WHAT DOES IT MEAN PUBLIC ADMINISTRATION REFORMS FOR THE EU INTEGRATION

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THE RELATION BETWEEN PUBLIC ADMINISTRATION REFORMS AND EUROPEAN INTEGRATION

Integration into the European Union can only occur if democratic systems of governance and market economies are in place. Integration complements and reinforces these through major political activities which involves both governments and all leading political and social forces. This process once started and is underway then it can be considered irreversible, but it, too, adds constraints and tasks onto already over-burdened public administrations[1]. Hence there are certain requirements for state administration which are posed by the integration process.

As accession approaches for the candidate countries, the link between European integration and public administration reform becomes stronger. Significantly, the European Commission places great emphasis in the *avis* on the capacity of Member States' administrations to implement the body of European law (the *acquis communautaire*) on schedule, which this had been also an issue in previous waves of accessions. The link between European Integration and public administration reforms is an indirect one since there is no general body of European law in the public administration sphere. Just as individual Member States are free to frame their own constitution, they are also free to organize their own public administration as they see fit. This is an issue that comes under the subsidiarity principle. In actual fact, public administration structures and regulations vary a great deal among the present EU Member States[2].

Indirect though it may be, the link between accession and public administration reform is nonetheless very real. Member States must be able to implement EU policies and legislation in their own countries. To do so, they must have an administration that performs well. This is a very important requirement for the EU as a whole and for its individual Member States. The Union has no administration at individual country level and therefore relies on each Member State to implement its decisions. In the same way, the individual Member States depend on each other to implement Community regulations.

The EU administration is in fact a chain of national administrations. That chain is only as strong as its weakest link. While candidate countries are not under any requirement as to the means they use[3], they do have to satisfy what lawyers call "performance requirements" or "obligation of results". Central and eastern European countries, prior to their integration, made great progress on public

[1] SIGMA Papers: No. 23. Preparing Public Administrations for the European Administrative Space
[2] SIGMA Papers, No. 23 (1999), Preparing Public Administrations for the European Administrative Space, OECD, Paris, 1998
[3] No-one dictates how they should organise their public administration

administration reform. Several countries defined an overall reform strategy. Almost every country made an effort to organize government affairs efficiently and to improve decision-making processes. Legislation on the civil service was already been introduced or was in the process of being drafted. Regulations on taxation and public procurement were clarified. Internal and external checks and balances were put in place. In short, the main elements of the rule of law in a democratic system were being put in place.

The Commission, as its mandate requires, closely reviews the situation in Community policy areas[4]. It usually finds serious inadequacies in most of the reviewed fields. Apart from the sector-specific inadequacies, other more general criticism emerges, although the Commission is careful not to impose a model: a lack of a coherent overall plan for administrative reform in several countries; poor legislation, resources and morale in the civil service; failures in inter-ministerial co-ordination; and weaknesses in the fight against fraud, corruption and crime, which are part of the European Commission criticism.

The first requirement posed by the integration process for the state administration was laid out in the 1993 Copenhagen criteria, which *inter alia* required stability of institutions guaranteeing democracy and the rule of law, as well as adopting the European Community legislation i.e. *acquis communautaire* which implies the need for effective institutions of public administration. In this way, during the fifth enlargement, the European Union has identified the weakness of state institutions of Central and Eastern European states as one of the key obstacles on the road to accession, prescribing a strengthening of their capacities through the institution building as one of pre-accession criteria. The term "institution building" was introduced in 1997 in the context of enlargement towards Central and Eastern Europe, requiring the enhancement of institutional capacity in order to meet the third Copenhagen criterion focusing on the transposition of the EU's *acquis communautaire*[5].

In December 1995 the Madrid European Council[6] concluded that the adoption of the *acquis communautaire* would not be sufficient for the membership, reiterating that the adjustment of EU administrative structures is a part of pre-accession conditionality. Consequently, the European Council in Madrid stressed the need for meeting the assumed commitments resulting from EU membership through the implementation of the transposed provisions of the *acquis communautaire*. The second criterion defined at the meeting in Madrid linked transposition of *acquis* into national legislation and its implementation to effectiveness of administrative and judicial structures of applicant countries. In other words, in order to accede to the EU, applicant countries were asked to strengthen their administrative capacity. Doing so, the EU has established administrative capacity as an essential prerequisite of membership. One could argue that the establishment of Madrid conditions on pre-

[4] Such as the regulation of competition, telecommunications, indirect taxation, veterinary and plant health controls, transport, labour inspection, environment, consumer protection, border controls, international police/judicial co-operation, customs, financial audits, etc.

[5] Petričušić, Antonija (2006): Institutional (In)capacity of Croatian Public Administration in EU Accession Process, *Paper prepared for the Jean Monnet Conference, 30 June - 1 July 2006, (*Macedonian path toward EU integration is similar to the path which Croatian is following, therefore certain parts from the above mentioned paper are applicable also for Macedonia, on its way to EU integration and the criteria's concerning the reforms of the public administration with the basic public administration values and principles of that to EU members states)

[6] The European Council [Madrid Summit 1995], Madrid, 15-16 December 1995

accession criteria constituted a basis for establishing the mutual trust required by EU membership, as the functional administrative capacity would allow for the implementation of the *acquis communautaire*. Since then this requirement has been reiterated in various forms and in stricter terms in consequent EU official documents dealing with the issue of enlargement[7].

The third component of the pre-accession administrative criteria is related to an acquisition of the principles which make up the European Administrative Space (EAS)[8]. The European Administrative Space can be described as "constant contact amongst public servants of member states and the Commission, the requirement to develop and implement the *acquis communautaire* at equivalent standards of reliability across the Union, the emergence of a Europe-wide system of administrative justice, and shared basic public administration values and principles"[9].

