

The Emergence and Consolidation of the Administrative Capacity Criteria within the EU Enlargement Policy

Bonomi Matteo¹, Scuola Superiore Sant'Anna, Pisa, Italy

ABSTRACT – *The article gives a critical assessment of the emergence, development and consolidation of the administrative capacity criteria for entering the European Union (EU). The administrative capacity criteria emerged for the first time during the 5th European Enlargement (2004-07) under soft political conditionality, showing a limited impact. The criteria gained importance during the accession process of Croatia, reflecting some changes in EU enlargement policy in order to address the specificities of the Western Balkan countries. The article concludes that these criteria today have become a central part in the new EU enlargement strategy, posing strict conditions to be fulfilled by all candidate countries if they want to proceed in their path towards the EU. It will be sustained that this reorientation represents a major change in the nature of EU enlargement policy.*

KEY WORDS: *administrative capacity criteria, EU enlargement policy, public administration reforms, CEEBs, Western Balkans*

Introduction

This article aims to give a critical assessment of the emergence, development and consolidation of the administrative capacity criteria for entering the European Union (EU). It analyses how the EU has started to apply some specific accession conditions for influencing domestic changes in public administration of candidate countries, not in relation to a specific EU policy area but in relation to the general – or horizontal – administrative structures of a candidate country. The administrative capacity criteria emerged for the first time during the 5th European Enlargement (2004-07) under soft political conditionality, they gained importance during the accession process of Croatia, and by now have become a central part in the new enlargement strategy of the European Commission which aims in particular to address the specificities of the Western Balkan countries.

The emergence and consolidation of administrative capacity criteria has been a real path breaking issue in EU enlargement policy for several reasons: (1) It has opened a new area of direct influence of the EU that is not traditionally associated with EU competences and that had never been involved in previous enlargements – the administrative capacity criteria are not part of the *acquis communautaire*, the main body of EU legislations; (2) It has cast an

¹Ph.D. in Politics, Human Rights and Sustainability, Florence, Italy, m.bonomi@alumni.sssup.it.

unprecedented attention to the implementation phase of the reform strategies in candidate countries – the adoption of new legislations represents, in fact, just a first step for modernizing public administrative systems; (3) It has brought about a reorientation of EU enlargement policy – since the pursuing of the administrative capacity criteria needs a high priority within the agenda of the European Commission in order to have some chances to succeed.

All these reasons have made the application of the administrative capacity criteria a very innovative policy within the EU enlargement strategy but, at the same time, they are also responsible for the limited impact in regards to Central East European and Baltic countries (CEEBs). While the success of EU conditionality depends mainly on both (a) the costs of domestic adaptation and (b) the external push of the EU (Börzel and Risse 2003), the application of administrative capacity criteria represents a case of extreme variation regarding both factors: (a) proceeding towards a comprehensive reform of the domestic administrative system implies very high political and material costs for internal political actors; and (b) a consistent application of EU conditionality in this field and the credibility of the threat of denying membership upon these criteria, the two most important elements determining the strength of EU external push, have faced several problems. In fact, the absence of an administrative *acquis* rendered the task of defining common standards in this field particularly difficult, while denying membership on this basis was at odds with other EU goals.

The limits that emerged in the application of the administrative capacity criteria during the 5th EU enlargement are, however, at the basis of the actual reorientation of the EU enlargement policy. For addressing the specificity of Western Balkans, the European Commission has renewed its attention regarding the administrative capacity criteria, which have become today a central part of the new enlargement strategy. This new strategy aims to reinforce the credibility of EU transformative power and tries to overcome the shortcomings of the past in applying the administrative capacity criteria through three fundamental improvements: (1) By giving high priority to administrative criteria within the agenda of the Commission – that have become, together with the rule of law and economic governance, one of the three pillars of the new EU enlargement strategy (European Commission 2014); (2) By providing a new framework for both benchmarking performances and guiding local policy-makers in the reform process – with a strong focus on implementation phase of the administrative reforms (OECD 2014); (3) By the introduction of *Special Groups on Public Administration Reform* within EU Delegations – with the aim of shaping a more structured dialogue with the enlargement countries and ensuring political commitment and leadership in the reform process.

Moreover, the role of the administrative capacity criteria within the EU enlargement agenda opens several questions about EU enlargement policy and, more generally, about the nature of the EU integration project and the system of governance that it generates. In fact, the absence of horizontal administrative rules within the main body of European legislations is not an accidental or contingent feature, but instead it is something that is deeply rooted in the *sui generis* nature of the EU system, directly deriving from the functional and incremental path that European integration has undertaken from its very beginning (Cassese 2003: 94-7). The ambiguous *status* of administrative power within the EU has, therefore, a *prima facie*



impact on EU enlargement policy, by exacerbating the contrast between the requirements of technical and sectoral alignments to European policies – covered by the *acquis* – and more general transformative ambitions of the EU as a system of governance.

