THE PUBLIC ADMINISTRATION OF THE EUROPEAN UNION AND THE MEMBER STATES, IN TERMS OF THE LISBON TREATY

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ABSTRACT: *The aim of the European integration was to implement the economic integration, after that – due to the Maastricht Treaty (1992) – the political integration began as well. The integration was developed by the Lisbon Treaty (2007), since the EU got legal personality and own institutional system.*

This tendency has not finished yet, as it has led to the development of the European Administrative Space, whose existence has been proved in innumerable ways.

The Member States are responsible for the implementation of the decisions, which was made on EU level, therefore the connection between the institutions of the Member States and of the Community is close and multilevel. This connection-system and its characteristics are examined and summarized in the study in seven theses.

KEYWORDS: *European Public Administration, Union's institutional system, Public Administration of the Member States, network of the organs, European Administrative Space*

JEL CLASSIFICATION: *K 00, K 23*

The European Union, which was established in 1992 with the *Maastricht Treaty,* aimed a double goal, an enormous task without precedent in the world history: economic and monetary union, additionally the realisation of political union. The attainment of this aim was also without precedent, supported by the structure of the three pillars in coopoeration with the Member States. The First Pillar was the European Communities (and the common bodies of the Communities from 1965), the second pillar was "Common Foreign and Security Policy" and the third pillar was cooperation in "Justice and Home Affairs".

In this structure the *Amsterdam Treaty* (1997) brought a momentous change, since it altered significantly the Third Pillar. The Treaty transferred seven of the nine cooperations into the First Pillar. Therefore the name of the Third Pillar changed to "Police and Judicial Co-operation in Criminal Matters". The *Nice Treaty* in 2001 did not result in crucial changes in terms of our topic, although its significance was undoubtedly enormous, since

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it made the expansion of the European Communities possible by creating its legal conditions. With the accomplishment of the accession negotiations launched in the meantime (in 1998 and in 2000), and with the signature of the accession treaties the number of Member States increased from 15 to 25 in 2004 and from 25 to 27 in 2007. Referring to our topic it should be emphasized that the EU did not get legal personality and its own institutional system, neither in the Maastricht Treaty nor in the Amsterdam or in the Nice Treaty. Therefore the EU practically "borrowed" the common institutional system of the European Communities in the First Pillar existing from 1965.

In the three pillars the differences were not only between the cooperation fields (so called policies), but in the functional model as well. Whereas the First Pillar functioned on the principle of "the community model", the second and the third pillars were based on "the intergovernmental model"

In a simplified manner it meant that:

- in the policies, which were involved in the First Pillar, every participant of the community institutional systems had a say. The decisions were prepared by the European Commission, but they were made by the Council of the European Union cooperating with the European Parliament and with the other „players of the game". The decisions were made by qualified majority, which means that the 15 Member States had 87 votes, out of which 62 were necessary for the decision-making, while the 27 Member States have 345 votes, out of which 255 votes are required for the decision-making.
- in the policies of the Second and the Third Pillars only one community institution, the Council of the European Union had the right to decide and decision were taken by consensus.

The situation has changed due to the *Lisbon Treaty,* which was signed in 2007 and came into force on 1st December 2009.[1] These changes can be proven by the facts mentioned below:

- the EU shall have legal personality and its own institutional system,
- the expression "community" has been changed to "union", concerning the legal system too,
- the three pillars of the EU have been abolished and the former decision-making model of the First Pillar has become the main rule (ordinary law-making process)
- "the democratic deficit" in the union institutional system has significantly decreased owing to the democratic principles and to other arrangements,
- the competences between the Union and the Member States have been more clearly distinguished,
- the administrative cooperation has been declared between the Union and the Member States

The above mentioned facts prove the complexity of the old and the new institutions-systems of the EU and their functioning. When this statement is true and it is true, then it is also obvious that the institutions- and the connection-system of the EU and the Member States shall also be complex. Therefore we shall simplify our message. To reach this goal, we won't take into account the connection-system between the Member States' whole

[1] cf: Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union In: Official Journal of the European Union ISSN 1725-2423 C 83 Volume 53 30 March 2010

state organization (legislation, executive and jurisdiction) and the EU we will only examine this connection in terms of the public administration (executing) of the Member States, in order to summarize the main characteristics of this system of relations in certain theses.

Thesis 1: The EU is an independent subject of the international law; it has legal personality and its own system of institutions.