Francisco Cardona groups European administration key principles into four categories. The first one being the rule of law is explained as a legal certainty and predictability of administrative actions and decisions. It refers to the principle of legality as opposing arbitrariness in public decision making and to the need of respecting legitimate expectations of individuals. The second principle is openness and transparency aimed at securing sound scrutiny of administrative processes and outcome and its consistency with pre-established rules. The third principle relates to accountability of public administration to other administrative, legislative or judicial authorities, and is aimed at ensuring compliance with the rule of law. And finally, the fourth principle implies efficiency in the use of public resources and effectiveness in accomplishing the policy goals established in legislation and in enforcing legislation[10].

Some principles of common administrative procedure can be also found in primary Treaty law and in rather detailed written sources of secondary law for competition policy, for the control of national subsidies, for the regulation of the Community's own civil service and the rights of defence[11]. Administrative co-operation between member states has an impact in terms of social intercourse, the development of common methods and approaches and the invention of new instruments. In other words, the Community law affects basic principles, the process of opening up careers and working conditions for civil servants in all member states.

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[7] For example, the Feira European Council in June 2000 emphasized: "The Progress in negotiations depends on the incorporation by the candidate States of the acquis in their national legislation and especially on their capacity to effectively implement and enforce it."

[8] You will read more about the European Administrative Space at the later stage of this paper (as the separate title). A detailed account of administrative law principles in connection to the European Administrative Space can be found in SIGMA Papers No. 27: "European Principles for Public Administration", OECD, Paris, 1998. See also SIGMA Paper No. 23, "Preparing Public Administrations for the European Administrative Space", OECD, Paris, 1998.

[9] SIGMA Papers, No. 23 (1999), Preparing Public Administrations for the European Administrative Space, OECD, Paris, 1998. See also Nicolaides, Phedon, Enlargement of the European Union and Effective Implementation of its Rules. Maastrich: EIPA

[10] Francisco Cardona, Elements of the Public Administration Integrity System in EU Member States, SIGMA /OECD Paper, at http://www.ipaei.government.bg/articles/Francisko_Kardona.doc. Compare also with Anamarija Musa, Europski upravni prostor: Približavanje nacionalnih uprava, (European Administrative Space: Convergence of National Administrations)

[11] Jürgen Schwarze, Judicial Review of European Administrative Procedure, at http://www.law.duke.edu/journals/lcp/articles/lcp68dwinter2004p85.htm

Finally, the fourth set of criteria a state administration of the candidate country must adhere to in the pre-accession process and afterwards relate to the case law of the European Court of Justice, i.e. directly applicable regulations or of directives, having a direct impact on Member States' institutional arrangements, processes, common administrative standards and civil service values contributes to a creation of a common European Administrative Space. Certain principles of good administration of the European Administrative Space were defined and refined through the jurisprudence of national courts and by the jurisprudence of the European Court of Justice that shapes common administrative law principles within the EU, relying on already general administrative law principles, accepted and refined by national courts of EU Member States, and particularly by concepts stemming from French administrative law. The interpretation of relevant European Commission law provisions by the European Court leads to modifications in the way principles of administrative law are understood within a Member State. Francisco Cardona claims this is a "common *acquis* of legal administrative principles developed by the European Court of Justice"[12].

Above stated four sets criteria the candidate countries must adhere to, prove that the absence of a formal legal body that would regulate public administration at the level of the Union, as well as the lack of common administrative procedural rules and unique institutional arrangements does not mean that European supranational administrative law is inexistent. It exists as a "non-formalised *acquis communautaire*" made up of administrative law principles, even though without formal convention[13].

Institution-building was given a high priority in several previous enlargement processes[14] but particularly during the latest enlargement process that allowed Central and Eastern European countries to join the EU in 2004. Candidate countries of that time were asked to develop their administrations to reach the level of reliability of the European Administrative Space and an acceptable threshold of shared principles, procedures and administrative structural arrangements. In addition, candidates were asked in the latest enlargement not only to attain a minimum standard of quality and reliability of public administration but also to reach the future average level of quality of its public administration of Member States[15].

The administrative capacity to take on the obligations of membership has become an important criterion for EU membership. The Commission Opinion on the EU membership applications of the candidate Member States confirms the trend towards the increasing importance of administrative capacities as an aspect of EU membership.

As described above, the link between European integration and administrative reform is not as obvious as it might seem. Administrative capacities are obviously not the main criterion on which the

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[12] Petričušić, Antonija (2006): Institutional (In)capacity of Croatian Public Administration in EU Accession Process, *Paper prepared for the Jean Monnet Conference, 30 June - 1 July 2006*.
[13] SIGMA Papers, No. 27 (1999), European Principles for Public Administration
[14] In 1986 when Portugal and Spain joined the EU, in 1995 when Austria, Finland and Sweden joined the Union
[15] SIGMA Papers, No. 27, *ibid*., pp.15 See also Jürgen Schwarze (Ed.), Administrative Law under European Influence: On the Convergence of the Administrative Laws of the EU Member States, Nomos, Baden-Baden, and Sweet and Maxwell (1996), London

membership applications for the countries of the previous enlargements have been judged. However, even if membership is not conditional on the quality of the administration, a high-quality administration is required to meet the other conditions set out in the *avis*. It is therefore important that the relationship between European integration and administrative reform is not only acknowledged but also operationalised in practical terms[16].