The paper will address these issues in the following way. Section two presents EU competences and influence in relation to the administrative system of the member states. Section three describes the emergence of the administrative capacity criteria in the context of the 5th European Enlargement and the problem of definition of common administrative standards. Section four synthesizes the limits of the application of the administrative capacity criteria in the CEEBs. Section five describes how the accession of Croatia highlighted the necessity to renew the accession toolbox for improving administrative capacity in the Western Balkans. Section six introduces the administrative capacity criteria in the context of the new EU enlargement strategy. Section seven makes some concluding remarks.

EU influence on the administrative system of the member states: An open debate

The EU and its Member states have a very peculiar style of public administration and rules enforcement characterized by an “indirect implementation” of the vast majority of EU rules and norms by national authorities, that is balanced by several routes of European influence on national public administrations (Schwarze 1992; 1996). The cornerstone of this atypical architecture can already be found in Article 5 of the Treaty of Rome,² establishing the principle of loyal cooperation between European and national authorities, which has been taken over, in a slightly modified form, by the Treaty of Lisbon (now Art. 4 par. 3 TEU). Article 5 represented a delicate compromise between the respect of national sovereignty and the necessity not to jeopardize the tasks and the goals pursued through European institutions. Not surprisingly, this article has been read in two diametrically opposite ways. On the one hand, it has been considered as a norm safeguarding the prerogatives of national executives, stating the Member States’ general competence for implementing Community Law (Lenaerts and Nuffel 1999: 392). On the other, it has been interpreted, in connection with the sanctioning powers of the European Court of Justice (ECJ) and under the principles of effectiveness of EC law and non-discrimination, as opening a further breach of national autonomy, as a source of direct European influence on national administrative systems (Bieber and Vaerini 2004: 388).

The arguments in favour of this second interpretation derive mainly from the important case law developed by the ECJ. While the development of secondary legislations by European legislative bodies tends to be sectoral and related to specific policy areas, the activity of the ECJ is by its very nature more general, establishing common principles that frame the interpretation of EU law. Acting in this way, the ECJ has established some common horizontal (non-sectoral) principles that are binding for national administrations,

²“Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty” (Art. 5 of the Treaty of Rome).

such as proportionality, non-discrimination, legitimate expectations, duty to give reasons, legal certainty and transparency (Schwarze 1992; 1996).

However, in support of the first type of reading, we have to note that these common principles are very general and their implications for concrete policies are far from clear (Page 2003: 173). Moreover, if we compare the overall administrative and executive powers within the EU with the legislative and judicial ones, we have to note how their expansion has been limited and very cautious toward a field that has always been perceived, especially in continental Europe, as lying at the real core of national sovereignty³ (Cassese 2003: 94-7; Tuori 2010: 207ss). Not only does the direct implementation of European norms, such as in monetary policy or competition law, still represents an exception rather than the rule, but provisions within the EU Treaties with some implications for the Member States' administrative systems are also very few.⁴ If we look at secondary legislations, we can observe that certain policy areas, such as common agricultural policy, environmental protection or electricity norms, require the creation of certain regulatory bodies by national authorities (Demmke 2002). However, EU secondary legislations with direct effect on the horizontal aspects of the national administrative system are rare. The most notorious exception is given by public procurement rules, which have established some kind of common European administrative rules that bind national regulatory authorities (Drijber and Stergiou 2009).

The difference between these two interpretations is clearly very sharp, and it is not surprising that the topic has attracted increasing attention of many scholars studying Europeanization (Page and Wouters 1995; Knill 2001; Olsen 2003; Goetz 2001; Kassim 2003; Heidebreder 2011; 2014; 2015). Applied to the topic of the administrative power within the EU, the Europeanization research paradigm has been utilized by scholars to study the level of convergence between public administrations within the EU, asking whether it is possible to speak about the emergence of a European model of public administration, or we still witness the persistence of deeply differentiated national administrative systems. Moreover, the Europeanization literature has drawn attention to the existence of many types of mixed bodies within the EU system of governance, composed of both national and European officials – such as the various consultative bodies and Comitology that have an important role in guarantying the continuity between legislative and administrative acts. This new brand of literature has also suggested how, within these governance bodies, informal rules, regular contacts, best practices and benchmarking could have an impact on shaping a European administrative space.

³ A good example of Member States' resistance to the penetration of EU laws into national administrative systems is given by the fact that public administration had been exempted from the application of the provisions guarantying freedom of movement and non-discrimination of workers until 1980, when the European Court of Justice had imposed some limitations on this exemption (Ziller 1998).

⁴Examples include, of course, the above mentioned Art. 4 par. 3 of TEU, especially in connection with the European Court of Justice's power to sanction Member States that do not fulfil their obligations, Art. 2 of TEU on general principles of the EU, and Art. 197 of TEU on voluntary administrative cooperation.



