

GOOD ADMINISTRATION AS A TICKET TO THE EUROPEAN ADMINISTRATIVE SPACE

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UDK 35.07(4)EU

061.1(4)EU

Izvorni znanstveni rad

Primljeno: rujan 2011.

The last two decades have been marked by the extensive efforts of the European institutions and organisations, as well as the academic community, to define and describe the concept of the European administrative space. The concept was initially intended to serve to the candidate countries as a model for administrative reform. The process of the concept development can be traced by the analysis of Sigma's activity, ranging from modest beginnings focusing on legal requirements for professional and accountable civil service based on the principle of legality, to multiplicity of demands and criteria for institutional adjustments. Still, the primary importance is given to the concept of good administration, which stands in essence of the European administrative space and relates to the standards and procedural requirements aiming at the protection of citizens' rights before administrative bodies as well as at the judicial control of public administration. The paper first explores the concept of European administrative space in theoretical and practical terms, and then presents the concept of good administration within the EU. The role of Sigma in defining and 'codifying' the administrative principles and requirements is analysed as well as its areas of activity intended to define good administration. Finally, in relation to the above-mentioned concepts, the reflection on the problem of institutional and legal adjustments is offered based on Croatian example.

Key words: European administrative space, good administration, Europeanization of public administration, OECD Sigma, Croatia, EU membership, enlargement

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1. SOME THEORETICAL AND PRACTICAL CONTROVERSIES OF THE EUROPEAN ADMINISTRATIVE SPACE¹

It has been 20 years since the European Union started to develop an outline for the ideal type of public administration that would serve as a role model for the new democracies of Eastern Europe. The membership in the European Club was conditioned by the fulfilment of a whole range of criteria that were considered to be the cornerstone of a well-functioning public administration. Some of those criteria were identified as traditional features of Western democracies, such as the principle of legality, accountability or the professional civil service. Moreover, additional criteria have been developed in the course of European institution building and offered as a model to be downloaded by the member states and candidate countries, such as better regulation or transparency.

First, in order to encompass the complexity of elements, the notion of the European administrative space (hereinafter: EAS) was coined, determining an area in which certain rules, values or ways of doing things exist.² Despite its theoretical appearance, the concept's value is primarily pragmatic: it serves as a benchmark for the evaluation of candidate countries' efforts to reform their respective public administrations. The evaluators, the European Commission and Sigma (*v. infra*), simultaneously help and assess the reform process and serve as guardians of the entrance to the EAS. Still, it appears that the concept has outgrown its primary purpose and has continued to develop on its own, mostly by means of including administrative standards in the legal acts and documents of the Union.

Namely, as a next step, the idea of good administration has been developed within the institutions of the EU and their legal acts and documents in order to encompass relevant administrative principles and practices that should be respected by European institutions, bodies, agencies and services but also by national administrations when they apply European law. Thus, both concepts

¹ The earlier version of this paper was presented at the workshop 'European Administrative Space – Balkan Realities' organised within the Jean Monnet Multilateral Research Group by the Faculty of Economics, University of Rijeka, Rijeka, Croatia, 18-19 February 2011. The paper is a part of the scientific research project 'Europeanization of Croatian Public Administration: Development and Identity' of the Department of Administrative Science, Faculty of Law, University of Zagreb, funded by the Ministry of Science, Education and Sports of the Republic of Croatia

² See Olsen, J.P., *Towards a European Administrative Space*, Journal of European Public Policy, vol. 10, no. 4, 2003, pp. 506–531.

– the European Administrative Space and Good Administration – include and rest upon recognised standards, principles and values that should be fulfilled and respected by national and European administrations within the EU. Although these concepts are perceived as 'soft' and ambiguous, the sanctions behind them show that they constitute a powerful tool for disciplining bad administrators. The European Commission's progress reports on candidate countries heavily rely on the assessments of administrative reforms according to EAS principles. Hence, the sanction is slowing down in accession process. Similarly, the introduction of good administration in the catalogue of the Treaty provisions shows its obligatory nature and possibility of judicial sanctioning of maladministration.

Both concepts are sporadically analysed in scholarly literature as controversial and disputable. While the discussions on the principle of good administration can (rarely) be found in legal literature,³ the concept of European administrative space is mostly confined to the new institutionalist theoretical agenda within the 'Europeanization' literature. Still, the term itself is discussed or only employed in several articles⁴ mostly dealing with candidate countries or by scholars from those countries. A general conclusion is that the impact of administrative tradition continues to be very strong although some general features of European administration(s) start to emerge. The inertia of public administrations leaves them on the historically defined path, with modest and mostly instrumentally introduced changes, under the pressures of the EU legal and political requirements, especially in case of Eastern Europe.

In theoretical terms, the concept of EAS is strongly connected with the issue of convergence or approximation of traditionally divergent administrative systems. The idea of convergence rests upon the belief that the process of Europeanization results in the harmonisation of public administration, and in the creation of a common core of administrative principles, rules and practices. Hence, there is a common ground or area to which future members should be directed. The research is focused on finding the level of similarity between the administrative system and the issue of variance between relevant indicators⁵

³ See Hofmann, H.C.H., Türk, A.H., eds., *EU Administrative Governance*. Edward Elgar, Cheltenham, UK and Northampton, USA, 2006.

⁴ See Olsen, *op.cit.*; Graver, H.P., *National Implementation of EU Law and the Shaping of European Administrative Policy*, ARENA Working Papers WP 02/17, 2002.

⁵ Featherstone, K., Introduction: In the Name of Europe, In: Featherstone, K., Raddaelli, C.M., eds., *The Politics of Europeanization*, Oxford University Press, New York, 2003, p. 17.

testing the idea that similar or identical organisational forms and practices are dispersed among European nations.⁶

Still, the research has shown that the process of Europeanization does not lead to general convergence in politics, policy and, even less likely, in state structures, including public administration. On the contrary, the findings indicate that the impact of the EU is mostly divergent, representing 'domestic adaptation in national colours'.⁷ The main reason for lack of general convergence is the fact that the process of Europeanization hits the hard stone of domestic institutions and actors that shape the reform outcomes. The national administrative tradition is one of the most prominent factors, to the extent that convergence is most likely to be found among groups of similar nations, responding to the similar pressures in the similar manner, where a default setting is determined by tradition. As a consequence, the clustered convergence⁸ emerges, with differences among Nordic, Anglo-Saxon, Continental and Mediterranean, and, finally, Eastern European states.⁹

The analysis of Europeanization and convergence in the Eastern European group of countries (including Central and South Eastern Europe) is based on several specific features. First, there is similarity in socio-economic features of the post-communist countries where the processes of democratic transition and economic transformation are interconnected with the process of Europeanization.¹⁰ Second, accession negotiations are based on unequal positions

⁶ Pollitt, C, *Clarifying Convergence: Striking Similarities and Durable Differences in Public Sector Management*, Public Management Review, vol. 4, no.1, 2002, pp. 471-492, p. 474.

⁷ See Risse, T, Green Cowles, M., Carporaso, J. Europeanization and Domestic Change: Introduction. In: Green Cowles, M., Carporaso, J., Risse, T., eds., *Transforming Europe: Europeanization and Domestic Change*. Cornell University Press, Ithaca, London, 2001.; Radaelli, C.M., Pasquier, R., Conceptual Issues, In: Graziano, P., Vink, M.P., eds. *Europeanization: New Research Agendas*. Palgrave Macmillan, Houndmills, Basingstoke, 2007.

⁸ Börzel, T., Risse, T., Europeanization: The Domestic Impact of EU Politics, In: Jørgensen, K.E., Pollack, M.A., Rosamond, B., eds., *The Handbook of European Union Politics*, Sage, New York, 2007., pp.495-496; Goetz, K.H., *Europeanisation in West and East: A Challenge to Institutional Theory*, First Pan-European Conference on EU Politics, Bordeaux, 26–28 September 2002.

⁹ Goetz, K.H., *Temporality and the European Administrative Space*. Paper Presented At The CONNEX Thematic Conference: Towards A European Administrative Space, London, 16-18 November 2006.

¹⁰ Agh, A., *Public Sector Reforms, Institutional Design and Strategy for Good Governance in East Central Europe*, Studies in East European Thought, vol. 53, 2001, pp. 233-255.

or asymmetry of power between the EU and the candidate countries, which allows the conditionality principle to be the leading instrument for disciplining the negative behaviour of the candidates.¹¹ Hence, the speed of reform, the large amount of the *acquis* to be transposed, as well as the formalized 'carrots and sticks' approach have resulted in the emergence of so called 'Eastern-type' Europeanization, characterized by formal and 'shallow' change, and lacking deep transformation of institutions, in the meaning of change in the belief system.¹²

With regard to the role of public administration, the consequence of this approach is twofold. The lack of clearly defined European model along with the focus on the fulfilment of formal requirements, accompanied with predominantly receptive type of public administration, has led to a basically untransformed and under-Europeanised public administration. The external incentives model leads to adaptive and not essential change.¹³ Consequently, public administration has no strength to be a leader of general societal and economic change and to contribute to the Europeanization of political and policy processes. In terms of types of convergence,¹⁴ convergence in transition countries when it comes to the EAS remains on the level of discourse and decisions, but actions and results are rather less present. Thus, instead of coercive isomorphism, a possible key for future transformations might be found in the model based on socialisation and external pressures to learn and exchange

¹¹ Heritier, A., Europeanization Research East and West, In: Schimmelfennig, F., Sedelmeier, U., eds., *The Europeanization of Central and Eastern Europe*. Cornell University Press, 2005, pp 203-205.; Sedelmeier, U., Europeanisation In New Member And Candidate States, *Living Reviews In European Governance*, vol. 1, no.3, 2006, pp. 19.; Grabbe, H., Europeanisation Goes East: Power and Uncertainty in the EU Accession Process. In: Featherstone, K., Radaelli, C., *op. cit.*

¹² Goetz, *op.cit.*; Heritier, A., *op.cit.*; See Dimitrov, V., Goetz, K.H., Wollmann, H., *Governing after Communism: Institutions and Policy Making*, Rowman and Littlefield Publishers, Lanham, Boulder, New York, Toronto, Plymouth, 2006.

¹³ There is a widely used distinction between the three models of Europeanization in Eastern Europe: external incentives model, where the change is induced from outside, on the basis of the conditionality principle; lesson-drawing model, when institutional solutions are borrowed from others for the reasons of their effectiveness or superior quality; and lesson learning model, when administrative change emerges on the basis of learning and acquiring new values. See Schimmelfennig, F, Sedelmeier, U, *op.cit.*; also see Börzel, T., How Europe Interacts with Its Member States., In: Bulmer, S., Lequesne, C., eds., *The Member States of the European Union*. Oxford University Press, 2005.

¹⁴ For the conceptualisation of convergence see Pollitt, C., *Convergence: a Useful Myth*, Public Administration, vol. 79, no. 4, 2001, pp.933-947.

ideas, which would help to change the belief system. In this respect, the real change is expected to happen once the country is a member of the EU, with greater prospect for socialisation of administrative elite and the potential use of powerful mechanisms by judicial and political institutions to discipline the misbehaviour.

1.1. The Research Design

This paper discusses the trends in the development of common administrative standards in Europe, with special emphasis on EU legal norms relating to good administration, and specific standards and areas of convergence as defined by Sigma and used for the assessment of candidate countries' progress in administrative reform. These developments are analysed in relation to the future Croatian membership in the EU, but also with regard to the very idea of converging public administrations in Europe, or the European administrative space (EAS). The main hypothesis is that the development of the EAS is a continuous process, which has gradually moved from setting clear targets for the candidate countries in terms of desirable model of public administration (informal *acquis*), towards formal *acquis* as set in the EU high level documents and legal acts. In order to confirm this thesis, the paper focuses on several research questions. When and by which means did the EU start to develop the model of good administration, in order to define good administrative standards for the member states? What is the legal character of these standards and is there an effective sanctioning for failing to fulfil them? Moreover, are there other standards emerging in European countries (Chapter 2)? Next, the paper asks what kind of administrative standards have been offered to the candidate countries as a model for their administrative reforms. By which processes are those standards defined and are there any sanctions in case if the candidates fail to adapt to the standards (Chapter 3)? Finally, the nature of the EAS is discussed and, specifically, the idea that the road to the EAS is unidirectional is analysed. Is it possible that specific legal or practical arrangements in the administrative systems of Eastern European countries might contribute to the EAS concept? More generally, what is the role of the inherited institutions, and how to design a new set of institutions? What is the position of Croatia in this respect and is there an experience out of which future members can learn? In order to answer these questions, the legal analysis of legal acts and documents has been applied, as well as content and statistical analysis of the data from Sigma documents.