From the previous enlargements, it can be concluded that it is crucial for the countries concerned to be able to *retain control over the reform of their public administration*. The countries themselves must be the "driving force" behind reforms in the public administration. This is in line with the principles governing relations between European Union and candidate Member States. Reforms can only work if it is based on perfect local knowledge of the country concerned and if those who will be implementing reform take ownership of it.

CONDITIONALITY AS EU MECHANISM FOR SUCCESSFUL INTEGRATION

The development of conditionality in the enlargement process is one of its most significant features. Of course there had always been EU project conditionality applied to the grant financing made available to third countries. The Phare Programme, which was agreed in 1989, just after the first free election in Poland and the opening of the Iron Curtain in Hungary, applied conditions to the granting and use of funds[17]. Conditions have been applied to all the other grant programmes which have followed Phare, and generally this conditionality has become stricter over time. However, it is the conditions attached to the accession process which are more relevant here.

The main condition for accession to the European Union has always been the adoption of the *acquis communautaire*. Negotiations have been about the details of when, and sometimes how, the *acquis* was to be adopted. The Union has rarely changed policy because of the accession of a new Member State or allowed incoming countries to derogate permanently from the *acquis*[18].

In the case of the countries of Central and Eastern Europe, coming from a different political and economic system and being considerably poorer than the EU-15, the Union considered it appropriate to reconsider the conditions for accession. At the Copenhagen European Council in 1993, the Member States recognised the right of accession for the countries of Central and Eastern Europe, but they also spelled out the conditions which the countries would have to meet before acceding[19].

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[16] Micheal Schmidt and Lothar Knopp (2004), Reform in the CEE-Countries with regard to European Enlargement

[17] Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic

[18] SIGMA Paper No. 37 (2007), Enlargement of the European Union: An Analysis of the Negotiations for Countries of the Western Balkans, (SIGMA is a joint intiative of the OECD Centre for Co-operation with Non-Member Economies and the European Union's Phare Programme. The initiative supports public administration reform efforts in thirteen countries in transition, and is principally financed by Phare)

[19] Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union.

The Copenhagen criteria (see table 9) are essentially political, economic and institutional ones.

Table 9: Criteria for Accession to the European Union

Copenhagen criteria:

1. existence of democracy and the observation of human rights and protection of minorities

2. existence of a market economy, ability to cope with competitive pressures from the EU

3. ability to take on the responsibility of membership (to implement the *acquis communautaire*)

4. the capacity of the EU to absorb new members

Madrid "criterion"

The Madrid Council conclusions also mentioned "*the adjustment of their administrative structures*" as an important element in the preparation for accession, although not as a condition.

Source: SIGMA Paper No. 37(2005), the Preparation of Countries in South East Europe for Integration into the European Union

As we can see, the conditions for EU integration according to the Copenhagen Criteria's are rather vague. This has the advantage for the Union that they leave a lot of scope for interpretation. This was indeed the express objective of the Member States when decisions were made at Copenhagen. More specific or indeed quantitative conditions would have led to automatic opening of accession negotiations once the conditions had been fulfilled. The advantage of the Copenhagen criteria, from EU perspective, is that they can always be considered as unfulfilled in some detail or other.

The political criteria concern the sharing of the basic values of the Union and the demonstration of these shared values in public life. Essentially these values are a common view on human and minority rights and freedom, administrative capacity, democracy and the rule of law. They have since been incorporated into article 6 of the EU Treaty.

In its relations with the Western Balkan states, it has also been the political criteria which have been uppermost in the minds of EU Member States. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), implementation of the Ohrid Framework Agreement (OFA)[20] in Macedonia, the protection of minorities, the resettlement of refugees, and the capacity of countries in the region to work constructively together have all been key conditions for deeper integration.

Until these criteria are met, there is little chance of the Union agreeing to negotiate accession or indeed to deepen integration. This has been made very clear in relations with both Croatia and Serbia.

[20] Ohrid Framework Agreement (OFA) signed on 2001

Croatia was recognized as a "candidate country" at the end of 2004, but the opening of negotiations was delayed until spring of 2005 subject to Croatia cooperating fully with ICTY[21]. The following spring, however, the EU did not consider that this criterion had been met and did not agree to open negotiations. It was only in the autumn of 2005, when the Chief Prosecutor in The Hague declared that Croatia was fully co-operating, that negotiations were opened. The same happens with Macedonia when on November 9, 2005 the European Commission recommended that Macedonia became a candidate country, formally naming the country as an official candidate, but no date for starting negotiations has been announced yet.

The economic criteria concern the establishment of the market economy, the implementation of EU competition and state aid policies, and the capacity to ensure that the rules of the EU internal market are applied. The crucial elements of the economic criteria are the overall competence of a state to run a stability-oriented macroeconomic policy and proven capacity to carry out structural reforms and to ensure that economic regulation is supporting the smooth functioning of the Union's internal market.

The interest of EU Member States is to ensure that the acceding country will not be a cause of economic problems once it becomes a member. These problems might occur because:

- macroeconomic policy, rather than being aimed at stability, is used as a political tool;
- structural reform is not progressing perhaps because privatisation is either progressing too slowly or is being undertaken in a less than optimal manner;
- institutional reform, such as the independence of the monetary authority or the imposition of EU competition policy or state aid control, is not taking place.

Economic conditionality is important but is less sensitive than political conditionality. The "market economy" is itself a very loose term. It includes relatively "statistic" Member States, which still have significant state sectors and which are attached to the concept of state provision of "public services", as well as very liberal states, which have essentially privatised the whole economy and believe in minimal regulation of the economy. The Union can therefore judge economic reforms in acceding countries more positively or more harshly depending on whether it senses that reforms are genuine and long-lasting or rather more cosmetic.