This discussion has, however, failed until now⁵ to give final evidence to sustain that convergence among the administrative system of the member states is taking place or that a common European model of public administration is emerging (Heidbreder 2011; 2014; 2015). While the EU has certainly had a growing impact on the development of national administrations, it seems that it has been just one among many intervening variables. In fact, marked differences still persist among public administration models of the EU Member States.

The emergence of the administrative capacity criteria in the context of the 5th European Enlargement and the problem of definition of common standards

Considering all the specificities that still characterize the administrative power within the EU system of governance, the late emergence of the administrative capacity criteria during the Fifth European Enlargement represented a real path breaking issue in EU enlargement policy, opening a new area of direct influence of the EU that is not traditionally associated with EU competences. Even if the sectoral administrative capacities of candidate countries have always posed some concern during previous EU enlargements, the introduction of a general assessment of the horizontal administrative capacities of the candidate countries represented a completely new issue in the enlargement process.

The emergence of the administrative capacity criteria was an expression of both the scepticism of Western European countries and the European Commission towards the administrative structures of East European countries and the tightening of EU conditionality, mainly due to the increased complexity of EU policy making after the completion of the internal market and the adoption of the Treaty of Maastricht. As highlighted by A. J. G. Verheijen (2000: 8), the main reasons for the introduction of the administrative capacity criteria can be summarized as follows: firstly, "Sectoral capacity cannot develop in isolation; even if capacities in key sectoral areas are brought up to the required levels, the effect of this will be at most temporary if the overall administrative system is not functioning effectively"; secondly, it was "important to guarantee that the European policy process will be able to function effectively with 27+ member states". The introduction of these new criteria was therefore linked to the concerns of absorbing 12 new countries without disrupting the EU policy process. Especially the high heterogeneity of the potential new member states from Central Eastern Europe and the Baltic, with the legacy of their communist past, was seen as a serious threat to the politico-administrative system of the Union, in which national administrations have a crucial role in enforcing European rules, while the principles of loyal cooperation and mutual trust have a pivotal importance.

The administrative capacity criteria was included only recently into the process of specification of the conditions for entering the EU. While the main conditions for new accessions had been formulated at the Copenhagen European Council in 1993, at that time no explicit reference was made to the horizontal administrative capacity criteria. The so-called Copenhagen criteria included three fundamental groups of conditions: (1) the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and

⁵We have to keep in mind that 'convergence' has turned out to be a really multifaceted concept that renders difficult to take a final position on the issue (Pollitt 2001).

protection of minorities; (2) a functioning market economy and the capacity to cope with competition and market forces within the internal market; (3) the ability to take on the obligations of membership (European Council 1993). It is only with the conclusion of the Madrid European Council in December 1995 that it was made explicit, for the first time, that the horizontal administrative capacities of candidate countries would be assessed (European Council 1995). Afterwards, it was introduced as a criterion in its own right for the first time in the *Commission Opinions* of June 1997, and then started to appear regularly, from November 1998 onwards, in the *Commission Regular Reports on Progress*.

From its very beginning, however, the assessment of the horizontal administrative capacity has encountered various problems in its application (Verheijen 2000; 2003; Dimitrova 2002; Bugarič 2006). The specific problems of the administrative criteria can be summarized in three main features: (1) the lack of administrative experience of the Commission; (2) elusiveness of the standards; and (3) the lack of a clear legal basis for EU intervention in national administrations. These are clearly three deeply interconnected issues deriving from the peculiar status of the administrative powers within the EU. In fact, the criteria for EU membership have always involved a sectoral approach implied in the chapter-by-chapter negotiations, while there are no clear competences of the EU regarding public administration of the Member States. The Commission itself was lacking the necessary experience in this field, having always dealt with sectoral technical administrative requirements. Moreover, the heterogeneity of the administrative systems of the old member states represented a problem for defining common European standards for public administration. In other words, even after the decision to proceed with the assessment of the horizontal administrative capacities of candidate countries, the definition of European standards in this field proved to be an extremely elusive task.

These problems have been partially mitigated by the intervention of SIGMA⁶ upon the request of the European Commission in the second half of the 1990s. The SIGMA programme is a joint initiative of the OECD and the European Union, mainly funded by the EU, that came to play an intermediary role between the Commission and the candidate states in relation to the horizontal administrative capacities requirement. SIGMA had a fundamental impact on the definition of common standards by its twofold activity of elaborating the normative basis for administrative capacity criteria and operationalizing the administrative capacity criteria.

Between 1998 and 1999, SIGMA published two important papers that elaborate the notion of “European Administrative Space” (EAS) (OECD 1998; 1999). Even though the EAS was initially recognized as just “a metaphor” (OECD 1999: 6) and it was openly stated that “no common agreement yet exists” (OECD 1999: 15) on common administrative law in the EU, the EAS soon appeared to be utilized by SIGMA as the fundamental notion in justifying and elaborating the administrative capacity requirements.⁷ In other words, within documents produced by SIGMA, the EAS soon became a synonym of “non formalized *acquis*

⁶ SIGMA stands for Support for Improvement in Governance and Management.