In a more detailed way:

Article 1 of the Treaty of Lisbon altered the Treaty of Maastricht – the Treaty on the European Union – (which was altered by the Treaty of Amsterdam and Nice too), and as a result of the alteration is the *Treaty on European Union* (henceforth TEU) According to Article 47 of TEU the Union shall have legal personality. According to Article 13 (1) the Union shall have an institutional framework: the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank, the Court of Auditors. Referring to Article 13 (4), the European Parliament, the Council and the Commission shall be assisted by the Economic and Social Committee and the Committee of the Regions acting in an advisory capacity.

The structure of the EU-institutional system and their tasks are basically provided for in the TEU, which consists of 55 Articles. In contrast to this the rules of the functioning and relationship between each institution are contained in the *Treaty on the Functioning of the European Union* (henceforth TFEU), which consists of 358 Articles. This Treaty has been established as a result of the alteration of the Treaty of Rome on the European Community with Article 2 of the Lisbon Treaty.[2] The TEU and the TFEU are two treaties with the same values. The constitutional basis of the EU is provided in these Treaties.

Thesis 2: Due to the lack of the Union institutions established in the Member States, the EU institutions and the Member States jointly provide for the accomplishment and enforcement of EU law. In this respect public administration of the EU has shared management.

More details:

Going through on the history of the European Communities and the European Union as well as the examination of the union institutions and their functioning it can be claimed that in organic sense the EU is nothing else then a structure of institutions - established by the Member States on supranational level, which is in close and legally clearly defined connection with the national institution of the Member States.

The relationship between the above listed union institutions operating *only on "central" level* and *"the regional and local"* institutions of the Member States (the national parliaments, the governments, the courts and the municipalities) can be characterized by *the principle of complemention in the EU*. In other words: - usinging the words of Prof. Lajos Lőrincz – in the EU *the principle of the sharing of administrative functions prevails.*[3] This means, that the union institutions set the goals of the Union, collect the information, plan, make decisions, and later coordinate and supervise the

[2] cf: Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union In: Official Journal of the European Union ISSN 1725-2423 C 83 Volume 53 30 March 2010

[3]Lőrincz, Lajos. "Európai integráció-magyar közigazgatás", Magyar Közigazgatás, Volume 7. (1998) pp 403

process. However the execution of the decisions is mainly the task of the Member States, more precisely the task of the whole state organisation and not only that of the public administration.[4]

In this organizational and functional model *the Union institutions and the apparatus of the Member States jointly create an entirety*: Global European "state organization", including Global European legislation, public administration and jurisdiction. Concerning all these *the European Administration* can be defined in the following way:

The European Administration – in organic sense – means the complex entirety of those union (on "central" level) and Member States' institutions (on "the regional and the local" levels), which prepare decisions, laws of the Union (law-making), then ensure their implementation and the effective enforcement of the union law. It should be emphasized, that in organizational sense "the definition of the European Administration includes not only the administrative units of the Community that is self-administration and the community administration but it covers the administration of the EU and the Member States as well."[5]

Third thesis: Regardless of only few exceptions the EU has "only" expectations, due to the lack of directly binding legal requirements, for public administration of the Member States: They are expected to enforce the EU law consistently and completely, therefore they shall be reliable and transparent moreover they shall function in a democratic way. In order to reach all these goals the TFEU has taken significant steps.

In more detailed way:

Explicit rules are not declared either in the primary sources of the Union law (Treaties) or in the secondary sources of Union law, apart from a few exceptions concerning the disposition on the use of financial sources from the Union budget, which directly ordain how the administrative structure of the Member States, their functioning or their staff (civil servant) of the Member States shall be concerned. It is also related to the Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) and by the Council Regulation (EC) No 1083/2006 laying down general provisions on the European Structural Funds (these regulations will be examined later in this study). In these exceptional cases, however the relationship between the institutions of the EU and the administrative organs of the Member States *cannot be* characterized by *a hierarchical connection* but, as Alberto J. Gil Ibanez emphasized, this relationship is rather *partnership* resulting *in cooperation as an organizational network.*[6] According to another author's view the European administration – in functional sense - can be characterized as the way of the separation of powers as a transition between cooperation, subordination and superiority.[7]

As a result the European Union and its institutional system do not exert direct power (irrespective of some exceptions) on the public administration of the Member States. It

[4] The question of the administrative function sharing will be examined later in the study!