For countries of the Western Balkans, the economic criteria may prove difficult to meet, judging from the present situation described in the Commission's most recent Progress Reports.[22]

The institutional conditions are essentially about the capacity to adopt and implement the *acquis communautaire*. The appropriateness, efficiency and public acceptance of institutions proved to be key problems in the fifth enlargement. Accession requires the reform or abolition of certain existing

[21] COMMUNICATION FROM THE COMMISSION (20.04.2004), Opinion on Croatia's Application for Membership of the European Union, Brussels

[22] European Commission (November 2007), Enlargement Strategy and Main Challenges 2007-2008 (including progress reports on Western Balkan countries and Turkey)

institutions and in certain cases the creation of new ones. The reform of existing institutions and the reforms in the *public administration* can be a very difficult and long process. Perhaps the reform of the judiciary is a good example. For many of the countries acceding to the EU since 1989, a complete reform of the judiciary was a necessary component of the reform of the one party state to a multi-party democracy with the rule of law. Judges had to be retrained in order to be able to function in the new system. The introduction of the *acquis communautaire* led to further changes in the legal framework, requiring more retraining. Still today, of course many of the judges in Central and Eastern Europe and in the Western Balkans were trained in a totally different legal system and tradition, and while change is happening, it can be slow and complicated. The inefficiencies of the judiciary have made it hard for companies, including foreign investors, to establish the legal implication of contracts. With the establishment of new institutions, the problem of public acceptance frequently arises. It takes time for institutions to gain public recognition and to be taken seriously. This process of building public trust may take many years and can be slowed down if institutions are considered to have made serious errors in their early years.

The institutional conditions for EU accession require several different elements:

- efficiency of the government to plan the adoption of the *acquis* in an orderly sequence;
- quality of the legal proposals which are drawn up;
- efficiency and quality of parliament in passing the necessary legislation;
- effectiveness of institutions charged with the implementation of the acquis and administrative capacity for its implementation;
- ability of the judiciary to deal with European law and to provide speedy, objective jurisdiction that is free of political bias.

These elements constitute the core of the hard work in preparing for accession. The administrative capacity of a candidate country is judged on whether it has lived up to the promises it has made on *acquis* implementation.

The fourth Copenhagen criterion, the capacity of the Union to accept new members**,** has recently been raised seriously by certain Member States, which are concerned that the rapid enlargement of the Union is leading to a dilution of its integration.[23]

In the specific case of the Western Balkan countries, additional criteria, resulting from the recent history of the region, apply. These "Stabilisation and Association process" conditions include full co-operation with the ICTY, implementation of the Ohrid Framework Agreement (OFA), a commitment to good neighbourly relations and the development of regional co-operation, and the resolution of any outstanding border disputes.

However, it can be easily said that the Copenhagen conditions still form the heart of EU conditionality. What has changed over the years is the way in which these conditions are monitored.

[23] Op.cit.

THE EUROPEAN ADMINISTRATIVE SPACE (EAS)

In discussions on the changes underway in public administration in contemporary European countries, two notions crop up increasingly often: the Europeanization of the sector and the European Administrative Space.

The idea of a "European Administrative Space" was put forward by SIGMA[24] in 1998. According to SIGMA, which was created within the OECD[25] in 1992 but is financed primarily by the European Union, "it is clear that a 'European Administrative Space' is has begin to emerge"[26]. SIGMA reached similar conclusions in 2000[27] also. According to a new study, the European Court of Justice's strict interpretation of Article 39 (4) of the European Commission Treaty and of the concept of "public administration" will lead to the creation of an administrative space in the Member States. This concept was expounded upon by the International Institute of Administrative Sciences' European Group of Public Administration (EGPA) in 2002, during a conference in Potsdam entitled "The European Administrative Space: Governance in Diversity". Yet the research that has been conducted to date has not fully answered the question, and since 2001 some researchers have even looked at the limits of the theory of the creation of a European administrative space[28].

Since 1998 onwards the thinking about the European administrative space appeared to be very directly linked to the preparation of the European Union's enlargement, which raised the question of the candidate countries' *administrative capacity* for the first time. This is the specific context in which the Commission started demanding detailed public administration reforms in the accession States, reforms from which the administrative organization, personnel structure and legal foundations of the civil service could not be exempted.

Under the EU system, national public administrations play a very important role. They are responsible for implementing and controlling execution of European Community policies in all of the European Union States on behalf of their respective governments. While the EU has a central administration, it does not have external agencies. It depends on national governments for the implementation of its directives and regulations. And because of rules such as mutual recognition, each Member government depends on the quality of execution of community policy by its partners in order to fulfill its own domestic responsibilities.

Although public administrations in the European States are old structures, they have continuously adapted to modern conditions including EU Membership, which is itself evolving. Constant contact

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[24] SIGMA (Support for Improvement in Governance and Management in Central and Eastern European Countries) is a joint initiative of the OECD's Centre for Co-operation with Non-Members (CCNM) and the European Union's PHARE programme

[25] The Organisation for Economic Co-operation and Development (OECD) is an intergovernmental organisation of 29 democracies with advanced market economies. Its Centre for Co-operation with Non-Members channels the Organisation's advice and assistance over a wide range of economic issues to reforming countries in Central and Eastern Europe and the former Soviet Union.

[26] Preparing Public Administrations for the European Administrative Space (no. 23, 1998), SIGMA papers, OECD.

