new transnational model continues stating the Italian reporter "implies to the mutation not only of rules and techniques, but also of legal theories and conceptual categories."

6. International Conventions on the recognition and execution of International administrative acts and on the legalization of Public Documents

6.1. International conventions develop different models for recognizing administrative acts in supranational fields of interest. In this line, there are agreements that establish standard procedures for the recognition of administrative acts, and other models that foresee mutual recognition.

However, as it was highlighted by the USA report, not all the mutual recognition agreements of foreign administrative acts involve recognition. On one hand, the conformity assessment bodies (CABs) are not considered administrative acts private bodies whose actions May be one der the law of the country where they operate. On the other hand, mutual recognition agreements may call almost for an Exchange of the mutual data gathered by inspections, not for any recognition of the assessment the foreign regulator makes on the basis of that data.

6.2. In the European region, a number of international conventions that develop systems of mutual recognition of acts or administrative documents have been approved. Beyond the European setting some countries have signed and ratified international agreements on limited recognition and enforcement of administrative measures, as it’s pointed out in the report from Brazil, while others deployed intense international cooperation in this field, as seems to be the case of Australia.

Institutionally, the work of the Council of Europe is highlighted. It’s also notable the role of other international organizations such as the North American Free Trade Area (NAFTA), the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) that have driven and even pressured -as it is stated in the US report related to the activity NAFTA and WTO- the States to negotiate mutual recognition agreements (MRAs).

In USA, recognition depends first and foremost on Whether the foreign administrative act is subject to mutual recognition agreements (MRAs) that the United States Enters into with its trading partners. MRAs may include for each participating nation the Commitment to recognize, with respect to goods and services imported from nations partner, the partner nations' inspections and certifications with regard to various standards, including most importantly matters of health and safety and environmental or consumer protection, in lieu of its own inspections. Some of these inspections or certifications may constitute administrative acts. By entering into MRAs to minimize duplicative inspections and certifications in foreign trade, the United States thus agrees to recognize certain
kinds of foreign administrative acts, a commitment that is usually implemented by domestic legislation and regulation, thereby providing a clear legal basis for recognition.

The report of the US emphasizes issues that condition the MRAs to a resource, such as the reluctance of the agencies to accept foreign regulations or conformity assessments instead of their own to share information with other national regulators. Also, the adoption of internal regulations derived from the MRAs can suppose a loss of legitimacy in the administrative action because of the limitation or elimination of the participation paperwork or regulatory proceedings.

6.3. There are some significant examples of international conventions on the recognition and / or enforcement of certain foreign administrative acts listed below:

- Convention on Road Traffic, Viena, 8 de noviembre de 1968.
- European Agreement on the abolition of visas for refugees, Strasbourgo, 20 april 1959.
- European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, Paris, 12 december 1957.

As highlighted by the Italian reporter, some of these agreements foresee mutual recognition models, such as the case of the Road Traffic Convention on (Vienna, November 8th, 1968). According to the self-scheme of the regulatory model the member States admit the validity and efficacy in its territory of the permits issued by other parties o the agreement. They cannot submit these acts to recognition procedures. However, the states can reject the recognition of licenses, for reasons such as age or the violation of the rules of national traffic. As it has been mentioned when speaking of Community secondary legislation, this agreement provides the possibility to except the automatic recognition system when overriding reasons of general interest are at risk, such as the protection of road safety.

6.4 it is also highlighted at regional level, the recognition of agreements of administrative acts signed between the Nordic countries, on tax matters, higher education or driving licenses. Also in the APEC group several initiatives have been developed, in areas of mutual recognition, for example, of electronic and telecommunications equipment. These foresee the automatic recognition of the assessment reports and the certificates of conformity of the products for export, made by the national bodies of conformity assessment. The aim is to avoid duplication of controls and reducing costs for export.

6.5. The recognition of foreign administrative acts is also evidenced through bilateral agreements between States, as expressed profusely in the national reports from Germany, Australia, Poland, Portugal, Russia, Turkey and USA. These agreements are projected on the same topics covered by international
conventions of regional scope: foreigners; free movement of persons; recognition and enforcement of sanctions; mutual administrative assistance, consumer protection; recognition of registration certificates; product approvals; social security; decisions on the stock market, etc..

The Australian national report provides information of the agreements or mutual recognition agreements between Australia and the EU, which apply to administrative acts for the verification of conformity of products. These bodies verify the compliance at source of the target regulation by certain products that are exported. In this case the transnational element of the acts does not only brings us to the efficacy of the act in the country or countries of destination but also the fact that the foreign administrative act itself applies the proper regulation of the country or market of destination.