⁷ “Candidate countries will need to develop their administrations to reach the level of reliability of the European Administrative Space and an acceptable threshold of shared principles, procedures and administrative structural arrangements. There is a minimum standard of quality and reliability of public administration that candidate countries should attain” (OECD 1999: 15).



communautaire”, under a strong convergence hypothesis, representing “a common European general administrative law” (OECD 1999: 16). The EAS is presented as a systematization of some common administrative law principles – including reliability and predictability; openness and transparency; accountability; efficiency and effectiveness – that have progressively emerged through several driving forces “such as economic pressures from individuals and firms, regular and continuous contacts between public officials of Member States and, finally and especially, the jurisprudence of the European Court of Justice” (OECD 1999: 6).

In addition to giving a contribution to the normative justification and doctrinal elaboration of the administrative requirements, SIGMA has played an even more important role in the operationalization of the criteria. From the general explanation of the common European administrative law principles, SIGMA formulated a new system of baseline assessment for the definition of minimum standards for public administration. The SIGMA baseline assessment, which was elaborated in strict cooperation with the European Commission, identified six main areas involved in the horizontal administrative capacity assessment: civil service, policy-making and coordination, public expenditure management systems, public procurement, internal financial control and external audit. The introduction of the baseline assessment represented a fundamental tool in the elaboration of minimum standards and in promoting capacities in public administration of candidate countries, having a clear influence on Commission’s Reports from 1999 onwards (Verheijen 2000: 17-8).

Even if the intervention of SIGMA presented clear limits in both its doctrinal elaborations and policy implications, the shortcomings seem to be related mainly to the ambiguities of the administrative power within the EU. The work of SIGMA represented therefore an important step towards a better definition of horizontal administrative requirements, marking the final stage for the specification of the administrative capacity criteria in the context of the Fifth European Enlargement.

Convergence: A dysfunctional myth? The limits of the application of the administrative capacity criteria to CEEBs

Despite the difficulties in shaping the administrative capacity criteria and the lengthy process of their specification, many reports have shown how EU conditionality had a clear impact on promoting reforms of the public administration in the Central East European and Baltic countries (CEEBs).⁸ This is not surprising, given the context of strong Europeanization that characterized the Fifth EU Enlargement, in which the influence of the European Commission went beyond its powers with regards to states already members (Grabbe 2006:

⁸While before 1997 only Poland, Hungary and the Baltic states had adopted some kind of legislations in this field, as a consequence of EU pressure all CEEB countries adopted new legislations between 1997-2002, with Romania and Bulgaria continuing to adopt new pieces of legislation until their accession to the EU (as shown by various *Reports* of the Commission). The fact that all candidate countries adopted new laws in a relatively short period of time is a good indicator that suggests that EU conditionality indeed had an impact. Moreover, as highlighted by Dimitrova, even if the reaction of the countries were not the same, the contents of the new legislations were quite similar and the influence of the European principles quite clear (Dimitrova, 2005: 81).

52-4). Nevertheless, it was at the same time clear how the exercise of EU conditionality in this field has been far from unproblematic. In fact, countries reacted differently to this specific part of EU conditionality, showing different degrees of internalization of European principles of public administration as defined by the Commission and SIGMA. By the end of the process many shortcomings and dysfunctions emerged in the ways the administrative requirement had been applied, in the types of effects that it had exercised and, especially, in the long-term sustainability of the reforms that had been promoted through EU conditionality.

What lies at the very core of the strategy adopted by the Commission and SIGMA is the reform of the civil service, that should be the first step in promoting horizontal administrative capacities and in this way a catalyzer for other reforms (Ziller 1998; Verheijen 2000; Dimitrova 2005). The Commission strongly insisted on adopting new legislation in this field, with the aim of creating a reliable civil service characterized by professionalism, neutrality and independence from the political system, in line with the classic continental *Rechtsstaat* tradition, marginalizing other available models such as New Public Management (Bugarič 2006: 218). The rationale behind this choice of the Commission and SIGMA can be explained by the specific strategy to deal with post-communist administrations, which appeared very dysfunctional in the pre-accession period, where the public services seemed characterized by strong influence of political parties, lack of mobility of the personal, low salaries and poor social considerations (Bossert and Demmke 2003; Verheijen 1995; 2003).⁹ While it is quite difficult to accurately describe the model that was sponsored as a simple derivation from the common administrative principles of the EU and its member states, this strategy aimed to stabilize the administrative structures of CEEB countries and guarantee their regularity and predictability. This was perceived as a necessary alignment with the rule of law tradition and, therefore, was considered a fundamental precondition for performing adequately, and in a reliable manner, within the EU system. Moreover, the success of this kind of reform should have helped to reach a better definition of the state-society relationship, offering a solid base for further efforts of modernization that could also be open to more managerial types of arrangements.