[27] Nizzo, C., National Public Administration and European Integration (2000), OECD-SIGMA , Paris

[28] Grabbe, H., "How does Europeanization affect CEE governance? Conditionality, diffusion and diversity" (2002), *Journal of European Public Policy*; See also Demmke, C., Undefined Boundaries and Grey Areas: The Evolving Interaction between the EU and National Public Services

amongst public servants of Member States and the European Commission, the requirement to develop and implement the *acquis communautaire* at equivalent standards of reliability across the European Union, the emergence of a Europe-wide system of administrative justice, and shared basic public administration values and principles, have led to some convergence amongst national administrations. This has been described as the "European Administrative Space"[29].

In addition, in order to implement EU decisions, the public servants of Member States meet frequently. They get to know each other and share views and experiences. Patterns of communication develop which have an impact on decision-making, so that common solutions are often found. Officials and experts from European States are becoming used to examining issues jointly, including those having to do with public administration. A European administrative space is emerging with its own traditions which build on but surpass the distinctive administrative traditions of the Union. Administrative reliability, which is necessary for the rule of law, effective implementation of policy and economic development, is one of the key characteristics of this space. All of this evidently presupposes a well-performing public administration. Administrative capabilities and how these are to be evaluated are likely to be issues behind the formal process of negotiation for accession[30].

Legal systems of EU Member States are undergoing a process of constant approximation in many different fields under the influence of Community law, i.e., through the legislative activity of Community institutions and through case law of the European Court of Justice. Community law concepts are introduced into national systems by means of directly applicable regulations or of directives, which first have to be transposed into national law. Regulations and directives both have a direct impact on Member States' administrative systems and can lead to important changes in the legal principles applicable to public administration in a given specific policy sector[31].

The case law of the European Court of Justice can establish principles of a more general nature, which are applicable in more than just a single substantive field of law. Furthermore, in many cases it is the interpretation of relevant EC law provisions by the European Court that leads to modifications in the way principles of administrative law are understood within a Member State[32].

This allows recording a sort of Europeanisation of administrative law as an outstanding element of recent legal developments.

All of this said above, demonstrates the emergence of a European Administrative Space, which mainly concerns basic institutional arrangements, processes, common administrative standards and civil service values. This list is far from complete, and there are significant quality differences amongst the Members. Indeed, the problems raised by these differences amongst Member States is one of the main reasons why institution-building has been given such a high priority in the enlargement process towards Central and Eastern Europe and South East Europe. Candidate countries need to develop their administrations to reach the level of reliability of the European Administrative

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[29] See SIGMA Papers, No. 23, *Preparing Public Administrations for the European Administrative Space*, OECD, Paris, 1998.
[30] *Ibid*
[31] Johan P. Olsen (2003), *Towards a European Administrative Space?* Journal of European Public Policy
[32] See J. Schwarze (ed.), *Administrative Law under European Influence: On the Convergence of the Administrative Laws of the EU Member States*, Nomos, Baden-Baden, and Sweet and Maxwell, London, 1996.

Space and an acceptable threshold of shared principles, procedures and administrative structural arrangements. There is a minimum standard of quality and reliability of public administration that candidate countries should attain[33].

A common administrative space, properly speaking, is possible when a set of administrative principles, rules, and regulations are uniformly enforced in a given territory covered by a national constitution. Traditionally, the territory where administrative law has been applicable has been that of the sovereign states. The issue of a common administrative law for all the sovereign states integrated into the European Union has been a matter for debate, unevenly intensive, since the outset of the European Community. No common agreement yet exists.

It is clear that a "European Administrative Space" has emerged already. The gradual emergence of this "space", which does not impose standards, is a logical step forward in the construction of the European Union. National governments meet, compare notes and join forces to draw up and enforce EU standards. It is quite natural that they should increasingly influence each other.

THE INFLUENECE OF THE EU IN THE PUBLIC ADMINISTRATION REFORMS

The EU accession involves many different processes that effect some degree of administrative, institutional and policy transformation in the candidate countries and in the new members' states. The most important mechanism is the EU's gate- keeping role (see below) in determining when each candidate can progress to the next stage towards accession. However, there are many other measures that directly or indirectly shape institutional reform and increase the organizational capacity of the candidate countries public sectors[34]. EU is using mechanisms or conditionality tools for effecting changes in the candidate countries throughout the accession process. These mechanisms could be grouped into following five categories:

- Gate-keeping: access to negotiations and further stages in the accession process
- Benchmarking and monitoring
- Models: provision of legislative and institutional templates
- Money: aid and technical assistance
- Advice and twinning.

[33] OECD/Sigma Papers No. 27 (1999), European principles for public administration, Paris. See also Johan P. Olsen (2003), *Towards a European Administrative Space?* Journal of European Public Policy

[34] Grabbe, Heather (May 2007) How does Europeanization affect CEE governance? Conditionality, diffusion and diversity, Journal of European Public Policy

Gate-keeping: access to negotiations and further stages in the accession process

The Europeans Union's most powerful conditionality tool is access to different stages in the accession process, particularly achieving candidate status and starting negotiations. Aid, trade and other benefits can also be used to promote domestic policy changes and administration reforms changes but they have not had such direct and evident consequences as progress towards membership. It has taken a decade for the EU to evolve an explicit use of conditionality in a gate-keeping role, where hurdles in the accession process are related to meeting specific conditions. For several years after the conditions were first set in 1993[35], it was not clear exactly which elements of the political and economic conditions had to be fulfilled for an applicant to be admitted to which benefits.

Although access to negotiations and other stages in the accession process is the EU's most powerful political tool for enforcing compliance, it is not a precise instrument that can target complex changes in institutional frameworks. Rather, it is a blunt weapon that has to be used judiciously for priority areas only. Its main value is as a shock tactic, to embarrass applicant governments into making dramatic changes owing to the domestic repercussions of failing to meet a major foreign policy goal. This results in 'shaming', whereby governments are embarrassed into complying with EU requirements by the international and domestic press coverage and political pressure.