[5] Eberhard Schmidt-Aßmann. "Az európai közigazgatás együttműködési és alá-fölé rendeltségi modellje", Európai Jog, Volume 3. (2003) pp 9

[6] Alberto J. Gil Ibanez: A közösségi jog ellenőrzése és végrehajtása. Osiris Kiadó Budapest, 2000. pp 281

[7] Eberhard Schmidt-Aßmann. "Az európai közigazgatás együttműködési és alá-fölé rendeltségi modellje", Európai Jog, Volume 3. (2003) pp. 10

is without doubt however that it effects on it continuously, widely and more and more powerfully: due to the acquis communautaire has a binding effect implicitly and the Union law primarily through paragraph 3 of 4 Article of the TEU expressis verbis, it obliges them to what is called as a *"resultobligation"*. This obligation means the implementation of the Union law, accomplishment of three requirements the public administration of the Member states shall be reliable, transparent and democratic as well.[8] What do these terms mean?

a.) Reliability

It can be stated, that the Member States organize their public administration independently without any external influence, therefore we cannot speak about administrative acquis. For the EU it is neutral, what kind of organizational solutions and functional methods have being applied by the Member States furthermore how their civil servant system is built up. Only one thing is essential, that the public administration is to function to achieve the tasks of the EU completely in order to achieve the goals determined by the EU. The emphasis is on achieving the EU goals, consequently on the effective application implementation of acquis communautaire are emphasized. To achieve this, the Union expects the Member States to have a reliable public administrative institutional system the Union regulations shall be incorporated in the legal system, they shall be enforced effectively by the different organs, and furthermore a continuous control of enforcement and the settlement of legal dispute shall be facilitated.[9] The reliability includes the different elements of efficiency: accuracy, quickness, dynamic adaptability, moreover the promotion of the economic and political integration, major goal of the EU.[10]

b.) Transparency

The EU expects the Member States to have transparent public administration, which means that the scope of state organs having contact with the EU institutions is to be well-defined. The powers and levels of decisions shall be precisely separated and the powers of the institutions shall be in compliance with each other so that neither 'empty space' nor overlapping of powers shall occur.[11]

c.) Democracy

Another requirement of the EU is the democratic operation of the administrative institutions of the Member States. The requirement of democracy includes law and order, respect for human rights and fundamental liberties, a multi-party political system, political impartiality of those working for the executive power, stability of legislation and reliability of public administration.[12]

Consequently, there is no standardised European model of public administration (controlled from Brussels), nevertheless, unified values and requirements related to the public administration of the Member States are to be concerned.[13]

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[8] cf: Jacques Forunier: A megbízható közigazgatás. Magyar Közigazgatás (October 1997)
[9] Jacques Forunier: A megbízható közigazgatás. Magyar Közigazgatás (October 1997) pp. 631
[10] Lőrincz, Lajos. "Európai integráció-magyar közigazgatás", Magyar Közigazgatás, Volume 7. (1998) pp. 404
[11] Soós, Edit: „Az önkormányzatok döntéshozatali mechanizmusa az EU-ban". EU-integráció Önkormányzatok I. Editor: Csefkó, Ferenc, Budapest: Önkormányzati Szövetségek Tanácsa (1998) pp. 61
[12] Lőrincz, Lajos. "Európai integráció-magyar közigazgatás", Magyar Közigazgatás, Volume 7. (1998) pp 404
[13] Torma, András: Adalékok az EU-közigazgatás fogalmához. Magyar Közigazgatás. Volume 2. (2002) pp 82-83.

According to Article 2 of TFEU four types of the Union's competences can be distinguished. One of these types includes the competences exercising by the EU on clearly determined fields and conditions in the Treaty, without withdrawing the competences of the Member States. These competences are *supportive, coordinating and supplementary competences,* which are enumerated in seven points in the Article 6 of TFEU. The enumeration's seventh element is the administrative cooperation, which detailed rules can be found in Article 197 of TFEU. The essence of that regulation is, that the effective implementation of the Union law by the Member States, shall be regarded as a matter of common interest. Therefore the Union supports the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. However any Member States can't be obligated to utilize the support.

By this rule – in our opinion – the EU has crossed a limit. The limit which meant, that the EU did not regulate the public administration of the Member States in a primary legal source of law. Due to the Lisbon Treaty this field is also regulated in a low key. This method gives the real significance of the regulation. With this sentence we arrived to the next thesis.

Thesis 4: Each Member State has its own system of public administration, however the requirement of the enforcement of EU law and the above – described requirement of the EU has resulted in the europeanisation - a kind of convergence – of the different systems of administration. The European Council also facilitates this process through different agreements and recommendations.