However, the results of EU conditionality in this field fell far behind this ambitious approach. As shown by several reports and various scholars,¹⁰ new legislations have been

⁹In fact, the ambiguous legacy of the recent communist past was working in a twofold way. On the one hand, during the previous regime, there was no clear separation between state and society, and no specific law distinguishing public and private employment. Within this context, public administration was under direct and strict control of the political system, working as a fundamental instrument of oppression and leaving a strong lack of political neutrality in the CEEB countries' administrative culture (König 1992; Verheijen 1995). On the other hand, the first reaction to the communist legacies during the early transition period was dominance of anti-statist and neoliberal ideology that gave priority to liberalization, deregulation and privatization, underestimating the role of the state and marginalizing reforms in this field (Verheijen 2003: 490). As a consequence, during the early transition period, the reform of public administration was not considered a priority on the reform agenda, with the only exception of Hungary that adopted a Civil Service law already in 1992.

¹⁰ Evidence about the limited impact of EU conditionality in this field derives from SIGMA assessments and documents and EU regular reports, but is also almost unanimously stated within secondary literature.

often lacking of successive implementation and the overall approach seemed to be too legalistic. Instead of seeing the adoption of a new law as a starting point for a broader strategy of reform of the public administration, the adoption of new civil service legislations seemed to have become a goal in itself. Moreover, the problem of politicization looked far from being resolved; on the contrary, the various plans for reforming the public administration often became themselves the expression of new waves of politicization, with the ruling political parties suspending the previous reform programs in order to launch their own initiatives (Mayer-Sahling 2004: 98). At the end of the negotiations with the candidates, the Commission's final reports highlighted the huge gap between legislation and implementation, asking for more efforts in this regard.

Other important areas covered by EU initiatives were the promotion of new training programs and the re-organization of policy-making and coordination, including the development of dedicated structures for the management of EU affairs. Given the context described above, it is not surprising that the results have been quite limited also in these fields. As reported by Verheijen (2000), even if a large number of training schools and institutes were established, the results had been quite modest. Among the main problems in carrying forward these initiatives were financial constraints, low priority, the reluctant use of training as an element of reform programs and a generally negative experience with 'imported' training. At the same time, as far as the re-organization of the policy-making and coordination is concerned, it was the field in which SIGMA and the Commission's assessments were the most negative. At the end of the negotiations, the policy-making and implementation processes of CEEBs still had many features of the previous system, such as top heavy co-ordination, duplication of functions and lack of clearly defined accountability structures. While the dedicated structures for the management of EU affairs were judged sufficient for transposing the *acquis*, strong concerns were expressed regarding the ability of the public administration of the new member states to work within the EU policy system.

However, the most negative feature that emerged from these initiatives was the lack of sustainability of the reform of the public administration. In fact, at the time of accession the Commission's *Comprehensive Monitoring Reports* highlighted the necessity to continue with reform initiatives, without effectively having at work, within the EU, any type of instrument to influence the development of public administration once a country has obtained EU membership. As shown by Meyer-Sahling in a SIGMA paper on the sustainability of civil service policy in the eight CEEBs five years after accession (Meyer-Sahling 2009),¹¹ there has been a high discrepancy between pre-accession and post-accession policy. With the only exception of Lithuania – and all Baltic states, with some qualifications, that continue with the pre-accession path – all the other countries have shown a policy reversal. On the one hand, Hungary and Slovenia presented “constructive reform reversals”, since new reform initiatives took place after accession but without the general framework provided by the Commission and SIGMA, leading to an increasing gap with respect to European principles. Slovakia, Poland and the Czech Republic, on the other hand, are classified as countries with “destructive reform reversals”. In this case, all three countries dismantled the reforms of the civil service that were initiated before accession without providing a policy reorientation.

¹¹ See also Meyer-Sahling 2011.

Overall, the results in the application of the administrative capacity criteria in CEEBs have been, at best, modest. Several factors interfered in mitigating the effect of EU conditionality. Firstly, the late introduction of administrative criteria and the lack of clarity on the standards substantially slowed down the process, leaving little space for the implementation of new legislation. Secondly, EU conditionality in this field has been weak. On the one hand, horizontal administrative requirements never reached high priority on the agenda of the Commission, with limited EU funds dedicated to the construction of a better public administration. On the other, the threat to deny membership to a candidate country on the basis of its lack of administrative capacities was not credible. A third negative factor is the lack of domestic ownership of these reforms, since they were strongly dependent from external stimuli. The results obtained by EU conditionality in this field did not reach a sufficient degree of internalization and institutionalization before accession and remained locked in the domestic domain. Given the lack of powers of the EU in this field, the administrative developments after EU accession, diverging often from the European principle of public administration, seemed to depend almost exclusively from internal political constellations.