2. THE LEGAL ASPECT OF GOOD ADMINISTRATION IN THE EUROPEAN UNION

The concept of 'good administration' has been gradually developed in legal acts of the EU institutions and other European organisations, such as the Council of Europe. The conceptualisations are different, moving from softer legal arrangements, such as codes of ethics and standardisation of behaviour, to good administration as a fundamental right embodied in the EU Treaties. Whatever the medium, the goal is the same: good administration represents a standard and an anchor in relation to which the administrative behaviour, actions and decisions might be assessed. It covers the whole range of administrative principles determined in the administrative and judicial practice in the EU and its member states.¹⁵ It is part of a broader concept of good governance that has been warmly embraced by the EU within the European governance agenda that rests upon the principles of democratic society based on the rule of law and effective European policies, which are dependable on the quality of regulation¹⁶ and its implementation. In the following sections, the concept of good administration will be presented as it has been codified in two legal documents – The European Ombudsman's Code of Good Administrative Behaviour and the EU Charter of Fundamental Rights. The additional section discusses the Treaties' provisions on public administration. The chapter ends with a short review of the Council of Europe's approach to the concept of good administration.

¹⁵ Fortsakis (2005) analyses the idea of good administration in the context of user protection that emerged in Europe in the late 20th century, together with the flourishing of privatised public services. Drawing on other authors, he enumerates the following good administration principles defined in the EU law: equality, good administration as useful administration (in the meaning of proportionality and legitimate user expectations), proper functioning of public administration, establishing procedures for hearing users beforehand and providing them with information, the principle of appointing an ombudsman, justification of administrative decisions, the principle of access to administrative documents, the principle of establishing independent administrative authorities, and the principle of establishing judicial protection. See Fortsakis, T., *Principles Governing Good Administration*, European Public Law, vol.11, no.2, 2005, pp. 207-217.

¹⁶ The notions of better lawmaking and better regulation refer to the quality of the process of lawmaking and the quality of its results (legislative acts, by-laws). The standards include public consultations, inclusion of relevant actors, coherent public policies (laws) and application of adequate instruments, such as impact assessment, but it also relates to administrative simplicity. See for example Interinstitutional Agreement on Better Law-Making (OJ C321 of 31.12.2003).

2.1. The Soft Version: Good Administration in the European Ombudsman's Code

The European Ombudsman (hereinafter: EO) was introduced to the European political, administrative and legal systems by the 1992 Maastricht Treaty.¹⁷ Today, the Treaty on the Functioning of the European Union defines the Ombudsman as a means of ensuring the proper functioning of the EU institutions and establishes the right of every citizen to apply to the Ombudsman (art. 24). The Ombudsman's appointment¹⁸ and functioning are regulated in Article 228 (ex Article 195 TEC). As a classical type of ombudsman in Europe and elsewhere,¹⁹ the Ombudsman is granted the right and duty to receive and examine complaints from citizens and legal persons (residing or registered in the member states) concerning maladministration, in the meaning of the allegations of misconduct in the Union institutions, bodies, offices or agencies.²⁰ The exemption relates to the court procedures – European Ombudsman's scope of affairs does not include the European Court of Justice when it exercises its judicial role.²¹ Consequently, the EO is primarily focused on the administrations of political institutions and various administrative bodies, focusing

¹⁷ Article 195 of the Treaty Establishing The European Community, 2002 O.J. (C 325) 1. On the basis of the TEU article, the institution was regulated by the Decision of European Parliament on the Regulations and General Conditions governing the performance of Ombudsman's duties, OJ L 113/15, 4.5.1994, amended 14 March 2002 (OJ L 92, 9.4.2002) and 18 June 2008 (OJ L 189, 17.7.2008).

¹⁸ The Ombudsman is elected by the European Parliament after each elections and its mandate is connected to that of the Parliament (regularly 5 years), with the possibility for re-election. The dismissal is in the hand of the Court of Justice, under the request of EP, in case he does not fulfil the conditions or is guilty of serious misconduct (paragraphs 1 and 2). The Ombudsman acts independently and every influence is forbidden, including his engagement in any other professional or public activity (Article 228, paragraph 3).

¹⁹ See Kucsko-Stadlmayer, G., ed., *European Ombudsman – Institutions and their Legal Basis*. Springer Verlag, Wien, New York, 2008.

²⁰ Before the Ombudsman was established, the complaints had been handled by the European Parliament's Committee on Petitions. The Committee still exists today but its role is shadowed by the Ombudsman. See art. 20 and 24 of the TFEU.

²¹ The negative presumption for acting upon the complaint is the pending legal procedure. Still, the EO can start an investigation on his own initiative, and the MEPs are entitled to forward the complaints they receive to the EO for inspection. He examines the case, asks for clarification and opinion of the institution, and gives his recommendation and opinion in the form of report to the complainant, the institution and the EP. The EO is obliged to report the EP annually.

on their adherence to the principles of legality and, in broader meaning, to good administration. By promoting the concept of good administration, the Ombudsman should help to improve and intensify the relations between the European Union and its citizens, and help to lower the democratic deficit.

Inspired by the Anglo-American legal doctrine, the Ombudsman is concerned with 'maladministration' as opposite to good administration, in the meaning of the failure of a public body to act 'in accordance with the rule or principle which is binding upon it'.²² Since the Treaty provisions do not clearly define what kind of behaviour falls under 'maladministration',²³ beside illegality of actions and decisions, the European Ombudsman has open hands to determine the content of the concept by himself. He has chosen the positive type of concept, explaining what kind of behaviour is expected from the EU servants and officials.²⁴ In 1999, the Ombudsman drafted the Code of Good Administrative Behaviour, which was adopted by the European Parliament in September 2001.²⁵ Almost simultaneously, the 'right to good administration' was legally introduced by Article 41 of the Charter of Fundamental Rights, together with the right to refer to the Ombudsman. It is reasonable to belie-

²² As stated in 1997 Annual Report of the European Ombudsman, pp.8.

²³ The examples of maladministration include the following: delay, incorrect action or failure to take any action, failure to follow procedures or the law, failure to provide information, inadequate record-keeping, failure to investigate, failure to reply, misleading or inaccurate statements, inadequate liaison, inadequate consultation, broken promises [URL: http://ombudsmanwatchers.org.uk/ow_maladministration.html, accessed on 25 March 2011]. See Fortsakis, T., *op.cit.*

²⁴ The Ombudsman's Code drew inspiration from national administrative laws, for example the French law no. 2000-231 of 12 April 2000 concerning the rights of citizens in their relations with the administrations, the Danish Public Administration Act no. 571 of 19 December 1985, the Finnish Administrative Procedure Act no. 598 of 6 August 1982 and the Belgian Law on the Formal Motivation of Administrative Acts of 29 July 1991. [URL: <http://www.ombudsman.europa.eu/speeches/en/2001-04-23.htm>, accessed on 24 March 2011].

²⁵ The first steps were actually made by MEP Roy Perry in 1998 who proposed the 'codification' of the standards of good administration. The first European Ombudsman, Jacob Söderman (1995-2003), drafted the text and presented it to the EP as a special report in 1999. He accentuated the importance of good administration for the democratic and legitimate governance (good government) and also expressed the need to include the right to good administration in the catalogue of the fundamental rights. See Lanza, E., *The Right to Good Administration in the European Union: Roots, Rationes and Enforcement in Antitrust Case-Law*, Teoria del Diritto e dello Stato no. 1-2-3, 2008, pp. 480.; Mendes, J., *Good Administration in EU Law and the European Code of Good Administrative Behaviour*, European University Institute Working Papers, Law, no.9, 2009.

ve that 'the Code was originally intended to explain in more detail what the Charter's right to good administration should mean in practice'.²⁶ Moreover, the Code is intended to serve as a tool for control of the EU administration and as a guide for officials and for citizens. The Code draws on the decisions of the ECJ defining administrative principles, as well as on the acts and documents of the Council of Europe (*v. infra*).

The Code encompasses 27 articles, including 24 articles devoted to the different principles of good administrative behaviour. It applies to all officials and other servants employed by EU institutions, bodies, offices and agencies ('to whom the Staff Regulations and Conditions of Employment of other servants apply', (Article 2, paragraph 2) but also on other employment schemes, such as contract personnel (Article 2, paragraph 2). It is intended to serve as a guideline for their interaction with the public - citizens, business, civil sector organisations, etc., regardless of their citizenship or state of origin.²⁷

The material scope of the Code (Article 3) includes general principles of good administrative behaviour which apply to all relations of the institutions with the respective public, unless specific provision imposes additional quality or greater legal power of specific provision. The rules create an amalgam of different principles and standards evolved in administrative practice and justice of the EU and its member states.

- *general principles of administrative law*, such as the principles of legality or lawfulness (Article 4), non-discrimination (Article 5), proportionality (Article 6), and absence of abuse of power (Article 7), impartiality and independence (Article 8), legitimate expectations and consistency (Article 10); data protection (Article 21) and access to information and documents (Articles 22 and 23);
- *principles of administrative procedure*, some of them are also envisaged in Article 41 of the Charter (see below), such as objectivity (Article 9), advice to the public (Article 10, paragraph 3), fairness in the meaning of fair, impartial and reasonable treatment (Article 11), right to use the language of the citizen (Article 13), acknowledgment of receipt and

²⁶ See Mendes, *op.cit.*, pp.1; See Kanska, K., *Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights*, European Law Journal, vol.10, no.3, 2010, pp. 296-326.

²⁷ In this respect, the fair treatment is granted also to non-EU citizens and firms (Article 3, paragraph 3).

- indication of the competent official (Article 14), right to be heard and to make statements (Article 16), reasonable time-limit for reaching the decision (Article 17), and duty to state grounds of decision (Article 18) and indication of the possibility of appeal (Article 19), notification of the decision (Article 20)
- non-legal standards related to *service ethics*, especially in provisions on courtesy (Article 12), or obligation to transfer the letter to the competent service of the Institution (Article 5), keeping records on activities and correspondence (Article 24) and the need for publicity of the Code (Article 25)

The nature of standards included in the Code has been analysed and disputed.²⁸ Two limitations determine their relevance: first, the Code is not legally binding for the EU institutions, bodies, offices and agencies; and second, the institution of the European Ombudsman inherently suffers from limited powers, which are restricted to the possibility to recommend, make warnings, and to give an opinion or advice to the institution or officer in question. Eventually, the Ombudsman is entitled and required to alarm the Parliament and the public about the practice or decision that qualifies as a case of maladministration. Nevertheless, the Code has exceptional value for European administrations, both supranational and national, which is confirmed in Article 197 TFEU (*v. infra*). The European Parliament stated that the Code should be respected by the EU administration and that the Ombudsman should use the Code as a benchmark, and apply its provisions when he determines the cases of maladministration.

In general, the principles of the Code do not depart significantly from the already acknowledged and legally binding principles of administrative behaviour, but still, their validity stretches on all types of administrative activities, including both individual decisions and general acts, covering every stage of the process or activity. Moreover, they can be called upon by every citizen and legal person, even if the decision affects their rights and interest only indirectly. The Code serves not only as a benchmark and ethical guide for the servants' behaviour related to their everyday activities and for the Ombudsman when assessing the behaviour, but also as an umbrella right,²⁹ covering a whole range of procedural and substantive rights. It has been said that the

²⁸ See Mendes, *op.cit.*; Fortsakis, *op.cit.*

²⁹ Mendes, *op.cit.*

Code 'clearly has a symbolic significance that goes far beyond its formal scope, and provides a template that could be used by any administration.'³⁰

The Ombudsman had recommended to the European institutions and bodies to adopt their respective codes of good administrative behaviour. One of the examples is the Code for the staff adopted by the European Commission in March 2000.³¹ It includes legal and non-legal rules, stressing the principles of service, independence, responsibility, accountability, efficiency and transparency, offering the possibility for citizens to lodge a complaint.³² The application of the Code has been monitored and stated in the monitoring report. The principles evolve around the concept of 'quality service', in the sense of the duty of the Commission and its staff to serve the Community's interest and, in this way, also the public interest. It rests on the legitimate public expectations of quality service and administration that is open, accessible and run properly. Quality service requires the Commission and its staff to be courteous, objective and impartial. The specific standards rely on the Ombudsman's Code, albeit not completely and often in different wording,³³ with additional rules on correspondence with the interested citizen and media, and special requirements regarding telephone and electronic mail communication, as well as with regard to handling the complaints.