In the cases of the CEE countries, criticisms made in EU reports had a powerful impact on domestic debates about public policy and the government's political fortunes. Conversely, gaining international approval was an important way of legitimizing political choices in the post-communist context. The EU has also made exceptional criticisms of undemocratic practices in particular countries in *démarches*[36], i.e. public criticisms that intended to embarrass CEE governments into making particular institutional or policy changes. *Démarches* are a form of 'nuclear weapon' that is only used for very serious breaches of the conditions, such as human or minority rights abuses. The EU has the right to decide on the exclusion from negotiations of certain country if not met the conditionality or other conditions[37].

Exclusion is a risky tactic, because the EU's own credibility is at stake: it can effect change only if it is credible that the applicant's failure to meet one of the conditions is the reason behind the exclusion from the next stage of the accession process, not any other political or economic motivations. Moreover, it is risky because the candidate country governments may not respond by complying with EU demands, but instead use the tactic of blaming the EU for unfair discrimination and appealing to national pride[38]. The sanction only works if governments and political ´elites as a whole are committed to EU accession. In other words, the conditionality only works as a carrot, not as a stick.

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[35] European Council in Copenhagen 21-22 June 1993 Conclusions of the EU Presidency

[36] *Démarches* are serious public criticisms, issued as part of EU foreign policy after unanimous intergovernmental agreement between the member states.

[37] This happened in 1997, for example when Slovakia was not allowed to join the first round of negotiations, as the only candidate judged not to meet the democracy criteria. The EU's disapprobation was expressed in several *démarches* which had an impact on the Slovak elections in autumn 1998, when the government of Prime Minister Vladimir Meciar was voted out. Following the change of government in 1998, Slovakia was allowed into EU negotiations in 2000.

[38] Schimmelfennig, Frank (2001) 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organisation*

These factors make it difficult for the EU to use exclusion and gate-keeping to shape aspects of governance that tend to require sustained and consistent pressure at a deeper level within national administrations and its reforms. Moreover, given the risks involved, it is not worth using this major weapon except for high political issues, and governance only becomes one of them when it involves evidently undemocratic practices and abuse of human rights. However, EU actors can use the threat of exclusion or the prospect of slowing progress to encourage particular changes in governance structures at the candidate countries[39].

Benchmarking and monitoring

The EU has more specific conditionality instruments beyond gate-keeping. As a consequence of the salience of EU accession in enlargement political debates, the EU can influence policy and institutional development through ranking the applicants' overall progress, benchmarking in particular policy areas, and providing examples of best practice that the applicants seek to follow. A key mechanism for this part of conditionality is the cycle of 'Accession Partnerships' and 'Regular Reports' published by the European Commission on how prepared each country applicant is in different fields. Conditionality for aid and other benefits is based on implementing the Accession Partnerships issued to each applicant. These documents provide a direct lever on policymaking in applicant countries by setting out a list of policy 'priorities' that have to be implemented within the year or in the medium term[40].

The European Commission then reports on the applicants' progress in meeting each priority including the reforms in the field of public administration in the autumn of the year, and publishes revised Accession Partnerships for the following year. In relation to governance, the most important aspects are the Commission's assessments of administrative capacity and institutional ability to implement and enforce the *acquis*, and to distribute and manage funds. However, the goals are often vague; citing a need for 'increasing administrative capacity' or 'improving training', rather than stating detailed institutional preferences.

Models: provision of legislative and institutional templates

Legal transposition of the *acquis* and harmonization with European Union laws are essential to becoming a member state, and they have so far been the central focus of the accession process and preparations by the candidates. Legislative gaps and institutional weaknesses are also identified by the screening process that is taking place with each applicant prior to negotiations on the thirty-one negotiating 'chapters'. The EU promotes both the strengthening of existing institutions and the establishment of new ones[41].

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[39] Grabbe, Heather (March 2002) Europeanisation Goes East: Power and Uncertainty in the EU Accession Process, Centre for European Reform, London, and Wolfson College, Oxford

[40] Defined as period of time of five years

[41] Grabbe, Heather (March 2002) Europeanisation Goes East: Power and Uncertainty in the EU Accession Process, Centre for European Reform, London, and Wolfson College, Oxford see also Grabbe, Heather (May 2007) How does Europeanization affect CEE governance? Conditionality, diffusion and diversity, Journal of European Public Policy

The most detailed guide to the EU's preferences on public administrations has been provided in an informal working document produced by the European Commission in September 2000 (and subsequently updated), which sets out the main administrative structures required for implementing the *acquis*. The document describes the institutions required to implement the various chapters of the *acquis*, their functions, and the characteristics they must have to fulfill those functions. It covers not only areas outside the *acquis*, but also others which the Commission considers necessary for its effective implementation. For example, the document lists the 'common elements' among member states' varying labour market institutions. This document's status is indicative of the EU's uncertainty about how far to go in providing detailed institutional preferences. It remains an unofficial paper, 'for information purposes only', and explicitly states that 'it should not be construed as committing the European Commission'. This reluctance demonstrates the political sensitivity of defining specific administrative models in areas where member states' administrations remain so diverse. It shows up how the policies for for applicant countries were originally designed for economic transition, not political. It also reflects the EU's general desire to retain flexibility in deciding when a country is ready to join. The Commission cannot pre-judge the Council's view on what might be acceptable or unacceptable in a prospective member state. However, Commission actors can communicate their preferences informally to different parts of the public administration in the applicant countries.