From this perspective, however, what appears more problematic is the nature of EU intervention in this field. The efforts made by the Commission and SIGMA to construct the horizontal administrative requirements as a sort of “non formalized *acquis communautaire*”, implying a strong convergence hypothesis, does not seem to have contributed to major clarity and success of EU conditionality in this field. During accession negotiations, the process of approximation of a candidate country to the *acquis communautaire* implies a specific status. After accession the *acquis* becomes part of the domestic legal order of a member state, and the specific goals of functional integration that are covered by EU laws turn out to be deeply plugged in the ordinary functioning of the State. This is clearly not so in the case of administrative standards, in relation to which not only there is no administrative *acquis*, but the existence of informal rules leading member states’ public administrations towards convergence seems to be problematic. This opens the question whether it wouldn’t have been better to have openly thematized EU requirements for public administration as an effort of external assistance to institution building and state consolidation, rather than as an approximation to common European standards.

The administrative capacity criteria in the Western Balkans: The accession of Croatia and the necessity to renew accession toolbox

After its emergence and application through soft conditionality during the 5th European enlargement, the administrative capacity criteria have rapidly gained importance with the EU enlargement process reaching the Western Balkans, receiving an even greater attention during the accession of Croatia and becoming today, together with the rule of law and economic governance, one of the three pillars of the new EU enlargement strategy (European Commission 2014). The rising importance of the administrative capacity criteria within the agenda of the Commission can again be seen as an expression of both stronger political conditionality utilized by the EU to address the specificities of the Western Balkan region, and the result of the experience that was gained during the previous enlargements. More generally, the approximation of the EU enlargement policy to the Western Balkans seemed to



generate a dilemma between stability and efficiency, requiring a serious adjustment in the EU “accession toolbox”. As noted by Tanja A. Börzel, “On the one hand, the EU has offered the Western Balkans a membership perspective to stabilize the region and overcome problems caused by weak and contested statehood. On the other hand, it is the limited statehood of Western Balkan countries which undermines their compliance with EU norms and rules” (Börzel 2011: 5). Within this context of limited statehood that has, in different ways, characterized all the countries of the region, the efforts made by the Commission to give today a central role to the administrative capacity criteria seems to represent a fundamental part of a reorientation of the EU enlargement policy.

The limits of the “old approach” in relation to the Western Balkans emerged clearly during the process of negotiations and accession of Croatia. Even if stronger political conditionality was applied to Croatia (Bojinović and Urlić 2015)¹² and some efforts were made to renovate the EU enlargement strategy, the innovations of the overall approach have been quite limited, since the accession strategy that the Commission has followed seemed to be largely on the path of the 5th EU enlargement. In relation to the administrative capacity criteria, the EU decided to put a greater emphasis on addressing administrative reforms from the early stage of the accession process and the EU and SIGMA provided extensive support to Croatia’s public administration reform. However, the final result was limited in terms of its wider impact and sustainability. Although EU conditionality did have some impact, as illustrated by several pieces of legislation, such as the General Administrative Procedures Act (Groß and Grimm 2014), or in establishing new training structures, such as the *National School for Public Administration*, at the end of the negotiation process in 2011 the Croatian public administration still appeared rather weak.

The vicissitudes of the *Strategy of State Administration Reform* can be seen as really emblematic of the difficulties that Croatia has faced in producing a comprehensive review of its administrative structures. After a period of fragmented Europeanization of public administration that started in 2001 with the signing of the *Stabilization and Association Agreement*, Croatia adopted a new *Strategy of State Administration Reform* in 2008, a general framework that was to produce a final effort of modernization before accession (Koprić 2008; 2011). However, the strategy suffered of considerable weaknesses. In fact, the strategy was adopted by the Government but not by the Parliament, it appeared to be highly normative without clear indicators for its monitoring and implementation, and it did not include a financial plan. Whereas a special body to watch over the implementation of the strategy was established in autumn 2008 – the *National Council for Evaluation of State Administration Modernisation* – it was dissolved in summer 2009 (Koprić 2011). At the end of the negotiations period the implementation of the strategy had been quite limited, since the Croatian authority simply announced that the “implementation of the Strategy was satisfactory”, but without providing any data sustaining such a statement (as reported by SIGMA baseline assessment of 2011, OECD 2011: 8).

¹²Including post-conflict resolution and cooperation with other international institutions such as the International Criminal Tribunal for the Former Yugoslavia, the Council of Europe in relation with minority rights and the Regional Cooperation Council with respect to regional post-conflict cooperation and reconciliation. These additional conditions are being applied to all the Western Balkan countries.

The difficulties of Croatia in consistently implementing the public administration reform strategy show very clearly some of the weaknesses of the current EU approach that affect all the countries of the region, primarily the problem of taking internal ownership of the reform initiative. Whereas a substantial improvement of administrative capacities was needed, the weakness of the administrative capacities and the internal fragmentation of powers biased the ability to adequately implement the strategy. More precisely, the Croatian case suggests three main groups of problems: (1) the problem of orientation, in terms of elaborating a credible long-term strategy; (2) the problem of motivations, given by low incentives and politicization of the administrative system; (3) and the problem of implementation, due to bureaucratic resistances and corruption. These difficulties exacerbate the problem of internal ownership that already was present in the CEEB countries, making the interplay between the external incentives and support provided by the EU and the internal actors very complicated.