2.2. The Hard(er) Version: Good Administration as a Fundamental Right

The introduction of the principle of good administration in the catalogue of legal provisions applicable in the EU started with *The Charter of Fundamental*

³⁰ *Ibidem.*

³¹ The Code of Good Administrative Behaviour – Relations with public for the staff of the European Commission in their relations with the public, OJ L 267, 20.10.2000, as part of the Commission's Rules of Procedure C(2000) 3614.

³² The complaints should be lodged with the Secretariat-General of the European Commission or with the European Ombudsman.

³³ Those principles include lawfulness, non-discrimination and equal treatment, proportionality, consistency, objectivity and impartiality. Special procedural provisions relate to information on administrative procedures, information on the rights of interested parties, listening to all parties with a direct interest, duty to justify decisions, duty to state arrangements for appeals, dealing with enquiries, requests for documents, correspondence, telephone communication, electronic mail, requests from the media, protection of personal data and confidential information, and handling complaints.

Rights of the European Union, a high-level legal document, signed and adopted twice. First, the Charter of Fundamental Rights was proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council in Nice on 7 December 2000.³⁴ The Charter carried out the idea that certain fundamental rights have to be granted to the citizens of the EU, as a response to the allegation of the democratic deficit of the EU and an introduction to the subsequent drafting of the European Constitution, a big step for integration that eventually failed in 2005.

After the Lisbon Treaty entered into force on 1 December 2009, the Charter became legally binding.³⁵ Article 6, paragraph 1 of the Treaty on the European Union (TEU) provides that the Charter is legally binding and has the same legal value as the Treaties. To this end, the Charter was amended and proclaimed a second time in December 2007 (parallel to the Lisbon Treaty), and published afterwards.³⁶ The legal and practical result is that the EU institutions as well as other structures have to respect the rights enshrined in the Charter, which applies to the member states when they implement EU law (Article 51, paragraph 2).³⁷ In that respect, the EU and its institutions, bodies, offices and agencies, as well as the member states (when implementing EU law) are obliged to respect the rights defined in the Charter, observe its principles and promote its application (Article 51, paragraph 1). In other words, the Charter applies, and the decisions and activities should be adjusted to and interpreted in the light of the Charter when the authorities of the member states

³⁴ The Charter is the outcome of an unprecedented procedure that started at the Cologne European Council (3-4 June 1999) when the task of drafting the Charter was entrusted to a Convention, which held its constituent meeting in December 1999 and adopted the draft on 2 October 2000. The Biarritz European Council (13-14 October 2000) unanimously approved the draft and forwarded it to the European Parliament and the Commission, which endorsed the Charter in November 2000 and December 2000 respectively. The Presidents of the European Parliament, the Council and the Commission signed and proclaimed the Charter on behalf of their institutions on 7 December 2000 in Nice. The Charter was published in Official Journal of the European Union C 364/1, 18.12.2000.

³⁵ The first sentence of Article 6, paragraph 1 of the TEU states 'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.'

³⁶ OJ C 83/399 (2010/C 83/02) EN 30.3.2010.

³⁷ Restrictions regarding the interpretation of the Charter contained in the Protocol (No) 30 encompass certain social rights and apply to Poland and United Kingdom.

adopt or apply a piece of national legislation implementing an EU directive, or when their authorities directly apply a Union regulation.³⁸

Although the Charter does not establish any new rights or tasks (Article 51, paragraph 2 of the Charter and Article 6, paragraph 1 TEU), it has a great value and codifying effect for the European Union countries and their citizens. Not only the provisions are legally binding and protected by the European Court of Justice, but also, for the first time in the history of European integration, the exhaustive list of civil, political, economic, and social rights is set out in a single text. They are based, in particular, on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of the EU member states, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers and other international conventions.³⁹ The Charter encompasses the whole range of fundamental rights and freedoms divided into 6 chapters and 54 articles with additional general provisions.⁴⁰

The importance of the Charter of Fundamental Rights for determination of the administrative principles is based on three special provisions: right to good administration (Article 41), right to access documents (Article 42) and right to refer to the Ombudsman (Article 43). In addition, numerous other rights have impact on administrative behaviour and structures, and are the content of 'good administration', such as the right to petition the European Parliament (Article 44), the right to the protection of personal data (Article 8), equality before the law (Article 20), non-discrimination (Article 21), the right to cultu-

³⁸ In cases when national authorities do not implement EU law, but national laws, the national constitutional provisions as well as the ratified international agreements apply. In those cases, the Commission has no power to protect fundamental rights, and the protection is granted by national mechanisms, including the European Court of Human Rights. On the contrary, the Commission can (and is obliged to) intervene in the cases of breach of Charter provisions in the application of EU law and it can instigate the process before the Court of Justice.

Additional monitoring is carried out by the European Union Agency for Fundamental Rights (FRA) which was established in 2007, replacing the previous European Monitoring Centre on Racism and Xenophobia. The FRA should provide EU Institutions and its Member States when they implement EU law with assistance and expertise relating to the fundamental rights. It collects objective, reliable and comparable information on the development of the situation of fundamental rights.

³⁹ For the list of documents which served as a basis see [URL: <http://www.eucharter.org>]

⁴⁰ The chapters are: I. Dignity (Arts. 1-5), II. Freedoms (Arts. 6-19), III. Equality (Arts. 20-26), IV. Solidarity (Arts. 27-38), V. Citizens' rights (Arts. 39-46), VI. Justice (Arts. 47-50), accompanied by VII. General provisions (Arts. 51-54).

ral, religious and linguistic diversity in the European Union (Article 22),⁴¹ the principle of equality between men and women (Article 23), access to services of general economic interest (Article 36), the right to an effective remedy and to a fair trial (Article 47).⁴²

First, Article 41 titled *The Right to Good Administration*⁴³ includes several specific administrative law principles and general standards of administrative behaviour. It is a part of the rule of law principle mentioned both in Article 2 TEU⁴⁴ and in the Charter's Preamble.⁴⁵ As defined in Article 41, paragraph 1, good administration is based on the principles of impartiality, fairness and reasonable time limit. It states that 'every person' has the right that her or his affairs are handled in such manner. It has to be noted that the rights in Article 41, are granted to 'every' person, which broadens the scope of protection to the non-citizens of the EU (comp. Articles 42 and 43).

The expressions of good administration are determined (albeit not exhaustively) by Article 41, paragraphs 2-4 as: (1) the right to be heard, before taking any individual measure which would affect the party; (2) the right of every person to have access to his/her file, with respect for the legitimate interests of confidentiality and of professional and business secrecy; (3) the obligation of the authority to give reasons for the decisions. The two remaining rights⁴⁶ include (4) the right of every person 'to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties,

⁴¹ Provisions contained in Articles 20-22 on equality, anti-discrimination and representation through diversity are particularly relevant with regard to employment in EU institutions, bodies, agencies and offices, representing the cornerstone of good administration.

⁴² See Fortsakis, *op.cit.*

⁴³ The European Ombudsman suggested in his speech before the convention responsible for drafting the Charter that the right to good administration should be granted by the Charter as a fundamental right. See Speech of the European Ombudsman – Public Hearing on the Draft Charter of Fundamental Rights of the European Union, Brussels, 2 February, 2001, European Ombudsman, Annual Report 2001; quoted by Mendes, *op.cit.*

⁴⁴ Article 2 of the TEU states: The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

⁴⁵ See Kanska, *op.cit.*; Mendes, *op.cit.*

⁴⁶ Paragraph 3 reproduces the right now guaranteed by Article 342 TFEU (ex Article 288 TEC), while paragraph 4 relates to Article 20 TFEU (ex Article 17 TEC).

in accordance with the general principles common to the laws of the Member States' (Article 41, paragraph 3), as well as (5) the right of every person to 'write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language (Article 41, paragraph 4).

Secondly, Article 42, on the basis of Article 15(3) TFEU (ex Article 255 TEC),⁴⁷ guarantees *the right of access to documents* to EU citizens and persons residing in the EU, as well as to legal persons registered in the member states. The form of the document is not relevant ('whatever their medium'), as far as it concerns the documents of the institutions, bodies, offices and agencies of the EU. This right has been developed further by the Regulation 1049/2001, which is now under revision.⁴⁸

Finally, Article 43 of the Charter grants any person (citizen or natural or legal person residing or having its office in a member state) *the right to refer to the European Ombudsman* the cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union. The exception is the Court of Justice, but only in its judicial role. The right is also guaranteed by Article 20 TFEU (ex Article 17 TEC), and legislation relating to the European Ombudsman defines the modalities of exercising this right (*v. supra*).

⁴⁷ Article 15 TFEU (ex art 255 TEC), focuses on good governance and openness of the EU. Paragraph 1 states: "In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible." It is situated in Part II containing provisions that have general application. Paragraph 3 gives basis for both openness and transparency, in the sense of the right to access documents, public consultation, transparent proceedings, and the obligation of publication.

It also provides that the limitations of those rights shall be determined by the EP and Council regulation. Still, paragraph 3, line 3 states that the Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

⁴⁸ Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents of 30 May 2001. The Regulation is now under the revision, in order to review the legislation and to improve its practical implications. After launching the European Transparency Initiative in 2005, the Commission adopted its Green Paper (Green Paper: Public access to Documents held by institutions of the European Community, A review; COM(2007) 185 final, Brussels, 18.4.2007). In April 2008, the Commission presented a Proposal for a Regulation regarding public access to European Parliament, Council and Commission documents, COM (2008), 229 final. The Proposal aims at broadening the scope of documents available for inspection as well at determining the checks on the procedure, such as limitation of member states opposing to disclosure etc.

The defined principles are based on the most prominent case law of European courts.⁴⁹ Still, Article 41 has added value in approach to good administration as a 'category of rights' or 'umbrella right'⁵⁰, which includes a list of rights. Consequently, it is up to practice, especially up to the judicial activity of the Court of Justice, as well as up to other legal acts and documents (such as the Code or European legislation), to determine other individual rights under the roof of good administration. The importance of granting the right to good administration the level of 'constitutional' right, especially within a community of nations such as the EU, is of special importance for the development of the rule of law and protection of citizen's rights, as well as for the quality of life and public services, not only at the European, but also at the national and subnational levels.⁵¹

2.3. Good European and National Administration in the Treaties

Both Treaty on European Union and the Treaty on the Functioning of the European Union⁵² contain provisions related to public administration, although a European policy on administrative matters does not exist as a coherent

⁴⁹ 'See inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty...' Data on judgments retrieved from [URL: http://www.eucharter.org/home.php?page_id=49, accessed on 24 March 2011].

⁵⁰ See Mendes, *op.cit.*; Kanska, *op.cit.*; Fortsakis, *op.cit.*

⁵¹ Although public authorities, both in the EU and in member states, have to be acquainted with the Charter, the invisibility of the Charter among citizens is striking. The European Ombudsman, P. Nikiforos Diamandouros (2003-present), has highlighted that according to recent research 72 per cent of European citizens do not feel well informed about the Charter, and that a further 13 per cent of citizens have never even heard of the Charter [URL: <http://www.ombudsman.europa.eu/en/press/release.faces/en/10191/html.bookmark>, accessed on 24 March 2011].

⁵² See Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 83/01, 30 March 2010.

approach. The EU has no power to regulate or to determine state structures and territorial divisions, as it is the prerogative of the member states. Nevertheless, along with the right to good administration defined by the Charter, and other Charter rights, directly or indirectly related to administrative behaviour and organisation, there are several provisions in the Treaties relating to public administration at both the EU and member state levels.