Aid and technical assistance

The EU is the largest external source of aid for applicant countries, providing funds administered by the European Commission and also bilateral programmes from individual member states. Support is also available to public authorities and non-governmental organizations to help fulfill the requirements of the Copenhagen political condition on democratic institutions. EU aid – both current receipts and the prospect of future transfers – has a direct impact in creating new governance structures because of the EU's insistence that particular administrative units and procedures be created to receive transfers.

Advice and twinning

The European Union has provided a wide range of policy advice to candidate countries through the technical assistance offered by the Phare programme[42], and through the twinning programme[43].

[42] The Programme of Community aid to the countries of Central and Eastern Europe (Phare) is the main financial instrument of the pre-accession strategy for the Central and Eastern European countries (CEECs) which have applied for membership of the European Union. Since 1994, Phare's tasks have been adapted to the priorities and needs of each CEEC. The revamped Phare programme, with a budget of over EUR 10 billion for the period 2000-2006 (about 1.5 billion per year), has two main priorities, namely institutional and capacity-building and investment financing. Although the Phare programme was originally reserved for the countries of Central and Eastern Europe, it is set to be extended to the applicant countries of the western Balkans

[43] Launched in May 1998, the Twinning programme is one of the principal tools of Institution Building accession assistance. Twinning aims to help beneficiary countries in the development of modern and efficient public administrations, with the structures, human resources and management skills needed to implement the *acquis communautaire* to the same standards as Member States. Twinning provides the framework for administrations and semi-public organizations

'Twinning' is aimed at helping beneficiary countries to adapt their administrative and democratic institutions to comply with membership requirements by learning from member state experiences of framing the legislation and building the organizational capacity necessary to implement the *acquis*. It involves the secondment of officials from EU member states to work in ministries of the countries and other parts of public administration; only civil servants can be seconded, not independent consultants. It is paid for by the Phare programme, and managed by the European Commission. The country governments put forward twinning projects in areas where they would like assistance from member state officials. These proposals are subject to approval by the EU Commission and member states bid for the contracts to supply the officials, either individually or in consortia.

The advice and expertise offered by the twinning agents[44] are not controlled centrally by the European Union, so the impact on respective public administrations is likely to be diffuse rather than reflecting any consistent European model. Indeed, one of the main principles of the twinning programme is the recognition that the present member states implement the EU's legislation by different means. The advice offered on how to transform institutions is somewhat random in that it depends on the experience and assumptions of the individual pre-accession adviser, which are in turn influenced by his or her nationality and background.

PUBLIC ADMINISTRATION AND THE *ACQUIS COMMUNAUTAIRES*

The approximation of the national law to the European Commission law is one of the main obligations of the candidate and the member states. The core meaning of the term 'approximation' and others used in this context is an assurance that the EC law does effectively applies in the national law systems. But the effective implementation of the EC law to national law is not the easy task from the point of view of theory of law as well as from the point of view of practice. It is connected *inter alia* with the differentiation of the EC law (primary versus secondary law, which also is differentiated)[45].

It is assumed that the precondition of membership to EU is that the candidate countries must align their national laws, rules and procedures with those to EU in order to give effect to entire body of the EU law contained in the *acquis communautaire*, which were created by the EC itself.

This so-called approximation process not only requires that all the relevant EU requirements are fully transposed into national legislation (legal transposition) but also that an appropriate institu-

in the beneficiary countries to work with their counterparts in Member States. Together they develop and implement a project that targets the transposition, enforcement and implementation of a specific part of the *acquis communautaire*. The main feature of a Twinning project is that it sets out to deliver specific and guaranteed results and not to foster general co-operation. The parties agree in advance on a detailed work programme to meet an objective concerning priority areas of the *acquis*, as set out in the Accession Partnerships. Since 1998, beneficiary countries have benefited from over 1,100 Twinning projects.

[44] Each Twinning project has at least one Resident Twinning Agent (RTA) who is seconded from a Member State administration or from another approved body in a Member State to work full time for a minimum of 12 months in the corresponding ministry in partner country to implement the twining project

[45] Schmidt, Micheal and Knopp, Lothar (2004), *Reform in the CEE Countries with Regard to European Enlargement*

tional structure is provided in order to administer the national laws and regulations and the necessary controls and penalties put in place to ensure the law is fully complied with (reinforcement). The candidate countries have the obligation to adopt the Acquis. *Acquis communautaire s* is not defined legally, only it is mentioned in the Treaty of the European Union[46] (article 2 and article 3). The term, it is asserted, embraces not only the primary and secondary law of the EU but also the verdicts of the Court of Justice and the international legal obligation of the EC.

The candidate countries are obliged to adopt the whole *Acquis Communautaire*. So, the process of approximation (or harmonization) emraces the transposition of the legal norms including the principle of the law and policy in the Treaty of the EU. According to the Treaty, the administrative and political structure of the member states is an internal affair. Only certain requirements are mentioned in the context of the political context when it comes to the administrative structures. Here it can be mentioned also the Copenhagen Criteria's, which have the similar content. In the other way, the checking of the approximation process in accession procedure has an official character. It is grounded on the political or administrative criteria. It may be supposed that the European Council and Member states government are using the political criteria's as expressed during the Copenhagen Summit of 1993. The Commission may prefer the administrative criteria, using as main standards the institution building, growth of the administrative staff and developing of administrative regulation[47].