In more details:

We can state that on one hand, each EU Member State has specific public administration, therefore there does not exist a standardised obligatory model of Brussels. On the other hand the public administration systems of the Member States are *greatly similar* to each other since each of them is involved in creating and adopting EU legislation, moreover each functions transparently, reliably and democratically. Concerning the three levels of public administration, '*being greatly similar*' means the following:

a. *In central public administration*:

Each and every Member State has established its own structure for handling European affairs; however, a so called Ministry for Europe has nowhere been established. The structural solutions are divided into two groups: a decentralised and a centralised model. The *decentralised model* means that each central authority (ministry) has a department dealing exclusively with EU matters. In this model the main issue – and the greatest problem at the same time – is coordination (Germany, Spain). In the *centralised model* one central organ is set up, into which representatives from the authorities are delegated. This central organ is under the direct control of the Prime Minister' Office (France) or the Cabinet (The United Kingdom) [14]

[14] Török, Éva: „A közigazgatás fejlesztése és az Európai Közösségekkel történő jogi harmonizáció összefüggései", Magyar Közigazgatás (January 1994) pp 38

b. Concerning the *territorial level*:

The determining common feature is *regionalisation* and a strong level of municipality on one hand, and closely related to this a significant decrease in the number of medium-level units and a significant increase in the population of this level.[15] The reasons behind the strengthening of regionalisation as an economic, social and political process are as follows: the extension of ethnic movements, the effects of the latest function of state administration (e.g. the effect of decentralisation), representation of regional interests, and the regional policy of the European Community.[16] *Regionalisation can be considered as an attack against national states since* it enforces the central state power to delegate competences to the regions below the national level.

This is particularly important since the *European integration*, the other major economic and political process in the second half of the 20th century in Western Europe had the same result, although with and opposite tendency. European integration – similarly to regionalisation – also leads to the weakening of the national state since it means that the tasks and competences are delegated to upper levels, to the institutions of the EU. Consequently, *European integration can be considered as an attack from above against nation-states*.

We state that the nation-states of Europe have existed under double pressure, besides other circumstances (globalisation), under the pressure of regionalisation and integration. Regionalisation sets the demand of decentralising the tasks and competences of the central power as well as the resources. In contrast to this, integration sets the demand of delegating tasks and competences to the institutions of the European Community and the European Union. The result of these tendencies will be the *disappearance of national states* in Europe, or in other words, a united Europe without national borders. A super state, a new United States of Europe will be formed. Nobody knows when it will take place. The fact is, however, that the tendencies are evident: the disappearance of national states and the formation of a new state structure.

c. With regard to *the local self-government organs of administration* certain common features occur:

• Local government management is generally multi-level with the different levels being co-ordinate and not subordinate or superordinate,

• local governments have general responsibilities thus they are involved in local public affairs,

• the scope of the local governments' activity involves providing services and co-ordinating the activity of different organisations in the settlements,

• the powers are exercised by assemblies composed of members directly elected by the inhabitants and supported by professional executive staff,

• the scope of activity of the political body and the executive authority is clearly separated,

• local governments, beyond the national level, are entitled to co-operate with their counterparts in each state thus they can establish a wide range of international relations.

[15] The number of medium-level units decreased from 531 to 320 in the European Communities/ European Union in period 1956-1995, meanwhile their population increased from 468000 to 1159000! Source: Horváth, Gyula: Európai regionális politika. Dialog Campus Kiadó, Budapest-Pécs pp 305

[16] Horváth, Gyula: Európai regionális politika. Dialog Campus Kiadó, Budapest-Pécs pp 319-326

The *Council of Europe* was established in 1949 with the aim of representing human rights in Europe. For the past sixty years it has elaborated a number of agreements, furthermore it has made a great number of recommendations for the Member States. The *European Charter of Local Self-Government* enacted in 1985 is of outstanding importance among the *agreements*. Hungary joined the Charter in 1997 and adopted it with Act XVII/ 1997. The Charter provides a European standard for minimum requirements of self-governance which the states of Europe shall achieve. [17]

Among the *recommendations* of the Council of Europe (Committee of Ministers) the *recommendation of 'Good Governance'* adopted in 2007 plays a significant role in standardising public administration in the Member States.[18] Safeguards for good governance according to the Document involve that each State shall contribute to making the organisation and operation of administrative authorities more effective and cost-conscious. To achieve this, the Charter promotes harmonisation of procedure.

The recommendation encourages harmonisation of the different systems of procedure by calling on the States to follow the 'Sample Regulation' enclosed in the supplement. This *Sample regulation* states a *minimum procedural standard* in order to enable enforcement of fundamental principles as follows:

Public administration shall be recognised in legislation (Article 2), principle of equal treatment (Article 3), principle of judicial overview (Article 22), principle of obligation for settling damage caused within the scope of administration (Article 23), principle of the protection of personal data (Article 9) and the principle of transparency (Article 10).[19]

Thesis 5.: Due to research results of the European Institute of Public Adminstration (EIPA-Maastricht) and of the European Institute at the University of Florence, the formulation of „the Copenhagen criteria" ensuring the accession of the ex-socialist eastern-central European states, furthermore owing to the Treaty of Amsterdam the EU made enormous steps to develop a unified European Adminstrative Space.[20] In this development the OECD (Paris) and its SIGMA programme played a crucial role. In the next 15 years after adopting the Treaty of Amsterdam the characteristic feature of the Administrative Space has been developing more clearly.