Moreover, we have to bear in mind that Croatia represents, together with Serbia, the frontrunner regarding its administrative capacities, that scores better in comparison to Macedonia or Albania, with Kosovo¹³ and Bosnia and Herzegovina being at the very bottom (Elbasani 2008; 2012; Börzel 2011). In different ways all these countries have suffered of limited statehood, that raises serious concerns about the decoupling between formal structures and rule-consistent behaviour. This problem of decoupling has been notoriously present also during accession of the CEEB countries (Grzymala-Busse 2004), but in a more moderate form. As stressed by Börzel, all CEEBs “suffered from weak capacities [...] but were largely consolidated states” (Börzel 2011: 11). On the contrary, in the Western Balkans, the lack of administrative capacities is more pronounced and seems to derive from the fragility of state sovereignty in both its internal and external dimensions. This is translated, in more concrete terms, in a high malleability of internal formal institutions to external influences but a low degree of effectiveness of these rules, leading to a greater gap between the legal framework and informal praxis.

From this perspective, the report written by Meyer-Sahling for SIGMA on *Civil Service Professionalization in the Western Balkans* (Meyer-Sahling 2012) illustrates the case rather well. On the one hand, Western Balkans countries have appeared to be very open to external influences and they outperform CEEBs civil service systems – all except Lithuania – in terms of their formal-legal alignment to the European principles of public administration (as defined by SIGMA), showing a medium-high level of fit. On the other hand, the main problem is the lack of rule effectiveness. In fact, despite this formal-legal alignment, the rules are poorly implemented, often failing to achieve the designed outcomes. All this seems to highlight a weakness of internal political agency in both dealing with the demands coming from external actors, which would easily penetrate the internal domain, and making internal rules effective.

¹³This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.



The New enlargement strategy and the administrative capacity criteria: The EU as a State builder in the Western Balkans?

Given these difficulties, after the closing of the negotiations with Croatia the EU has undertaken a major transformation of its enlargement policy from 2012 onwards, producing in the arch of three years a general reorientation of its enlargement strategy (European Commission 2012; 2013; 2014). Through its annual communications on the *Enlargement Strategy and Main Challenges*, the European Commission has progressively shaped a new Enlargement strategy based on the three pillars: the rule of law, economic governance and public administration reform. In 2012, the Communication of the Commission has introduced a new approach to the rule of law by changing the negotiations framework for Montenegro and for future negotiating countries – this new framework is today applied also to Serbia that started negotiations in January 2014. The new framework strengthens political conditionality, overcoming the traditional way of opening of the negotiation chapters and giving priority to the chapters on judiciary and fundamental rights and justice, freedom and security, in order to put the rule of law at the core of EU enlargement policy. In 2013, a new strategy on economic governance and competitiveness has been formulated, strengthening the economic dialogue with enlargement countries. The new strategy introduces new mechanisms of coordination and preparation of national reform strategies, which now include both macroeconomic and fiscal programs and structural reforms. Finally, in 2014, a new approach on public administration reform has been introduced.

The new three-pillars approach is characterized by a strong focus on fundamental reforms, that have to be addressed early in the enlargement process. It represents a clear effort to overcome the limits of EU policies in the past, especially those related to the fragmentation of chapter-by-chapter negotiations that has exposed EU power, exercised through conditionality, to high degrees of dispersion (Grabbe 2001). The new approach aims to strengthen the credibility of EU transformative power by elaborating a more holistic approach in which the strategy's three pillars are clearly strongly interdependent, having a mutually reinforcing impact among themselves. The strengthening of the rule of law has an impact on economic development and on public administration. Effective, reliable and predictable legal and administrative systems represent the basic infrastructure for economic dynamism and for attracting foreign investment. And an open and efficient public administration that is capable of properly implementing political decisions and representing the rights of its citizens lies at the very basis of mutual trust between the rulers and the ruled, of political legitimacy and of democratic governance.

One of the most significant features of the new EU enlargement strategy is its strong focus on horizontal aspects of candidate countries' governance, which do not bear any particular relation with EU policies and functional integration. In other words, the three pillars approach focuses EU conditionality on pushing for reforms that could be desirable and pursued regardless of future effective accession to the EU by a candidate country, and that could be well framed also in terms of national interests. This of course does not mean that the strategy is not related to EU integration. However, despite the sometime alleged antagonism between European integration and national sovereignty, the new approach shows how a well functioning national system, capable of formulating national interests in a

coherent manner and implementing them consistently, represents a fundamental premise for EU membership.