Firstly, good EU administration is defined in Article 298 TFEU stipulating that the institutions, bodies, offices and agencies of the Union in carrying out their missions, shall have the support of an *open, efficient and independent European administration*. Those three qualities – openness, efficiency and independence – should serve as guiding principles for the European Parliament and the Council when they are drafting and adopting regulations to establish the provisions to that end, in accordance with the ordinary legislative procedure and in compliance with regulations concerned with the status of employees.⁵³ This provision should be examined in relation to Article 226 TFEU (ex Article 193 TEC), which, defining one of the very first European Parliament's prerogatives, regulates that it may, at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law.⁵⁴ The provision does not explicitly narrow the maladministration cases on European administration, although it should be expected to employ this possibility in 'European matter', and not to investigate a particular national administration.

Secondly, a number of particular provisions in the Treaties are related to administration and citizens' rights. Most of them are also included in the Charter, such as Article 15 TFEU that requires good governance and openness of the EU institutions, especially granting the right of access to documents. Similarly, Article 20 TFEU includes the right to refer the cases of maladministration to the European Ombudsman. Articles 39 TEU and 16 TFEU define the protection of personal data and require the setting up of independent authority to monitor the compliance of the legislation.

In relation to the national administrations, several provisions are important. First, Article 6 TFEU explicitly determines *the administrative cooperation*

⁵³ The Staff Regulations and the Conditions of Employment are adopted by the European Parliament and the Council on the basis of Article 336.

⁵⁴ If the case is being examined before a court or is still subject to legal proceedings, the EP will not use its power to set up the committee. In addition, the article envisages the regulation to be adopted for that purpose.

as one of the areas of action of the EU at the European level, along with the protection and improvement of health, industry, culture, tourism, education, vocational training, youth and sport, and civil protection. This provision is located in the first part of the TFEU containing the principles on which the Union is based, especially its areas of competences (Title I, Articles 2-6). The specific position of those areas concerns the Union's 'competence to carry out actions to support, coordinate or supplement the actions of the Member States'. This is the weakest form of EU competence, in relation to its exclusive competences defined in Article 3 (customs, monetary policy, competition, common commercial policy and a part of fisheries policy) and shared competences defined in Article 4 (internal market, environment, consumer protection, transport, energy, economic, social cohesion, etc.). It is actually a consequence of the process in which legal integration in different areas was not followed by administrative integration.

This provision is followed by a special type of administrative cooperation in Article 197 TFEU under Title XXIV.⁵⁵ The importance of this provision is based on the formulation of the Article 197, paragraph 1 which states that the effective implementation of EU law by the member states, which is essential for the proper functioning of the Union, is regarded as a matter of common interest.' Consequently, in order to ensure that the implementation is effective and hence contributing to the functioning of the European project, Article 197, paragraph 2 states that the EU supports the efforts of the member states to improve their respective administrative capacities. The EU support includes different instruments, but two are particularly mentioned: strengthening the information flow and information bases ('facilitating the exchange of information') and strengthening the personnel basis of administration ('facilitating the exchange of civil servants, and supporting training schemes'). Hence, the EU has certain indirect means to influence member states' administrations, without directly offering and prescribing obligatory downloading of the model for structures or functioning. Instead, soft mechanisms are chosen to promote harmonisation – via informational and personnel exchange and education. Moreover, formal harmonisation of laws and regulations of the member states is explicitly excluded in the same articles. Instead, in order to establish the necessary measures to this end, the European Parliament and the Council may adopt regulations in accordance with the ordinary legislative procedure. Still, although it is explicitly stated that the

⁵⁵ The articles correspond to Articles 2E and 176D of the Treaty of Lisbon.

member state is not obliged to use and to participate in such support schemes,⁵⁶ its decision not to do so may have a political weight.⁵⁷

2.4. Good Administration in the Council of Europe

It was more than three decades ago when the Council of Europe (hereinafter: CoE) has started to build up a framework for good administration on the basis of the standards defined and applied in its member states.⁵⁸ The first step in this direction was the 1977 Council of Ministers Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities. The impetus came from the necessities of modern state which 'had resulted in an increasing importance of public administrative activities' where 'individuals were more frequently affected by administrative procedures.'⁵⁹ Having in mind that the principal task of the CoE relates to the protection of fundamental rights and freedoms of citizens, the attempts to legally enhance the position of both natural and legal persons in relation to administrative aut-

⁵⁶ Article 197(3) This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.

Related to Article 197, Article 74 TFEU (ex Article 66 TEC) authorises the Council to adopt measures to ensure administrative cooperation between the relevant departments of the Member States, in the areas of freedom, security and justice, as well as between those departments and the Commission. It is obliged to consult the European Parliament before adopting the measure, on the proposal of the Commission or on the initiative of one quarter of member states (Article 76 TFEU).

The obligations of the member states' administrations have to be assessed in the light of Articles 258-260 which determine the possibilities for the European Commission and other member states to set in motion the procedure before the Court against the member state not fulfilling its obligations under the Treaties, especially the cases of ineffective transposition or non-transposition of European legislation to the national law.

⁵⁷ It may be expected that a good share of activities based on these provisions might be directed towards the enhancement of administrative capacity in new member states and future members, such as Croatia.

⁵⁸ The Council of Europe is an organisation founded in 1949, dedicated to protecting human rights, pluralist democracy and the rule of law. The most important document is the European Convention on Human Rights, signed in 1950. In 2011, the Council of Europe includes all 47 European states.

⁵⁹ Statskontoret, *Principles of Good Administration in the Member States of the European Union*, 2005, p.11., [URL: <http://www.statskontoret.se/upload/Publikationer/2005/200504.pdf>]

horities is clearly in line with the mandate. The importance of Resolution 31 is well described by the Swedish Statskontoret⁶⁰ in the document exploring the principles of good administration in the EU: 'it can be said that the resolution became an important first step towards establishing good administration as an operative legal concept since it established a set of principles that today are commonly regarded as central for the right to good administration'.⁶¹ The five principles include the right to be heard (I), the right to access information (II), the possibility of assistance and representation in the administrative procedure (III), the obligation to state the reason for decision (IV), and the obligation to indicate the remedies against the decisions, including the time-limit (V). Although both resolutions (until 1979) and recommendations (since 1979) as key decisions of the Council of Minister are not legally binding, the Council of Ministers has used its power to set up the monitoring mechanism. Hence, Resolution (77)31 recommends to the governments to include listed principles into their legislation and practice, as well as to inform Secretary General of their activities in that respect. Consequently, the behaviour of the member states gained a political and symbolic weight.

In following decades, the CoE has continued to develop the standards of good administration, often focusing on the core elements of public administration and administrative law, such as access to information and documents;⁶² status and ethics of officials and civil servants;⁶³ the use of discretionary power;⁶⁴ the system of administrative justice,⁶⁵ and some specific issues of

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, pp.11.

⁶² Rec (81)19; Rec (91)10; Rec (2002)2.

⁶³ Rec (2000)2 and (2000)16.

⁶⁴ Rec (80)2.

⁶⁵ See Recommendation No. R (2001)9E of the Committee of Ministers on alternatives to litigation between administrative authorities and private parties; Recommendation No. R (2003)16E R of the Committee of Ministers on the execution of administrative and judicial decisions in the field of administrative law; Recommendation No. R (2004) 6 of the Committee of Ministers on the improvement of domestic remedies; Recommendation No. R (2004) 20 of the Committee of Ministers on judicial review of administrative acts; and Recommendation No. R (2010) 3 on effective remedies for excessive length of proceedings.

In addition, additional recommendation indirectly affects the administrative justice system: Recommendation No. R (2001) 2 of the Committee of Ministers concerning the design and re-design of court systems and legal information systems in a cost-effective manner; Recommendation No. R (2001) 3 of the Committee of Ministers on the delivery of court and other legal services to the citizen through the use of new technologies.

administrative procedure.⁶⁶ Additionally, a whole range of recommendations and other instruments have been adopted in relation to local self-government, regional self-government, improvement of public services, and the use of e-government in the public sector, especially at the local level.⁶⁷

A major step in defining good administration was taken thirty years after the first recommendation. In 2007, the CoE Committee of Ministers adopted Recommendation CM/Rec (2007) 7 on good administration. The text 'codifies' the most important principles of good administration, which were determined by the CoE Project group on administrative law (CJ-DA).⁶⁸ Consequently, the Group indicated around 30 principles that are found in the mentioned

⁶⁶ See Recommendation No. R (80) 2 of the Committee of Ministers concerning the exercise of discretionary powers by administrative authorities; Recommendation No. R (81) 19 of the Committee of Ministers on the access to information held by public authorities; Recommendation No. R (84) 15 of the Committee of Ministers relating to public liability; Recommendation No R (87) 16 of the Committee of Ministers on administrative procedures affecting a large number of persons; Recommendation No. R (91) 10 of the Committee of Ministers on the communication to third parties of personal data held by public bodies; Recommendation No. R (2000) 6 of the Committee of Ministers on the status of public officials in Europe; Recommendation No R (2000) 10 of the Committee of Ministers on codes of conduct for Public officials; Recommendation Rec(2002)2 of the Committee of Ministers on access to official documents; Recommendation Rec(2003)16 of the Committee of Ministers on the execution of administrative and judicial decisions in the field of administrative law.

The Parliamentary Assembly of the Council of Europe has also been active in the area of public administration reform, with Recommendation 1322(1997) on Civil Service in an Enlarged Europe, and Recommendation 1617(2003) on Civil Service Reform in Europe.

⁶⁷ For example, Rec(2004)15E on electronic governance; or Rec(2005)1E on the financial resources of local and regional authorities; or Rec(2007)16E on measures to promote the public service value of the Internet; or Rec(2009)2E on the evaluation, auditing and monitoring of participation and participation policies at local and regional level. See Council of Europe web page for details [URL: www.coe.int].

⁶⁸ The group had the task to examine the feasibility of preparing a consolidated model code of good administration based on all the principles contained in its recommendations and resolutions as well as the European Ombudsman's Code.

Another key document is a handbook edited by the Council of Europe titled 'The Administration and You' (Council of Europe Publishing, 1996). The Handbook defines basic principles of substantive and procedural administrative law important for the protection of individual rights, and contains references to the relevant case law of the European Court of Human Rights, as well as examples of implementation of the principles in the member states of the CoE. It served the European Ombudsman for drafting his Code.

documents and member states practices and that should be adapted as a legal text.⁶⁹ The Recommendation⁷⁰ states that 'public authorities play a key role in democratic societies', and that they 'must provide private persons with a certain number of services and issue certain instructions and rulings', within a reasonable time limit. Good administration must be ensured by the quality of legislation, which must be appropriate and consistent, clear, easily understood and accessible', while 'cases of maladministration, whether as a result of official inaction, delays in taking action or taking action in breach of official obligations, must be subject to sanctions through appropriate procedures, which may include judicial procedures'.

The appendix of Recommendation (2007)7 includes the Code of good administration, containing 22 articles related to the principles of good administration. In Section I, there are 9 basic principles: lawfulness (Article 2), equality (Article 3), impartiality (Article 4), proportionality (Article 5), legal certainty (Article 6), taking action within reasonable time limit (Article 7), participation (Article 8), respect for privacy (Article 9), and transparency (Article 10). Section II contains specific rules governing administrative decisions, which include standards related to initiation of administrative decisions (Article 12), requests from private persons (Article 13), right to be heard (Article 14), right of private persons to be involved in certain non-regulatory decisions (Article 15); contribution of private persons to costs of administrative decisions (Article 16), and standards regarding the form of administrative decisions (Article 17), their publication (Article 18), entry into force (Article 19) and execution (Article 20), as well as possibility of changing individual administrative decision (Article 21). Finally, Section III contains only two articles – on appeals against administrative decisions (Article 22) and compensation (Article 23).

Although the recommendations are not legally binding, their value rests upon their directive nature, recommending both functional and structural adaptations – the member states are recommended to promote good administration 'within the framework of the principles of the rule of law and democracy' and 'through the organisation and functioning of public authorities

⁶⁹ See Meeting reports CJ-DA-GT (2004)6 E Report 1st meeting and CJ-DA-GT (2004)9E Report 2nd meeting.