In more details:

The essential *task of the European Institute of Public Adminstration* established in the 1980s is the continuous analysis of the system of connection between the European Communities'/ the Union's institution and the public administration of the Member States. The directive ensuring adequate independence for the Member States has become increasingly significant in the Community legislation, while it was fundamentally obligatory. In 1988 *Jürgen Schwarze* published his monograph on the European

[17] It is to be noted that the Hungarian regulation, Act LXV of 1990 on the local self-government is in accordance with the European Charter of Local Self-Government.

[18] Recommendation CM/Rec(2007)7 of the Commitee of Ministers to member states on good administration. 20 June 2007.

[19] It is to be noted that the Hungarian regulation (Act CXL of 2004 on the general rules of administrative proceedings and services) is in accordance with the principles of the recommendation. cf: Fábián, Adrián: Az EU-jog és a tagállami közigazgatási eljárás kapcsolódási pontjai. Magyar Közigazgatás Volume 10 (2006)

[20] Czuczai, Jenő: Közigazgatás és európai integráció. Magyar Közigazgatási Jog Különös Rész (Editor: Ficzere, Lajos) Budapest: Osiris Kiadó (1999) pp 447

administrative law determining the development of the adminsitration. This monograph was one of the first results the empiirical comparative research performed in the European Institute of Public Adminstration as well as in the other institute based in Florence.[21]

In 1992 the OECD (Paris) launched its *SIGMA* (Support for Improvement in Governance and Management in Central and Eastern European Countries) *Programme* in order to support the six ex-socialist countries. In 1994 five countries, later a number of countries were involved in the Programme. The main task of the Program was to promote the enlargement of administrative (executive) capacity of the ex-socialist countries and to promote it. In 1999 the EU joined the programme through the European Commission since its Phare programme had the similar goals.

The OECD/EU through its SIGMA Programme *adopted recommendations* for the ex-socialist countries so that they would be prepared for accession to the EU as well as for the implementation of the Community/Union law. In the spere of the recommendations two of them are highly significant regarding our topic. One of them is about preparing the national administration for the European Administrative Space[22], the other is concerned with the principles of European Administration.[23]

In the *first recommendation* was stated:

- the institutions of the Union shall not be replaced by national institutions, at the same time they are obliged to cooperate,
- the national public administration is responsible for the implementation of the Union's decisions,
- despite the fact that EU does not exercise direct power on the administration of the Member States, it has a strong effect, which is embodied in the term of "*obligation of results*".

In the second recommendation states, that there are certain principles in view of the developing European Adminstrative Space, that are to be enforced by the Member States to ensure the implementation of Community law, therefore the candidate countries are obliged to enforce these principles for the accession through the administrative reforms. These principles are as follows:

- reliability and predictability,
- transparency and review
- accountability,
- effectiveness and efficiency.[24]

According to the above mentioned reasons *the main characteristics* of the European Adminstrative Space – which in theorety is a harmonized value synthesis of the administrative systems of the Member States and the practice based on them[25] - are:

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[21] Jürgen, Schwarze: Europaisches Verwaltungsrecht. Nomos Verlagsgesellschaft, Baden-Baden (1988)/"European Administrative Law" Sweet and Maxwell Publisher (1992)

[22] OECD SIGMA/PUMA: Preparing Public Administrations for the European Administrative Space. SIGMA Paper No. 23. 1998

[23] OECD SIGMA/PUMA: European Principles for Public Administration. SIGMA Paper No. 27. 1999

[24] Because of the length limit we cannot examine these principles in details.

[25] Czuczai, Jenő: Közigazgatás és európai integráció. Magyar Közigazgatási Jog Különös Rész (Editor: Ficzere, Lajos) Budapest: Osiris Kiadó (1999) pp 446.