The reinforcement of the administrative and judicial capacity is a key priority (short term) stipulated in the Accession Partnerships[48]. The Accession Partnerships are designed to help prepare the candidate countries to meet the criteria set by the Copenhagen European Council 1993 for full membership. The Accession Partnerships contain precise commitments on the part of the candidate countries relating, in particular, to democracy, macroeconomic stabilization, industrial restructuring, nuclear safety and the *adoption of the acquis Communautaire*, focusing on the priority areas identified in each Commision's Opinions on the applications of the candidate countries for the EU membership. Each country's Accession Partnership is complemented by its own *National Programm for Adoption of the Acquis* (NPAA). The NPAA sets out, in detail, how the states then intend to fulfill the priorities of the Accesion Partnershipand prepare for their integration into the EU. In this way, the NPAA complements the Accession Partnership – it contains a timetable for achieving the priorities and objectives and, where possible and relevant, indicates the human and financial resources to be allocated.

Initially, the Copenhagen criteria's did not include a clear reference to administrative capacity requirements. The main criteria imposed on candidate states in terms of their internal readiness[49] to join the EU can be summarized as the development of democratic systems of governance, the creation of a working market economy and a proven capacity to absorb and apply the *acquis communautaire*.

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[46] Consolidated Version of the Treaty on European Union (24.12.2002), Official Journal of the European Communities
[47] *Ibid*
[48] Council Regulation (EC) 622/98, OJ 1998 L 85/l
[49] SIGMA Papers No. 27(1998): "European Principles for Public Administration", OECD, Paris;

The first more explicit indication that general administrative capacities were considered to be an important issue in the enlargement process was provided by the references made to administrative capacities in the 'White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union'[50]. The White Paper makes extensive reference to sectoral administrative requirements, while making more limited statements on the necessity 'horizontal' capacities required to function in the EU[51]. The conclusions of the Madrid European Council[52], for the first time mentioned adequate administrative capacities as an explicit criterion for membership, without, however, addressing the issue in more detail.

The first time administrative capacity was used as a criterion in its own right was in the Commission Opinions, issued in July1997. In these opinions references were not only made to administrative capacities to deal with the absorption of specific elements of the *acquis communautaire*, but also to the need to develop general administrative capacities. Furthermore, the opinions showed the contours of what the European Commission considers to be an adequate administrative system. The criteria were developed further in the Commission Regular Reports on Progress, published in November1998 and in the following years.

References to administrative capacities can be found in the Opinions and Progress Reports under the section on the executive in the chapter on political criteria and in the section on '*Administrative Capacity to Apply the Acquis*'. Even though actually the latter section largely is a sectoral evaluation of administrative capacities in crucial policy areas, it also makes reference to general administrative capacities[53].

In addition to the necessity of meeting the requirements of the EU and its readiness to implement the *acquis communautaires*, candidate states also have a self-interest in trying to develop an effective administration. Experience from previous enlargements has shown that states which do not set up effective administrative structures and procedures for the management of European Union policy-making (defining national positions on Commission proposals, taking policy initiatives in Second and Third Pillar areas, managing the presidency etc.)[54] tend to 'lose out' in the policy process and face difficulties in meeting membership obligations.

CONCLUSION AND RECOMMENDATIONS

Adequate administrative capacity, human and financial resources to implement the National Programme for the Adoption of the acquis (NPAA) are always very much needed.

[50] Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union - White Paper. COM (95) 163 final, 3 May 1995

[51] Other problems would be the reform of the Comitology system, and the in crease in control capacities and powers of the European Parliament

[52] Madrid European Council 15 and 16 December 1995, Presidency Conclusions

[53] A.J.G Verheijen (June 2000), Administrative Capacity Development, Scientific Council for Government Policy

[54] Verheijen, T. (1995) Constitutional Pillars for New Democracies, Leiden: DSWO Press.

While it is true that the candidate countries still carry the burden of the transition structures marked by centralization, hierarchy and lack of transparency, its public administration should serve public needs by delivering services in a reliable, transparent, accountable, effective and efficient way.

The steps towards the reform of public administration in the potential candidates should include the establishment of ethic standards in the public administration to prevent corruption, improvement of internal communication, utilization of information technology, a transparent and performance-oriented EU integration processes.

Lack of European standards in the area of organization and functioning of state administration does not mean that a candidate country is not obliged to meet a number of principles that are applied in the organization and functioning of the state administration of the member states and the principles applied in the European Administrative Space.

The principles such as reliability and predictability, openness and transparency, accountability, rationality and efficiency of the state administration must be reflected in the constitution of the candidate countries and transposed in pre-accession period into domestic legislation through administrative legislation (i.e. in civil service law, administrative procedure law, administrative process and judicial review law etc.).

The applicant countries need to reform continuously its public administration in order to progress toward the European integration and to represent their people's interest in the European integration process. Although the EU has no direct authorization regarding the organization of government and public administration in member and candidate states, membership and accession call for the national administration to fulfill specific minimum requirements with regard to its performance.

For future membership in the European Union it is necessary, first of all, to fulfill the "Copenhagen Criteria" and to fulfill specific standards in the field of public administration reform. Also, a country that intends to join the European Union must have the capacity to conduct negotiations and preparations that are part of this process, including the administrative capacity to implement the "*Aquis communautaire*". Full compliance with the *acquis* in the field of public administration is required. Drafting the National Programm for Adoption of Acquis (NPAA) may not been enough to align its legislation with the *acquis communautaire* unless additional steps for its implementation are taken.

The fulfilment of general and horizontal administrative capacity requirements is one among many criteria for EU membership and a relatively minor issue compared to the democracy, market economy and *acquis* implementation capacity criteria. The relevance of the administrative capacity was acknowledged by the EU at a comparatively late stage of the pre-accession process. A new assessment system, consisting of a set of baselines, was tested for the first time in the preparation of the 1999 Regular Reports on Progress, and is likely to be the basis also for future assessments of the candidate country's administrative capacity.

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