The USA report alludes, among other things, the bilateral agreement with Australia, adopted in 2008 which involves a mutual equivalency regime for stock brokers and stock exchanges. Australian and USA exchanges and brokers are exempted from the usual national registration requirements. The national report mentions that this type of agreement allow the recognition of foreign administrative acts, also they show the difficulty of sustaining or expanding such programs of mutual recognition.

6.6. Besides the issue of recognition of foreign administrative acts, the questionnaire that has been the basis for this comprehensive report has raised issues about the level of implementation of international conventions that legalize administrative documents. There are multiple international agreements that eliminate the requirement of the legalization of administrative documents, between those, the role of the Apostille Convention is highlighted.

There are also international agreements that eliminate the requirement of legalization of certain administrative documents, as the documents executed by the diplomatic -European Convention on the Abolition way of Legalization on Documents Executed by Diplomatic Agents or Officers, London, June 7, 1968-; requests for notification of foreing administrative acts -European Convention on the Service Abroad Documents relating to Administrative Matters , November 24, 1977-; or requests for administrative assistance from third States -European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters of march 15 of 1978 -.  

6.7. Most of the countries analyzed have joined to the Hague Convention abolishing the requirement of legalization for foreign public documents, concluded on 5 October 1961 in The Hague (Apostille Convention). As we have noted, the agreement eliminates the requirements of legalization of administrative documents, which is replaced by the apostille authentication. This certifies the authenticity of the signature of the public document and the capacity of the person signing, but does it does not prove the authenticity of the content of the document.

6.8. The Administrative documents are authenticated by apostille, depending on the country and the nature of the document, by a notary, judicial authorities / or administrative bodies. In any case, the allocation of the power to grant the apostille is linked to the legal nature of the documents to be annotated and the nature of the
authority or institution of origin (courts, notaries or public administrations). The Australian report notes that Apostille service may, in addition to public authorities, provided by private companies.

6.9. Some states that have been analyzed, as the case of Spain and France, have an electronic procedure to issue the apostille and electronic records for its register. In Spain the implementation of the electronic Apostille procedure is gradually spreading among the different administrative authorities with competence to issue them. Other States have foreseen this possibility in their internal regulation of the Convention but they have not developed the system yet. In general, we can conclude that the development of electronic procedures has not been widespread in this field, as it is shown by the fact that most of the reports warn that this is not foreseen in their national legislation.

6.10. In accordance with the acts issued by states that are not considered as a party in the Apostille Convention to the public documents that fall outside its scope, the States foresees specific procedures of legalization designed to ensure that the act has been issued by the competent authority of the foreign transmitting State of the decision -as emphasized, for example, on the reports from Australia, Finland, Greece and Portugal-. In these processes the consular authorities of the state of destination or ad hoc national certification authorities are involved. Some national reports consider that these legalization proceedings are expensive and slow, but of great importance for countries with special ties with regions or countries adhered to the Apostille Convention. This is the case of Portugal, since most of the Portuguese-speaking countries are not parties of the Apostille Convention.

National reports also describe procedures and rules for the certification of translations of foreign public documents, as well as the Portugal or Sweden reports indicate. Furthermore, there are procedures oriented to certify documents or the signing of national acts that aim to produce effects abroad, as it is credited in the Finland report.

7. Doctrinal treatment of the subject of foreign administrative acts

7.1. In general, the specific matter of the transnational administrative act has been poorly treated by the administrative doctrine of the countries that have been analyzed, except in some countries like Germany or Sweden. The professors of private international law have addressed this issue further, as indicated in the reports of France or Portugal.

In recent years, a progressive development of the doctrine in linked matters, as the issue of global public law (Spain, France, Greece, Poland, Portugal) has been appreciated. Also, the administrative doctrines of different countries that have been analyzed is paying increasing attention to the European administrative law and its implications for the general dogmatic about the act and the administrative procedure.

7.2. The development of the questionnaire and the findings of the national reports
allows us to conclude that it is necessary to deepen the study of the transnational administrative act, paying particular attention to how it affects the conception of the administrative act in different legal cultures and their potential impact on procedural rights and judicial guarantees of the recipients of such acts. It is also necessary to give greater impetus, in some countries, to legal research on the impact of Community law in the characterization and extraterritorial effects of national administrative acts.