- political stability, thus the enforcement of democratic rule of law: the maintaining of a law system, which ensures the separation of power, the democratic institutional system and its functioning, and the respect for human rights and freedoms,

- sustainable and environmental-friendly economic development, in which the idea of solidarity is a major factor,

- a decrease in the role of the national repserentative organs (parliaments), and an increase in the role of the public administration,

- the implementation of the five fundamental principles of "good governance" elabourated by the European Commission on Community (Union), Member States (national) and municipal levels,[26]

- the maintenance and operation of the public-sector, which carries out its tasks legally, effectively, and for the content of the citizens,[27]

- armed forces and law enforcement organs functioning regulated by law and under political direction, but in politically impartial way,

- the operation of judicial system, which is impartial and follows the rules of fair procedures,

- the implemantation of the principles of decentralization, susidiarity and solidarity, consequently the strengthening of the subnational and supranational organs resulting in the decrease in the role of the national state organs moreover the decrease in and creating a balance in the difference level of development of regions,

- reliable, transparent and democratic public administration,

- adequate legal institutions and functioning regulations ensuring the achievment of Community's/ Union's goals and the effective implemantation of the Union law,

- the mutual approximation of the Member States' legal administrative methods (for instance in France) and the pragmatic administrative methods (for instance in Great Britain),

- the harmonization of the procedural system,

- stable, predictable, capable, skilfull, professionali, and impartial civil servant staff.[28]

I would like to highlight the fourth characteristic from the above mentioned characteristics, as it is significant regarding to our topic. The main goal of the publishing of the "*White Paper*" on "*Good governance*" by the European Comission in 2001 was the rebuilding of the Union's governmental system in order to achieve that the Union's *institutions are closer to the European citizens* by establishing the coherence of common and community policies. The Commission emphasized in order to reach in the Document aimed "good governance" the rebuilding of the work of the Commission is not enough then the efforts of the other Community institutions, the Member States, and the candidate states are necessary as well. The White Paper *is a compass* not only for the Commission but for the other community law making organs and executor.

As a starting-point the White Paper examined the situation of the EU referring to the positive and negative elements as well. Among *the positive element*s the Document

[26] cf: White Paper on European Governance (2001)

[27] cf: Fábián, Adrián: New Public Management and What Comes After. Issues of Business and Law. Volume 5, 2010

[28] cf: Heinrich Siedentopf – Christoph Hauschild: Európai integráció és a tagállamok közigazgatása. Közigazgatástudományi Antológia. Volume 2 (Editor: Lőrincz, Lajos) Unió Kiadó Budapest (1994) cf: Dr. Józsa, Zoltán: Az európai közigazgatási tér összefüggéseiről. Magyar Közigazgatás (December 2003), Verebélyi, Imre: Az Európai Unió hatása a nemzeti közigazgatásra és kormányzásra II. Magyar Közigazgatás (August 2001)

pointed out, that European integration has delivered fifty years of stability, peace and economic prosperity and ensured democratic functioning for Europe. Among the *critical elements* the Document pointed out that the Union needs to communicate more actively with the general public. On the other hand the EU needs to react efectively to the changes like unemployment, crime and changes in politics.

Solutions are also considered by the Commision. The achievement of the five foundamental principles of good governance – openness, participation, accountability, effectiveness, coherence – was highlighted:

a. *Openness.* The requirement of openness states that the institutions should work in a more open manner and they should communicate in an accessible and understandable lanuage for the general public.

b. *Participation* establishes well-prepared decisions which create more confidence in the institutions through the citizens participations in the decision-making process. Decision-making shall not exclusively be privileged of Community institutions.

c. *Accountability* means that each EU instituions must explain and make citizens understand what and why is done and also take responsibility for what it does.

d. The principle of *effectiveness* demands the implementation of three requirements to the institutions. Firstly policies must be timely on the basis of clear objectives and considering future impact as well. Seconly decisions and results of the decision must always be proportional to the objectives (proportanality). Thirdly decisions shall be made on the most appropriate level according to the principle of subsidiarity.

e. The princiles of *coherence* requires the institutions to create balance in the different areas of cooperation. According to the Document the range of changes of the world is becoming more and more complex thus respond to them must also be complex and coherent.

In the White Paper the Commission states the importance of the transformation of the insitutional system of the EU is to be achieved. *The institutional framework must be clear, transparent, accessible and open.* In achieving this, the Commission establishes the following recommendations:

- Legislative and executive powers must be clearly separated on the EU level, similarly to national states. In the decision-making process the Council and the Parliament must be made equal and the Commision takes the complet executive responsibility.

- The separation of competences shall be made clearly between the EU and the Member Sates. It must be clear for the public who is responsible for what in Europe.

The Treaty of Nice concluded in 2001 European Constitution adopted in 2004 aimed to achive the Principles of good governance. After the failure of the Constitution intergration was reinforced by the Treaty of Lisbon in 2007 which also included all these fundamental principles. We can state that the outlines of the European Administrative Space have been developing therefore it is without doubt that the economic integration in Europe shall be followed by a significant integration of administration as well.

Thesis 6.: A new tendency has been developing recently, which influences deeply the Member States administration. This tendency is based on the secondary sources of Community/Union law concerning the regional policy of the Union.