⁷⁰ Recommendation (2007)7 draws on the above mentioned 11 recommendations of the Council of Ministers and the European Ombudsman's Code of good administrative behaviour and the EU Charter on Fundamental Rights.

ensuring efficiency, effectiveness and value for money'. In other words, they are required to establish performance measurement systems, conduct functional reviews of the administrative service and check them regularly, enhance efficiency by seeking 'best means to obtain the best results' and ensure accountability by effective control mechanisms ('internal and external monitoring'). Member states are recommended to promote the right to good administration by adopting the standards set out in the model code, 'assuring their effective implementation by the officials of member states and doing whatever may be permissible within the constitutional and legal structure of the state to ensure that regional and local governments adopt the same standards.' Unfortunately, recommendation does not set up the monitoring mechanism (comp. Resolution (77)7) since it does not require that member states report on the measures taken for the fulfilment of the goals defined in Recommendation.⁷¹ Still, it is a valuable attempt to gather all widely accepted administrative principles.

3. SIGMA - THE WIZARD OF EUROPEAN ADMINISTRATIVE SPACE

The European administrative space is often defined as informal *acquis* of the EU related to the organisation and functioning of public administration.⁷² Its creation, at least in the part offered as a model to the prospective member states, is mostly due to the activities of Sigma (*Support for Improvement in Governance and Management*), a joint initiative of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), financed

⁷¹ In order to examine the ways of promoting and implementing the Recommendation, the Conference 'In pursuit of good administration' was organised by the Council of Europe and the Faculty of Law and Administration of the University of Warsaw, Poland, on 29-30 November 2007. The participants were representatives from all Eastern European countries (both Central and South East), except Croatia, as well as from Italy, Belgium, Greece, Monaco and Lichtenstein. The Conference Conclusions stated the right to good administration as a third generation right of general scope (in addition to liberties and to economic and social rights), whose content can be broken down into individual rights, which seek for adoption of relevant legislation and safeguarding by judicial review and special bodies, such as the Ombudsman. It also urges the CoE to assist the member states in implementation of the recommendation.

⁷² See Olsen, *op.cit.* Also see Musa, A., 'Europski upravni prostor - približavanje nacionalnih uprava' (European Administrative Space. Convergence of National Administrations), *Hrvatska javna uprava*, vol. 6, no.1, pp. 123-154.

by the EU, established by OECD and the European Commission's Phare Programme in 1992 as support to partner countries in their public administration reforms. Sigma was launched as support to five Central European countries (Czech Republic, Hungary, Poland, Slovakia and Slovenia). In the meantime, Sigma support has been extended to other countries – to all 12 candidate countries from the eastern enlargement of 2004 and 2007, as well as to recent candidate countries (Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Turkey) and potential candidates (Albania, Bosnia and Herzegovina, Serbia and Kosovo), parallel with the expansion of the Stabilisation and Association Process. Since 2008, Sigma support has also been extended to 16 EU neighbouring countries, covered by the European Neighbourhood Policy.⁷³ Sigma's activities and priority areas regarding public administration reform are analysed in the following sections, with special reference to the principles regarding several key dimensions of public administration.

3.1. The Role of the OECD-Sigma in Developing the Standards of Good Administration

The activities of Sigma's support to the reform processes of public administration are divided into different areas, including legal frameworks, civil service, administrative justice and integrity; public expenditure management, external audit and financial control; public procurement; policy and regulatory systems. Within the scope of those priorities, Sigma supports the target countries by assessing the reform progress and identifying priorities for reform, supporting institution building and development of legal frameworks and procedures, and facilitating assistance from the EU and other donors. The mechanisms of Sigma support include advising, peer reviews/assistance, analysis and assessments, support to networks, preparation of different reference material and providing training and education (e.g. twinning programmes).

Important contributions to Sigma's work are documents covering specific issues in governance and management - the Sigma papers. Since 1995, 47 papers have been published on different subjects, including the reform of public institutions, policy-making, management of financial resources, administrative control and providing information. Based on the content analysis, Sigma papers can be grouped into eight thematic areas (see Figure 1 for percentage distribution):

⁷³ See Sigma's official website [URL: www.sigmaweb.org].

- (a) institution building and institutional reforms of public administration as well as its adaptation to the European standards, especially within the notion of the European Administrative Space (7 papers);
- (b) financial control and audit (8 papers);
- (c) law drafting, regulatory management and assessing the impact of proposed regulations (5 papers);
- (d) development of public administration legal framework and the content of regulations (4 papers);
- (e) public service, civil servants, integrity and professionalism (8 papers);
- (f) different issues of public procurement (7 papers);
- (g) policy making and public policies coordination (6 papers);
- (h) specific issues of transitional countries (2 papers).

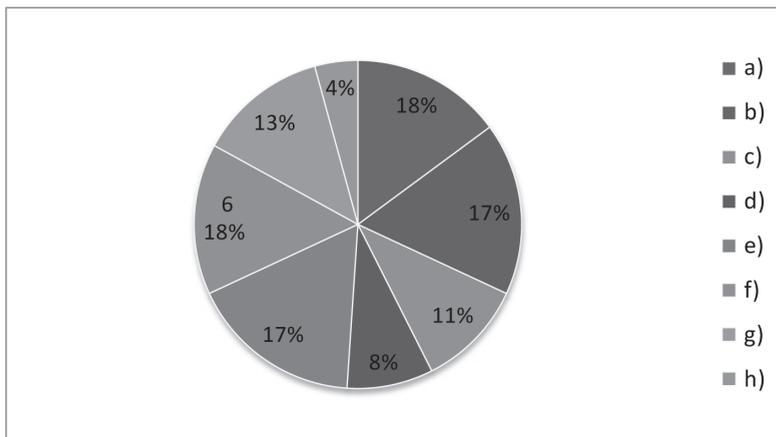


Figure 1: Sigma papers by subject area

In total, Sigma papers encompass more than 4.000 pages, which represent a respectable material on different issues from public administration domain. The size of the papers ranges from very comprehensive, e.g. Paper no. 8 on Budgeting and Policy Making (335 pages), to very short, such as Paper no. 7 on The Audit of Secret and Politically Sensitive Subjects.

The authors of Sigma papers were mainly academics from universities and scientific institutions, prevalently from Great Britain (6) and France (4); then OECD/Sigma experts; and finally, CEE/SEE practitioners, usually civil servants, who drafted country reports on a specific subject in question. In general, the academics originating from CEE/SEE countries were not included in the preparation of the Papers, not even after the accession of their countries to

the EU. It is arguable whether the inclusion of domestic academic knowledge would improve the reception of the reports and legitimacy of their findings, leaving aside the issue of impartiality.

The majority of Sigma papers were published in the period 1995 – 2004, a total of 36. This can be explained by the need for preparation for Eastern Enlargement in 2004. Moreover, the Sigma programme was established in the first place as a support to the reforms in the Czech Republic, Hungary, Poland, Slovakia and Slovenia. Six applicants (the Czech Republic, Estonia, Hungary, Poland and Slovenia, plus Cyprus) began accession negotiations with the EU in 1998, while Bulgaria, Latvia, Lithuania, Romania and Slovakia (plus Malta) opened EU accession negotiations in 2000. The CEE candidates approached EU accession with different starting conditions from previous applicants, following decades of central planning and state socialism. Since public administration reform was one of the key areas of concern in accession negotiations, it is easy to understand why the majority of Sigma papers were published during the Eastern enlargement period. On the contrary, after the Eastern Enlargement, in the period 2005 – 2010 a total of 11 Papers were published, and their topics moved focus from the civil service professionalism, budgeting and financial management, which dominated the first phase, towards more central issues of policy making and regulation (Papers no. 37 and 38, 42, 43), public procurement (papers no. 40, 41, 45, 47), and overall transparency (paper no. 46).

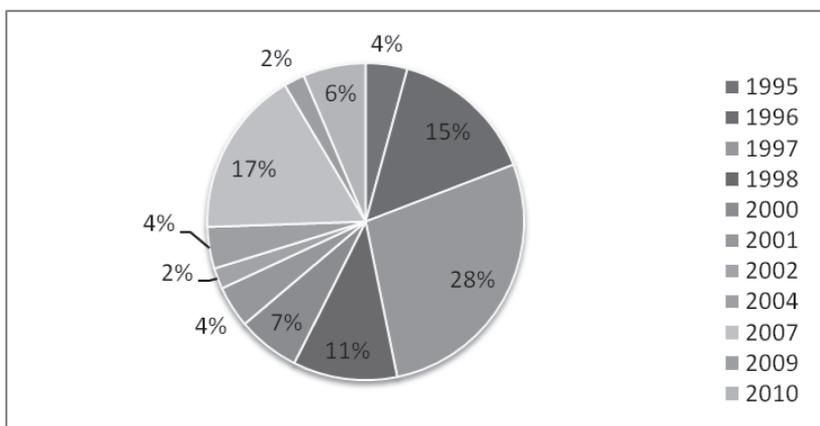


Figure 2: Distribution of Sigma papers by the year of publication

The standards developed and compiled within Sigma papers represent good practices and European standards of governance and management to which

candidate countries are expected to conform within accession conditionality, in order to align their public administration structures and practices with those of the EU member states. Those standards have been thoroughly used in *Sigma assessment reports*, which have been prepared since 1999, at the request of the European Commission and as a contribution to its *annual progress reports* on EU candidate and potential candidate countries. The objective of Sigma assessments is to examine the extent to which the public administration systems in candidate countries correspond to the principles of the European Administrative Space.⁷⁴ In its annual reports, Commission is assessing the extent to which the institutional arrangements adopted by the candidate country and its administrative practices are compatible with principles of the EAS.⁷⁵

The Sigma documents, although not legally binding, gather and codify good administrative practice and ways of doing things, and administrative standards that are backed up by the Commission's authority and the argumentation, functionality and usefulness in dealing with practical administrative problems. Moreover, spreading of the EAS is enhanced by the dissemination of principles and related concepts by the means of conferences, round tables, workshops and other events, and by the publication of the assessments and analyses of its experts. The emerging network of experts in different administrative areas helps to promote mutual learning and the convergence among the European administrative traditions. Moreover, the development of the EAS has been fostered by Union's need for a policy template for horizontal administrative reforms, based on the requirements stipulated by the Copenhagen and Madrid accession criteria.

3.2. The European Administrative Space and Specific Standards: the Sigma Approach

Sigma had an important role in creating the concept of the European Administrative Space – the very notion of the concept was developed in Sigma papers published in 1998 and 1999. According to Paper no. 23 'Preparing

⁷⁴ However, in order to assess the scope of changes in candidate countries' public administrations which can be regarded as influenced by the SIGMA Papers, additional empirical research should be conducted.

⁷⁵ Meyer-Sahling, J. (2009), "Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession", *Sigma Papers*, No. 44, OECD Publishing, [URL: <http://dx.doi.org/10.1787/5kml60pvjmbq-en>], pp. 12

Public Administrations for the European Administrative Space',⁷⁶ 'it is clear that a European Administrative Space is now beginning to emerge. 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.' In order for the countries concerned to be able to retain control over the reform of their public administrations, 'EAS offers applicant countries a range of solutions that are similar enough to provide some common ground and broad enough to leave each country substantial room for manoeuvre in terms of policy options.'

Paper no. 27 'European Principles for Public Administration'⁷⁷ defined the EAS as 'a metaphor with practical implications' which 'represents an evolving process of increasing convergence between national administrative legal orders and administrative practices of Member States' influenced by several driving forces, such as the jurisprudence of the European Court of Justice, economic pressures from individuals and firms and regular and continuous contacts between public officials of Member States, but also the legislative activity of European institutions and influence of EU legislation on the national legal framework.⁷⁸ According to Sigma, the EAS includes a set of common standards within public administration, defined by law and enforced in practice through procedures and accountability mechanisms. Those principles of EAS are divided into four main groups: the rule of law - legality, reliability and predictability; openness and transparency; accountability; efficiency and effectiveness.