From this perspective, the central role of public administration reforms in the new EU strategy, that represents a fundamental step for empowering national public institutions, is not surprising. The high priority given to the administrative criteria aims to increase EU external push and internal ownership at the same time by making horizontal administrative requirements fundamental obstacles for accession and framing them in terms of national interest.

Another important part of the strengthening of the EU external push has come from a further clarification of EU administrative requirements through a new SIGMA initiative to support the Commission – *The Principles of Public Administration* (OECD 2014). Through this initiative, the SIGMA has produced a renewed baseline assessment according to the six priority areas specified by the Commission, which include: strategic framework for public administration reform; policy development and coordination; public service and human resources management; accountability; service delivery; and public financial management. These SIGMA principles provide a new framework for both benchmarking performances – defining 19 key requirements of a functioning public administration – and providing a guide to local policy-makers in the reform process – shaping 48 key principles that focus on implementation, evidence based monitoring and performance of the system in practice.

The introduction by both the Commission and SIGMA of a special focus on the strategic framework for public administration reform represents one of the main innovations of the new approach. It puts an unprecedented emphasis on the necessities of a political commitment and political leadership in candidate countries regarding the reform process, providing new means of technical coordination and a monitoring framework for the implementation of the reform strategies. Moreover, in order to shape a more structured dialogue with the enlargement countries, new *Special Groups on Public Administration Reform* have been introduced. The Special Groups on Public Administration Reform have already met in Albania, Kosovo, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, becoming part of the EU Delegation to these countries. These Special Groups on Public Administration Reform aim, in particular, to stimulate long-term political support and better coordination of reform initiatives at the local level.

Overall, the new approach on public administration reforms aims to reinforce the credibility of EU transformative power and tries to overcome the shortcomings of the past by both strengthening EU external push and increasing local ownership and leadership of the reform process. The positive effects of the new approach have been evident in Serbia and Montenegro, the two countries of the region presently negotiating EU membership, as both countries have adopted new action plans for the implementation of the national public administration reform strategies by the end of 2014, in close cooperation with the Special Groups on Public Administration Reform within the EU delegations and SIGMA. However, the administrative capacity criteria do not address only countries actually negotiating EU membership, but all candidate and potential candidate countries, making EU conditionality today stricter, but more coherent than in the past. The fulfilment of the administrative capacity criteria is today one of the fundamental preconditions for entering the EU, in relation to which all Western Balkans countries have to conform if they want to proceed in



their path towards the EU; an underestimation of the administrative capacity criteria could substantially delay and jeopardize their possible accession.

Concluding remarks

After almost 20 years from its first introduction at the European Council of Madrid, the EU administrative capacity criteria passed a long way – from being a marginal criteria applied through soft political conditionality in the case of the CEEB countries, to representing a central requirement for EU membership that lies at the very core of EU enlargement policy. This transformation reflects both the experience acquired by the Commission during previous enlargements and the specificities of the new candidate countries in the Western Balkans. Today, the EU enlargement policy has overcome many of the shortcomings of the past, reinforcing the overall coherence of the approach. This reflects a substantial change in the nature of EU conditionality, since the traditional emphasis on technical alignments to the *acquis communautaire* has been progressively combined with a new emphasis on reinforcing the horizontal governance capacities of candidate countries. All this makes EU conditionality today stricter than in the past. Whether this reorientation of the EU enlargement policy will produce the desired results is very difficult to say for the moment. A lot will depend on how much the EU will insist on the modernization of national institutions as a necessary condition for accession, as such a requirement could substantially slow down the EU enlargement process. Ultimately, what will effectively happen will depend to a great extent on the political choice of the EU and its Member States: whether priority will be given to reinforcing the EU transformative power but with the risk of delaying accession, or to goals of stability and fast integration of the Western Balkan countries into the EU.

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Nastanak i konsolidacija kriterijuma administrativnih kapaciteta u okviru politike proširenja EU

REZIME – Ovaj članak daje kritičku ocenu nastanka, razvoja i konsolidacije kriterijuma administrativnih kapaciteta za ulazak u Evropsku uniju (EU). Kriterijumi administrativnih kapaciteta su se prvi put pojavili prilikom petogproširenja EU (2004-07) usled slabog političkog uslovljavanja, gde su kriterijumi imali ograničen uticaj. Kriterijum dobija na značaju u procesu pristupanja Hrvatske, pokazujući određene promene u politici proširenja EUu cilju rešavanja specifičnosti zemalja Zapadnog Balkana. Zaključak je da su ovi kriterijumi danas postali glavni deo nove strategije proširenja EU, predstavljajući stroge uslove koje treba da ispune sve zemlje kandidati ukoliko žele da nastave na svom putu ka EU. Ovo preusmeravanje predstavlja veliku promenu u prirodi politike proširenja EU.

KLJUČNE REČI: kriterijumi administrativnih kapaciteta, politika proširenja EU, javne administrativne reforme, CEEB, Zapadni Balkan

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