In more details:

Two regulations shall be emphasized: Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (NUTS-regulation), and Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999.

A. Common Classification of Territorial Units for Statistics is one essential instrument of the realization of regional policy of the EU. It was introduced in 1988 – by the Statistical Office Of The European Communities (EUROSTAT) – to *compare with different geographical areas and different statistical datas*. So it is decidable in communal stage that communal financial sources, providing developmental targets are ensured for which – economically underdeveloped – regions. The NUTS system – as the instrument of the collection, composition and spread – has proved as a result the *impoundment of areas*, which are entitled to the recourse of communal sources.

There was differenciated five stages in the system, three of them were regional (territorial) stages, and two were local (endemic) stages. The sources of Structural Funds, aiming the realization of regional policy, were (and are today too) available for areas (regions) at the level NUTS 2. according to the Council regulation (EC) No. 1260/1999, which regulated the general theories of the operation of Structural Funds.

There was not any legal basis of the NUTS system and its operation, or rather: there was not one particular source of law, which could order about this legal institution. This insufficiency was abolished by *Regulation (EC) No. 1059/2003 of the European Parliament and of the Council* on the establishment of a common classification of territorial units for statistics (NUTS). According to paragraph 2 of Regulation – referring to the Regulation (EEC) No. 91/450 – NUTS classification *dissolves the territory of Member States into territorial units* and it orders each unit individual name and code. With this – according to our estimation – there *happened a breakthrough in the connection of the Union and Member States,* since with this regulation the Council regulated such a question, which was the exclusively internal affairs of Member States – similary to the whole administration – till that time, so it stood until the suvereignity of Member States. With this Regulation the Council has interfered in the administration of Member States, because it determines *obligatory* the administrative-territorial classification, and division of Member States. It would be true in that time too, if we know well, that on the one hand the decision was brought by ministers of Member States in the Council, and on the other hand decision-preparing was realized by the central administrative institutions of Member States.

NUTS classification is a *hierarchic nomenclature,* which divides each Member States into territorial units level NUTS 1, and all of that divides into territorial units level NUTS 2, and these divides into territorial units level NUTS 3. According to paragraph 3 of Regulation, and the Appendix 1. the *whole territory of every Member States were classified into level NUTS 1, NUTS 2, and NUTS 3*, depend on the *number of the permanent residents* in a given area. In level NUTS 1 come to classification areas at least 3 million and at most 7 million persons, in level NUTS 2 at least 800,000 and at most 3 million persons, and in

level NUTS 3 at least 150,000 and at most 800,000 persons identified the given areas with concrete name and code. If the whole population of a Member State is under the lower threshold concerning a given NUTS level, then in this stage the whole Member State will form only one NUTS territorial unit. We have to highlight: Member States are entitled to establish further particularized hierarchic territorial stages in their own competence, and with that they divide level NUTS 3.

The *fundamental criterion of classification composes the existing administrative units.* „Administrative unit" is such a geographical area, possessing administrative authority, which provides administrative or political decision-making competence within the legal and institutional frame of Member States. The existing administrative units, utilized to the NUTS classification, were defined by the Appendix I. of the Regulation, stage to stage, referring to the Member State (native) nomination. Appendix II. of the regulation fixes the Member State nomination of existing administrative units separately from stage to stage.

If a Member State does not have an adequate size administrative unit, according to the upper criterion, than it *has to (!) compose* the missing NUTS level *with the merger of* adequate number, boundering one another the *existing administrative units*. In the course of that, they have to be attentive to the geographical, social-economic, historical, cultural and environmental circumstances too. The name of the so established contracted area is: „non administrative unit". But note that the size of this area has to be inside of the upper population-treshold.

With the issue of the Regulation (EC) No. 1059/2003 the possibility was stopped for Member States to form their territorial classification freely, at their pleasuse, and according to their prevailing interest, aiming the access to the communal developmental sources. From 2003 the amendment of the regulation, or as a conclusion the approval of other Member States are necessary to the establisment of the areas level NUTS 2, meaning the aiming field of developmental sources. In this meaning Regulation (EC) No. 1059/2003 not only defines the structure of the territory of Member States but it stabilizes that too, not absolutely to the pleasure of every Member States.

B. Council *Regulation (EC) No. 1083/2006* lays down in details, which *institutional system shall be established and functioned* by the Member States in order to ensure the proper utilization of Union development resources. We have to emphasize, that the institutional system is regulated not only in the articles of Title VI of Regulation but many other articles deal with it as well. In terms of the institutional system the following principles have especially significant role: partnership, territorial level of implementation, shared management, harmony, coordination. Since the implementation of the principles is ensured partly by the institutions, whose establishment are based on the Regulation. The regulation makes it clear: *the Member States are responsible for the implementation of the Operational Programmes* moreover this responsibility includes the establishment and functioning of the management and controls system of Programmes as well. The Commission "only" controls the functioning of the Member States' institutional system and imposes sanctions if they do not work suitable.