According to Sigma papers, there is no doubt that the EAS exists. However, there is a question of the level of convergence of national public administrations towards the common model. Research findings published in the recent Sigma Paper no. 44 'Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession' has shown that 'different groups of countries in CEE that share broad characteristics, levels of fit with European principles of administration, and recent reform trajectories expectation associated with the notion of the European Administrative Space, whe-

⁷⁶ OECD (1998), "Preparing Public Administrations for the European Administrative Space", *Sigma Papers*, No. 23, OECD Publishing, 1998, [URL:<http://dx.doi.org/10.1787/5kml6143zd8p-en>]

⁷⁷ OECD (1999), "European Principles for Public Administration", *Sigma Papers*, No. 27, OECD Publishing, 1999, [URL: <http://dx.doi.org/10.1787/5kml60zwd7h-en>]

⁷⁸ Cardona F., Freibert A., *The European Administrative Space and Sigma Assessments of EU Candidate Countries*. Hrvatska javna uprava, vol. 7, no.1, 2007, pp. 51-59.

reby administrative systems in the EU should converge on the basis of certain principles of administration. In fact, post accession development has implied a divergence of CEE civil service systems over the last five years.⁷⁹

The examples of administrative standards of the EAS include specific elements of the civil service, administrative procedure, administrative justice, regulatory capacity and policymaking, as well as four groups of general administrative principles (presented in Table 1).⁸⁰ Those standards, backed up by checklists, serve as benchmarks for administrative capacity assessments of the candidate countries, as well as of the new members.⁸¹ For example, Sigma has prepared a detailed checklist for a General Law on Administrative Procedures⁸² intended as a tool in a drafting process, which can later serve in the assessment of the actual reform of administrative procedure. The checklist includes some general principles of administrative law and the steps or phases that are conducive to deciding on an administrative matter. Similarly, there are impressively detailed two checklists on civil service legislation, relating to both civil service law and by-laws regulating specific elements of civil service.⁸³ In addition, administrative systems of the candidate countries are assessed according to formal legal arrangements but also according to scrutinising the extent to which those administrative law principles are applied in practice. Finally, regulatory policy and policy making are special areas which are defined and assessed by

⁷⁹ See Meyer-Sahling, *op.cit.*, p. 75.

⁸⁰ See Papers 42 and 44 assessing regulatory management capacities and civil service reforms in the New Members three and five years after the enlargement, i.e. in 2007 and in 2009. For the principles of administrative law see OECD, 1999, *op.cit.* For administrative procedure principles see Cardona, F., *Checklist for a General Law on Administrative Procedures*, OECD Sigma, 2005, [URL: www.sigmaweb.org].

⁸¹ The role of the Council of Europe in the harmonization of different aspects of public administration and administrative law has been already stressed in the previous chapters. See Woehrling, J.-M., *Judicial Control of Administrative Authorities in Europe: Toward a Common Model*, Papers presented at the “Regional Workshop on Public Administration Reform and EU Integration”, Budva, 5-6 December 2005.

⁸² For administrative procedure principles see Cardona, F., *Checklist for a General Law on Administrative Procedures*, OECD Sigma, 2005, [URL: www.sigmaweb.org].

⁸³ See OECD Sigma, Sigma paper no. 5, Civil Service Legislation Contents Checklist, 1996 and OECD Sigma, Sigma paper no. 14, Civil Service Legislation: Checklist on Secondary Legislation (and Other Regulatory Instruments), 1997. For details and comments see also Musa, A., *Europski standardi u pogledu službeničkog prava i Zakon o državnim službenicima iz 2005.* (European Standards Regarding Civil Service Legislation and Croatian Civil Service Law 2005), Hrvatska javna uprava vol.6, no.4, pp. 91-132

Sigma, giving weight not only to the legal arrangements, but also to the process that precedes them – strategic capacity of the government, planning and prioritising, regulatory impact assessment practice, coordination capacities etc. These elements are found to be weak in Eastern European countries in general (*v. infra*), mostly due to the legalistic administrative tradition which does not naturally support policy approach. On the contrary, in order to accept the mechanisms of policy formulation and implementation, all instruments of coordination, strategic planning and evaluation, and similar, legalistic administrative tradition ought to embrace managerial values and loosen up the strongly formalistic approach.

Table 1: An overview of the European administrative standards relating to civil service, administrative procedure, administrative justice and policy making

<i>Civil service and the status of public servants</i>	<i>Administrative procedure</i>	<i>General administrative and administrative law principles</i>	<i>Regulation and policy-making</i>
Clear demarcation between political appointments and civil service positions in public administration as a means to ensure depoliticised public administration, independent from daily political interventions	Clear definition of public administration jurisdiction (legal competence);	Reliability and predictability (legal certainty) of administrative actions and decisions, as opposed to arbitrariness in public decision-making and to the need for respect of legitimate expectations of individuals;	Interministerial co-operation regarding formulation policy proposals
Recruitment and promotion based on merit and competition, in order to promote professionalism	Legislative regulation of the fundamental procedural steps;	Openness and transparency, aimed at ensuring the sound scrutiny of administrative processes and outcomes and its consistency with pre-established rules;	Planning and prioritising of and within public policies
Hierarchical supervision and external control of legality as a means of promoting accountability of public administration	Legislative assurance of the principle of proportionality of the administrative decisions and actions;	Accountability of public administration to other administrative, legislative or judicial authorities, aimed at ensuring compliance with the rule of law;	Defining conflict resolutions in the course of policy formulation

Quality regulation of servants duties and rights, especially in terms of political neutrality, fairness, integrity, and conflict of interest	Timeliness of the administrative decisions and actions, within the prescribed deadlines;	Efficiency in the use of public resources and effectiveness in accomplishing the policy goals established in legislation and in enforcing legislation.	Centre of government capacity
Effective regulation of the appeals and protection of rights of the civil servants, including administrative court control	Factual and legal foundations of the decision contained in the reasoning of the administrative act	<i>System of administrative justice</i>	Strategic planning capacity at governmental level
Fair regulation of the evaluation of performance with adequate guarantees of protection from unjust assessments	Guarantee of the interested parties insight into the all relevant documentation in the file;	Independence and impartiality, both subjective and objective;	Coordination of the EU issues
The system of salaries prescribed by law, transparent and low discretion of manager in determining a salary for civil servant	Right of the interested party to be heard before issuing an administrative decision;	Defined limits of discretionary power;	Government inclusion in the budgetary process
Establishment of the professional training system as a presumption for professional administration	Right to be informed about the procedural decisions in order for party to be able to use legal remedies, before termination of administrative procedure;	Procedural guarantees in order to secure a fair proceeding.	Regulatory impact assessment
Strengthening the human resources management and development mechanism, including central service which ensures the application of standards in the administration as a whole	Instruction on the legal remedy in the administrative act;		
	Clear regulation of the reasons for the annulment and cessation of the administrative act		

3.3. Assessing Croatia: A Modest Success or Not a Complete Failure?

Croatia's progress has been extensively assessed by Sigma and the European Commission, which both clearly state the reform problems and inadequacies when it comes to six regularly evaluated areas: democracy and the rule of law, civil service and administrative law, integrity, public expenditures management and control, public procurement and the policy making and coordination. The main conclusion of 2010 Report⁸⁴ is ambiguous: although in some areas, such as public procurement and combat against corruption a significant progress has been achieved, in comparison with other areas, the progress is limited and insufficient, more or less unchanged from that of previous assessments. The most prominent suggestions and objections include the following: (1) lack of political support for the reform; (2) low level of inclusion of the civil society, (3) the legal framework is still considered to be too formalistic and detailed, which leads to poorer management effectiveness, increases costs for public administration and for citizens, and creates legal loopholes requiring continuous amendments; (4) the administrative leadership of the reform is weak and insufficient to cope with complex change; (5) the organisation of public administration lacks coherence; (6) the degree of politicisation is still unacceptable, reducing the attractiveness of the civil service and perpetuating public distrust of public services; (7) the transparency and openness are still low; (8) the centre of government is still weak and fragmented; and (9) the quality of policy development and law-drafting in ministries remains variable and overall is poor.

Limited progress with public administration reform was also reported in the 2010 Croatia Progress Report, prepared by the European Commission.⁸⁵ Regarding the General Administrative Procedure Act, although it aims at supporting the establishment of service-oriented and professional administrative practices and developing an administrative system based on simplified and transparent procedures, its implementation is at an early stage to assess its practical implications. In general, in order to achieve tangible results in public administration reform, stronger political commitment and closer coordination between the key stakeholders at the central, regional and local levels are required.

⁸⁴ The Report was published in November 2010, less than a year before the expected closing of negotiations.

⁸⁵ Commission of the European Communities, Croatia 2010 Progress Report, SEC(2010) 1326, 9.11.2010.

In comparison with previous years, Croatia 2010 Reports prepared by Sigma and the EC have not observed any significant progress in public administration reform.⁸⁶ Croatian public administration has been burdened by numerous complex problems requiring solutions that meet high standards, firm and committed pro-reform leadership, and professional monitoring and evaluation of reform implementation.⁸⁷ The administrative culture is predominantly of an authoritarian and bureaucratic type based on the climate of secrecy, obedience, deep resistance to changes, evasion of responsibilities and underestimation of civil servants themselves, but also of citizens and domestic and external experts.⁸⁸ All these characteristics, together with the prevailing administrative traditions, aggravate reform efforts.

The importance and stubbornness of administrative traditions can be pictured by the evaluation of Sigma's leading expert in 2006, who accentuated that Croatia had had a significant advantage in comparison with other transition countries with regard to legal regulation of the civil servants' status and general administrative procedure, as well as the judicial control of administrative decisions. Nevertheless, Croatia managed to turn this advantage into disadvantage by behaving as a hostage of administrative traditions, and not accepting the necessity for change.⁸⁹

4. DISCUSSING THESES AND CONCLUSIONS

The EAS is an ambiguous and evolving concept rooted in European democratic tradition. It has been built and rebuilt with joint efforts of European nations, the institutions of the European Union and other organisations, generating new practices and new legislation. The standards of the EAS are facing the resistance of administrative traditions and inertia of the national administrations in Eastern Europe. Other important factors are the impulses

⁸⁶ See Lalić Novak, G. *Hrvatska uprava u izvješćima Europske komisije i SIGME 2010.: ograničen napredak u reformi javne uprave* (Croatian Public Administration in the 2010 Reports of the European Commission and SIGMA – Limited Progress in Public Administration Reform), Hrvatska javna uprava, vol. 10, no. 4, 2010.

⁸⁷ Koprić, I., *Contemporary Croatian Public Administration on the Reform Waves*, Paper presented at the 21st IPSA World Congress, Santiago de Chile, 12-16 July 2009, [URL: www.ipsa.org].

⁸⁸ *Ibid.*

⁸⁹ Freibert, A. Uvodno izlaganje (Introductory presentation). In: Barbić, J., ed., *Reforma hrvatske državne uprave* (Reform of the Croatian State Administration), HAZU, Zagreb, 2006, pp.32.

from international organisations that often promote a more economically based approach within the framework of the New Public Management, thus moving beyond legalistic European administrative traditions that are the only framework Eastern European administrators are used to apply and move within.

In conclusion, several directions can be traced in the evolving concept of the EAS. One is related to the formulation of the core EAS agenda, which is rarely challenged, and which is focused on the key principles of Western democracies: professional, accountable and impartial public administration is to serve the will of the citizen. The other direction relates to the more vague and changeable outer layer of the EAS, evolving and developing towards a more effective and efficient public administration. Public administration should act transparently, and should be effectively managed and coordinated in financial terms. The third includes the development of the core principles relating to the European administration, but also applicable to public administrations of the member states when they apply European law. Finally, there are some elements of good administration that can be found in Eastern European states, for example in Croatia, and those practices are worth keeping alive. The final part of the paper enumerates the main issues of the EAS, as presented earlier.

1. The European Administrative Space (EAS) is a result of common intentions and efforts of institutional players as well as of European citizens.

The EAS is based on and comprised of a set of principles and standards of public administration organisation and functioning defined by law, whose application is supported by the appropriate procedures and accountability mechanisms. The EAS is created and driven by EU institutions, the Council of Europe, the OECD-Sigma, and other European players. It is facilitated by civil servants' learning in the process of sharing best practices.

However, it is fuelled by the expectations of European citizens, civil society, economic and other non-governmental actors.⁹⁰ Those expectations give propellant to the process of Europeanization and make the EAS a viable and vivid concept. Thanks to the doctrine of good governance, citizens are getting a more influential role in public policies.⁹¹

⁹⁰ See also Ulusoy, K., *The Changing Challenge of Europeanization to Politics and Governance in Turkey*, International Political Science Review, vo. 30, no.4, 2009, pp. 363-384.

⁹¹ Martin, S., *Engaging with Citizens and Other Stakeholders*, In: Bovaird, T., Löffler, E., eds., *Public Management and Governance*. 2nd ed., Routledge, London, New York, 2009. This can be seen as "rediscovering civil political culture", also see Favell, A.,

2. *The EAS is a light-concept for every European country.*

Central and Eastern European countries, as well as South-East European countries are obviously among them. However, there is convergence between Western European countries as well. For example, Santer's EU Commission (1995-1999) insisted that the member states report "their respective capacities to transpose directives into national legislation". Such kind of performance measurement and comparing capacities caused the pressure towards performance harmonization.⁹²

There are many other examples of convergence and ever-increasing similarities that are not the result of imposing policy but of almost inevitable mutual adjustments between the EU member states, such as the centre of government, regional policy, administrative justice, access to public sector information, local governments, administrative procedures, regulatory policies in services of general interest, etc.⁹³

3. *The EAS is a constantly evolving concept.*

The convergence seems to be slow, but constant. There are continuous efforts of the Council of Europe, the EU and the OECD-Sigma, to create, syste-

A Politics that is Shared, Bounded, and Rooted? Rediscovering Civic Political Culture in Western Europe, Theory and Society, vol. 27, 1998, pp. 209-236.

⁹² Moxon-Browne, E., *Administrative Capacity in the European Union: How High Can We Jump?*, pp. 3-4, [URL: <http://www.coleurope.eu/content/rd/devoffice/acad/cooperation/EITC/Paper%20Moxon-Browne.pdf>].

⁹³ See Wollmann, H., *Local Government Systems: From Historic Divergence towards Convergence? Great Britain, France, and Germany as Comparative Cases in Point. Environment and Planning, Government and Policy*, vol. 18, 2000, pp. 33-55; Goetz, K.H., Wollmann, H., *Governmentalizing Central Executives in Post-Communist Europe: A Four-Country Comparison*, Journal of European Public Policy, vol. 8, no.1, 2001, pp. 864-887; Winkler, R., *Administrative Justice in Europe: The EU Acquis, Good Practice and Recent Developments*, Hrvatska javna uprava, vol.7, no. 4, 2007, pp. 887-911; Đulabić, V., *Moderna regionalna politika u Hrvatskoj (Modern Regional Policy in Croatia)*. In: Pusić, E, ed., *Hrvatska država i uprava (Croatian State and Administration)*, HAZU, Zagreb, 2008.; Koprić, I., Musa, A., Đulabić, V., *Europski standardi regulacije službi od općeg interesa: (kvazi)nezavisna regulacijska tijela u izgradnji modernog kapitalizma (European Standards in the Regulation of Services of General Interest: Quasi-Independent Regulatory Bodies in Building of Modern Capitalism)*, Hrvatska javna uprava, vol. 8, no.3,2008, pp. 647-688; Koprić, I., Đulabić, V., *Europeizacija hrvatskog upravnog postupovnog prava (Europeanization of Croatian Administrative Procedure Law)*, In: Đerđa, D. et al., *Novi Zakon o općem upravnom postupku (New General Administrative Procedure Act)*, Novi informator, Zagreb, 2009.

matize, codify, promote, and impose (if possible) common European administrative principles and standards. These principles and standards are undergoing the process of sedimentation through everyday administrative functioning and practicing. There are many fields of harmonization and convergence, such as constitutions (6 standards), civil service legislation (8 standards), administrative procedures legislation (10 standards), public sector financial control (9 standards), external audit (4 standards), budgeting and public expenditure management (13 standards), and policy-making and coordination at the centre of the government (9 standards).⁹⁴ In addition, Freibert accentuates the standards in public procurement and public integrity.⁹⁵ There are also Sigma checklists with regard to the content of civil service legislation and secondary legislation, public integrity, administrative procedures, etc.⁹⁶

4. *Since the mid-1990s, the new focal point of the EAS concept is administrative capacity.*

The preparation of accession of ten Eastern European countries to the EU generated the issue of administrative capacity and the transition from the socialist to the European administrative space. The administrative capacity became one of the main accession criteria established at the Madrid EU Council meeting of 1995. However, it was not elaborated in detail. Two years later, in 1997, the Commission specified the administrative capacity in its Opinions on the applications of ten applicant states, accentuating the following targets: that civil service must be regulated by specific law, a career civil service must be established, political neutrality of the civil service must be ensured, and pay system closer to the one in the private sector must be designed.⁹⁷

Apart from such European considerations, administrative capacity could be defined in terms that are more scientific. The elements of the concept of administrative capacity can be systematized in five groups: public policies and strategic planning; organization; functioning of public administration; per-

⁹⁴ Cardona, F., *Assessing the Fulfilment of the Copenhagen Criteria in Public Administrations*, pp. 1-5. [URL: <http://www.sigmaxweb.org>]

⁹⁵ Freibert, *op.cit.*

⁹⁶ Koprić, I., *Europeizacija upravnog sudovanja* (Europeanisation of Administrative Justice). Paper presented at the Conference Novi Zakon o upravnim sporovima i nova organizacija upravnog sudovanja (New Law on Administrative Disputes and New Organisation of Administrative Justice), Zagreb, 11 May 2010, pp. 2-7.

⁹⁷ Moxon-Browne, *op. cit.*, pp. 5

sonnel; support to administrative capacity development.⁹⁸ There are serious warnings about the sustainability of administrative reforms imposed during the EU accession process.⁹⁹ For example, the EU assessments of administrative capacities do not take into account all the necessary elements, administrative reforms are poorly prepared by foreign experts, they are implemented too quickly, they are badly managed, they do not have a firm basis in domestic academic and expert communities, they lack properly educated (not only superficially trained) civil servants, etc.

5. *However, the role of the transitional countries from CEE and SEE regions is not and should not be passive. Some elements of good administration could be offered to the European administrative community from CEE and SEE countries as well.*

Legislation on general administrative procedure seems to be one of them. The first successful codification of administrative procedural rules in Europe was made by Austria in 1925, followed by several countries that regulated their general administrative procedures in a similar manner. These were Czechoslovakia and Poland in 1928, and the Kingdom of Yugoslavia in 1930. The second Yugoslav General Administrative Procedure Act was adopted during early socialist period, in 1956. Similarly, the other European countries codified general administrative procedural rules after World War II or during the past several decades.¹⁰⁰

⁹⁸ As many as 24 elements can be included in such a systematisation. See Koprić, I., *Kritična važnost kapaciteta javne uprave za pridruživanje Hrvatske Europskoj uniji: jesu li važnije političke zapreke ili upravne mogućnosti? (Critical Importance of Administrative Capacities for Croatian Accession to the European Union: Are Political Obstacles or Administrative Capacities More Important?)*. In: Damir Vašiček (ed.) *Hrvatski javni sektor u aktualnim gospodarskim uvjetima (The Croatian Public Sector in Actual Economic Circumstances)*. Opatija: Hrvatska zajednica računovođa i finansijskih djelatnika, 2009, pp. 147-159.

⁹⁹ The World Bank, *EU-8: Administrative Capacity in the New Member States: The Limits of Innovation?*, 2009.; see also Meyer-Sahling, *op.cit.*

¹⁰⁰ Hungary in 1957, Spain in 1958, Poland in 1960, Czechoslovakia in 1967, Switzerland in 1968, Bulgaria in 1970, Germany in 1976 (federal law), Denmark in 1986, Sweden in 1986, Italy in 1990, Portugal in 1991, Netherlands in 1994, Greece in 1999, etc. See Medvedović, D., *Legally Regulated Procedures – A Prerequisite of Modern Administration*, In: Koprić, I., ed., *Modernisation of the Croatian Public Administration*, Faculty of Law and Konrad Adenauer Stiftung, Zagreb, 2003., pp. 415; Rusch, W., *Administrative Procedures in EU Member States*, Paper presented at the Conference on Public Administration Reform and European Integration, OECD-Sigma, Budva, 26-27 March 2009., pp. 8.

Current legal regulation of general administrative procedure is still based on the old Austrian tradition, i.e. on the ideas of classical, Weberian public administration. Similar legal regulation of administrative procedures during almost eighty years has had a profound effect on generations of lawyers and civil servants in general, but also on citizens. The general administrative procedure laws have become a part of the institutional memory and social capital of SEE countries. In a way, they are in-built in everyday life. However, they have also brought about rigidity, formalism and bureaucratisation in practice. A modernised version of the general administrative procedure act could possibly be enter the EAS as one of the elements of modern neo-Weberian state.¹⁰¹

6. *There are other trends and influences in public administrations, beside Europeanization.*

There is a constant pressure to accept the philosophy, values, principles, and practices of the new public management doctrine (the NPM). Such pressure comes from international players (the OECD, the World Bank, IMF, etc.), but also from the business community (both domestic and foreign entrepreneurs). Additionally, more and more public managers are being recruited from the private sector and/or accepting the NPM ideology. Certain influential media, mostly in foreign ownership, strongly advocate practicing public management methods regardless of the rule of law, speculating that in such a way public administration can be more efficient, economic and effective. Deregulation (“regulatory guillotine”), debureaucratization, simplification of administrative procedures, are very popular reform words in the region.

Public administrations in many CEE and SEE countries are also under pressure for rationalisation that comes from domestic political actors. Rationalization is used in a sense of pressure to do more with less (civil servants, money, and resources), better in shorter terms, etc. Public administration is often treated as a scapegoat that should be blamed for all the sins of unsuccessful policies.¹⁰² Not to mention that public managers and politicians try to influ-

¹⁰¹ Randma-Liiv, T., *New Public Managers Versus the Neo-Weberian State in Central and Eastern Europe*, The NISPAcee Journal of Public Administration and Policy, vol. 1, no. 2, 2008/2009, pp. 69-81.

¹⁰² Politicians, as people in general, tend to avoid blame for losses or negative outcomes, while citizens as ultimate blamers in political systems “blame the delegates (politicians, I.K.) rather than the delegators (administrations, I.K.). See Hood, C., *The Risk Game and the Blame Game*, Government and Opposition, vol. 37, no. 1, 2002, pp. 15-37.

ence recruitment, appraisals, disciplinary responsibility, and other elements of the civil servants' status. Merit-based civil services are in the process of development, and politicization is the common issue in SEE countries. A kind of vicious circle is emerging, in which politicians try to influence the civil service, and blame it for failures, simultaneously causing low level of citizens' trust and weak organizational culture. Many citizens are also in favour of hollowing out the state, thus treating the civil service as a huge, oversized machine full of lazy bureaucrats, and lodging their political frustrations to public administrations.

7. *In that way, administrative practice is muddling through between European convergence and other external influences, living, practising, and reinterpreting their national administrative traditions, all at the same time.*

Sigma Paper no. 44 (2009) argues that administrative reforms imposed by external actors are highly dependable on national administrative traditions, political will of the dominant national political players, administrative cultures, academic communities, and strength of civil society and citizens.¹⁰³ All of them can be a source of countervailing power, meaning that they can foster, slow down or even block and pull back administrative reforms¹⁰⁴

8. *Institutions and legal regulation of the new institutions do matter.*

Many new institutions were created as a result of this administrative melting pot. Legal framework of the new institutions is important, which has been shown by both old and new institutionalism. However, new institutions should be used in practice, should be alive, and should be stabilised through effective and uniform use.¹⁰⁵

This opens the issue of possible rigidity that can also be labelled as ritualism. Even new "managerial instruments can be used ... in a bureaucratic manner, less in the sense of Weber than in the sense of the US sociology of bureaucracy".¹⁰⁶

¹⁰³ See Meyer-Sahling, *op.cit.*

¹⁰⁴ For such "cultural surprises" see Hood, C., Peters, B.G., *The Middle Aging of New Public Management: Into the Age of Paradox?*, *Journal of Public Administration Research and Theory*, vol.14., no.3, 2004, pp. 272-274.