B. 1. The management and controls system

The compulsory elements of the institutional system – namely: managing authority, certifying authority, audit authority – are named in Article 59., and further articles lay down the tasks of each institution.

The managing authority a national, regional or local public authority or a public or private body designated by the Member State. The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management. The managing authority submitting to the Commission the annual and final reported on implementation until June 30th, 2008 and following it, each year until 30th June.

The certifying authority a national, regional or local public authority or body designated by the Member State to certify statement of expenditure and applications for payment before they are sent to the Commission;

The audit authority a national, regional or local public authority or body, functionally independent of the managing authority and the certifying authority, designated by the Member State for each operational programme and responsible for verifying the effective functioning of the management and controls system.

The Regulation *ensures freedom on high level for the Member States* in connection to the institutional system:

- The same authority may be designated for more than one operational programme,
- Some or all of the authorities may be part of the same body,
- The Member State shall lay down rules governing its relations with the authorities and their relations with the Commission,
- The Member State may designate one or more *intermediate bodies* to carry out some or all of the tasks of the managing or certifying authority under the responsibility of that authority.

It is crucial to emphasize that *the Member States shall submit* before the submission of the first interim application for payment or at the latest within twelve months of the approval of each operational programme *to the Commission a report* of the managing and controls systems. To the report the Member State shall annex expert evidence published by an independent authority, which values the established institutional system and the accordance determining in the Regulation. If the Commission makes reservations the Member State shall make corrections.

B. 2. The monitoring system

As far as the Union's regional policy is concerned the monitoring and the controls have different definitions. They can be distinguished according to five aspects: goal, timing, persons doing the work, method of the feedback. Accordingly the *monitoring's* aim is the examination of implementation of aimed goals. The timing is continuous. The work is operational doing by an external person. The method of feedbacks is aid and adjustment. The *controls'* aim is the examination of the accordance with the rules. The timing is continuous. The work is operational doing by an internal or external person. The method of feedback is imposing sanctions.

According to Art. 63 the *Member State* shall set up a *monitoring committee for each operational programme*, in agreement with the managing authority. A single

monitoring committee may be set up for several operational programmes. The monitoring committee *shall examine and help* the continuous implementation of the operational programme. The managing authority and monitoring committee ensures the good quality of the operational programme's implementation.

The *composition* of the monitoring committee shall be decided by the Member State in agreement with the managing authority. The monitoring committee shall be chaired by a representative of the Member State or the managing authority. At its own initiative or at the request of the monitoring committee, a representative of the Commission shall participate in the work of the monitoring committee in an advisory capacity.

To sum up this topic we have to emphasize that the establishment of managing authorities, certifying authorities, audit authorities and monitoring committees is compulsory in the Member States if they intend to get supports from the Union development resources. As we know each Member States would like it. Therefore the Union's regional policy *approaches* the Member States' administrative institutional system effectively, taking into account the pursuit of the NUTS-system in terms of the territorial system of the Member States. These can lead to – after the development of the internal market – the development of *the European Administrative Space.*

Thesis 7.: The unified geographical area – without internal borders – established by European Communities and European Union, the unified European citizenship and the internal market, the economic and monetary union require the approach of and the unification of the administration of the Community/ Union affairs.

In more details:

In our opinion the current solution, thus the separation of the elements of the administrative circle and the separation of institutional systems cannot be maintained for a long time.[29] Namely: objective, collection of information, planning, decision, coordination, control are realized on the EU level, by the institution of the EU, meanwhile the execution of the decision is implemented on the Member States level, by the institutions of the Member States. Altough this solution means in practice 27 different methods.[30] We state, that the economic and monetary union shall *follow an administrative integration,* thus the institutional system of the Member States will be unified more effectively decreasing the sovereignty of the Member States as well as the introduction of the economic integration done.

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[29] On the realization of the elements of the administrative circle in the Community and the Member States cf: Torma András: Kísérlet az EU-intézményrendszer működése igazgatástudományi modelljének leírására Magyar Közigazgatás (July-August 2002)

[30] Ont he administrative circle and its elements cf: Kalas Tibor: Az igazgatás. Magyar Közigazgatási Jog Általános Rész I. (Editor: Kalas Tibor) Virtuóz Kiadó Budapest, (2006) pp 9 – 18