¹⁰⁵ See Pusić, E., *Društvena regulacija* (Regulation in Society), Globus, Pravni fakultet: Zagreb, 1989, pp. 182-187.

¹⁰⁶ Eymeri-Douzans, J.-M., *Towards a post-NPM/neo-Weberian Hybrid State: Prospective Remarks*, Paper presented at the 21st IPSA World Congress, Santiago de Chile, 12-16 July 2009, pp. 10.

9. *Institutions should be modernised.*

It is not easy to balance stabilisation of the new institutions and their modernisation. Tensions between the two (stabilization and change) constantly cause problems within public administrations and in their relations with citizens and other subjects. Too rigid institutions may lead to the bureaucratisation and ritualism, although their stable and uniform use certainly contributes to legality, predictability and development of reasonable expectations towards public administrations. Social trust, including trust in public administration, can lower transaction cost for the economy and curb corruption.¹⁰⁷

10. *Croatia is a latecomer to the process of Europeanization, although it is a few steps ahead of other Western Balkan countries.*

Croatia is a latecomer to the process of transition. Unlike Central European countries (including Slovenia), Croatia and other countries on the territory of the former Yugoslavia were blocked by the war of 1991-1995. During the war, when hierarchical army principles prevail, there is a serious chance for the development of authoritarian, even dictatorship tendencies. Because of that, political democratisation as one of the main transitional processes was prevented in Croatia to a significant degree. Real democratisation and full transition in political terms started rather late, at the beginning of the 21st century.

Partly because of that, Croatia has been a carefully monitored country, now for a whole decade. Sigma *alone* has submitted and published more than 35 reports on the progress in various administrative fields.¹⁰⁸

¹⁰⁷ Pierre, J., Rothstein, B., Reinventing Weber: The Role of Institutions in Creating Social Trust, In: Laegreid, P., Christensen, T., eds., *The Ashgate Research Companion to New Public Management*, Ashgate Publishing, Burlington, 2010.

¹⁰⁸ There are assessments on: a) civil service and the administrative framework (2005, 2006, 2007, 2008, 2009, 2010); public procurement (2004, 2006, 2007, 2008, 2009, 2010); external audit (2004, 2006, 2007, 2009); public internal financial control (2006, 2007, 2008, 2009); public integrity system (2005, 2006, 2008); policy-making and coordination (2005, 2006, 2008, 2010); tax administration (2002); administrative reform capacity (2004); governance and public administration (2004); democracy and the rule of law (2009, 2010); public expenditure management system (2008, 2009, 2010); general assessment (2010); etc. Certain assessments have not been published, see [www.sigmaxweb.org].

However, Croatia is a latecomer to the process of Europeanization, too.¹⁰⁹ When ten transition countries joined the EU in May 2004, Croatia had not acquired even a candidate country status. The process of accession started in 2001 when the Stabilisation and Association Agreement was signed, followed by granting of the candidate status in June 2004 and the beginning of the negotiation process in October 2005. During that period, an institutional structure for negotiations was constructed, consisting of negotiations group and task forces for particular negotiation chapters (35 chapters), supervised and guided by the National Committee for Monitoring the Negotiation Process as a working body of the Croatian Parliament. Although at the beginning of the process, it was predicted that Croatia would be ready for full membership in 2007, the negotiation process finished only in June 2011.¹¹⁰ Despite the clear connection between the progress of administrative reform and the progress of EU accession, Croatian approach to Europeanization has been more formal than substantial.¹¹¹

¹⁰⁹ Stubbs, P., Zrinščak, S., *Croatian Social Policy: The Legacies of War, State-Building and Late Europeanization*, Social Policy & Administration, vol.43, no.2, 2009, pp. 121-135.

¹¹⁰ For negotiations in the Western Balkans see OECD (2007), "Enlargement of the European Union: An Analysis of the Negotiations for Countries of the Western Balkans", *Sigma Papers*, No. 37, OECD Publishing, [URL: <http://dx.doi.org/10.1787/5kml60qztg21-en>]

¹¹¹ See Freibert, *op.cit.* See also Koprić, I., Novi Zakon o općem upravnom postupku kao poticaj ili prepreka modernizaciji hrvatske javne uprave? (New General Administrative Procedure Act as an Impetus or Obstacle for Modernisation of the Croatian Public Administration), in: Koprić, I., ed. *Novi Zakon o općem upravnom postupku – praktična pitanja i problemi primjene* (New General Administrative Procedure Act – Practical Issues and Implementation Problems), Institut za javnu upravu, Narodne Novine, Zagreb, 2009; Koprić, I., Novi Zakon o općem upravnom postupku – tradicija ili modernizacija? (New General Administrative Procedure Act – Tradition or Modernisation), in Koprić, I., Đulabić, V., eds., *Modernizacija općeg upravnog postupka i javne uprave u Hrvatskoj* (Modernisation of General Administrative Procedure and Public Administration in Croatia). Institut za javnu upravu, Društveno veleučilište, Zagreb, 2009; Koprić, I., Teritorijalna organizacija Hrvatske: stanje, kriteriji za prosudbu racionalnosti i prijedlog novog sustava (Territorial Self-Government in Croatia: State of Affairs, Criteria for Evaluating Rational Territorial Organisation, and Proposal for a New System), in: *Nova lokalna i regionalna samouprava* (New Local and Regional Self-Government), HAZU, Zagreb, 2010. Also see Cohen, L.J., *Administrative Development in 'Low-Intensity' Democracies: Governance, Rule-of-Law and Corruption in the Western Balkans*, Simons Papers in Security and Development No. 5, School for International Studies, Simon Fraser University, Vancouver, 2010.

Last, but not least, Croatia is a small country, having similar administrative problems, challenges and risks as other small countries. At least five specific administrative problems of small states are noted in the literature, such as the limited scope of activity, multi-functionalism, reliance on informal structures, constraints on steering and control, and higher personalism.¹¹²

11. Croatia combines strategic and incremental approach, relying on its administrative tradition and European requirements. Learning is slow, best practices are accepted hard, standards are respected hesitantly.

The first State Administration Reform Strategy was adopted in March 2008 as part of the EU accession efforts, proclaiming eight goals in five main areas.¹¹³ However, the implementation process has not been easy or straightforward. Some lessons have been learnt. First, public administration reform as part of the process of Europeanization is not the best solution for domestic problems. It should be noted that Europeanization is only one of the environmental influences, and the EU is only one actor in broader institutional setting. Other actors, as well as domestic social, cultural, economic and other circumstances influence the reform process. Second, public administration reform should be in line with previously discussed and adopted basic national goals – otherwise it could be unsuccessful or counter-productive. Third, different reform approaches are needed in three main parts of public administration - state administration, local and regional self-government and public services. Fourth, laws can foster or freeze reform efforts, but cannot replace the determination to make public administration modern and better for the citizens.

12. Good administration in Croatia concerns both its own citizens and the EU

In less than two years, Croatia will join the EU and start implementing EU laws and its own laws and by-laws, whose application is postponed until

¹¹² Sarapuu, K., *Comparative Analysis of State Administrations: The Size of State as an Independent Variable*, Halduskultuur – Administrative Culture, vol.11, no.1, 2010, pp. 34-37.

Brown adds six theses about institutional development in small states based on experiences from the Commonwealth Caribbean that seem to be of importance for small countries in general. See Brown, D.R., *Institutional Development in Small States: Evidence from the Commonwealth Caribbean*, Halduskultuur – Administrative Culture, vol.11, no.1, 2010, pp. 34-37.

¹¹³ Koprić, I., *Managing Public Administration Reform in Croatia*, Hrvatska javna uprava, vol.8., no.3, 2008, pp. 551-565.

the accession is formalised. From that point, Croatia will be responsible not only to its own citizens, but also to the European citizens, member states and the EU itself for the implementation of EU law and for ensuring the same legal environment for undisturbed mobility of capital, goods, services and people. Its administrative services (state administration, local and regional self-government, public services) will be of utmost importance for a successful membership. The EU has effective remedies at its disposal for disciplining its members, such as helping administrative capacity (*v.supra*), infringement procedures, funding, and, of course, political instruments. However, at the end, Croatia's success in public administration reform will have the greatest impact on its position among the nations of Europe – good administration will facilitate development and comparative advantages, while failing to reform and to apply to the standards of quality administration will make any economic, social and political progress unfeasible.

Zusammenfassung

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**GOOD ADMINISTRATION ALS EINTRITTSKARTE ZUM
EUROPÄISCHEN VERWALTUNGSRAUM**

Die letzten beiden Jahrzehnte sind geprägt vom intensiven Bemühen der europäischen Institutionen und Organisationen wie auch der akademischen Gemeinschaft, das Konzept eines Europäischen Verwaltungsraums zu definieren und zu beschreiben. Anfangs sollte das Konzept den Beitrittskandidaten als Modell für ihre Verwaltungsreformen dienen. Der Entfaltungsprozess dieses Konzepts lässt sich an einer Analyse der Sigma-Aktivitäten nachverfolgen, beginnend bei ersten bescheidenen Rechtsanforderungen bezüglich eines professionell handelnden und verantwortungsvollen, auf dem Legalitätsprinzip basierenden Staatsdienstes bis hin zu vielfältigen Ansprüchen und Kriterien für institutionelle Anpassungen. Außerdem kommt dem Konzept der Good Governance, das mit seinen auf den Schutz der Bürgerrechte gegenüber Verwaltungsbehörden und die gerichtliche Kontrolle der öffentlichen Verwaltung abzielenden Standards und Prozessanforderungen den Kern des Europäischen Verwaltungsraums bildet, primäre Bedeutung zu. Im vorliegenden Beitrag wird das Konzept des Europäischen Verwaltungsraums in theoretischer und praktischer Hinsicht untersucht sowie das Konzept der Good Governance in der EU vorgestellt. Die Rolle von Sigma bei der Definition und Kodifizierung von Verwaltungsprinzipien und –anforderungen sowie ihre auf das Konzept der Good Governance ausgerichteten Tätigkeitsbereiche werden analysiert. Schließlich wird in Bezug auf die oben erwähnten Konzepte das Problem der institutionellen und rechtlichen Anpassungen anhand des kroatischen Beispiels erörtert.

Schlüsselwörter: Europäischer Verwaltungsraum, Good Governance, Europäisierung der öffentlichen Verwaltung, OECD Sigma, Kroatien, EU-Mitgliedschaft, EU-Erweiterung

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DOBRA UPRAVA KAO ULAZNICA ZA EUROPSKI UPRAVNI PROSTOR

Posljednja dva desetljeća obilježena su intenzivnim naporima europskih institucija i organizacija te akademske zajednice da se definira i opiše koncept europskog upravnog prostora. U početku koncept je trebao poslužiti državama kandidatkinjama za članstvo kao model za upravnu reformu. Proces razvijanja koncepta može se pratiti na analizi aktivnosti Sigmee, a kreće se od skromnih početaka fokusiranih na pravne zahtjeve u pogledu profesionalne i odgovorne državne službe utemeljene na načelima zakonitosti, do višestrukih zahtjeva i kriterija za institucionalne prilagodbe. Nadalje, primarna važnost daje se konceptu dobre uprave, koji je u srži europskog upravnog prostora, i veže se na standarde i procesne zahtjeve usmjerene na zaštitu prava građana pred upravnim tijelima te sudske kontrole javne uprave. U tekstu se istražuje koncept europskog upravnog prostora u teorijskom i praktičnom smislu te se predstavlja koncept dobre uprave u EU-u. Analizira se uloga Sigmee u definiranju i kodifikaciji upravnih načela i zahtjeva te područja njezine aktivnosti usmjerene na koncept dobre uprave. Na kraju, u odnosu na gore spomenute koncepte, razmatra se problem institucionalnih i pravnih prilagodbi na temelju hrvatskog primjera.

Ključne riječi: europski upravni prostor, dobra uprava, europeizacija javne uprave, OECD Sigma, Hrvatska, članstvo u EU-u, proširenje EU-a

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