

# The Concept and Practice of Good Governance in the European Union

Robert Grzeszczak

**Abstract**—The article deals with one of the most significant issues concerning the functioning of the public sector in the European Union. The objectives of good governance were formulated by the EU itself and also the Scholars in reaction to the discussion that started a decade ago and concerned the role of the government in 21st century, the future of integration processes and globalization challenges in Europe. Currently, the concept of good governance is mainly associated with the improvement of management of public policies in the European Union, concerning both domestic and EU policies. However, it goes beyond the issues of state capacity and effectiveness of management. Good governance relates also to societal participation in the public administration and verification of decisions made in public authorities' (including public administration). Indirectly, the concept and practice of good governance are connected to societal legitimisation of public bodies in the European Union.

**Keywords**—Good governance, Government, European law, European Union.

## I. INTRODUCTION

THE European Union is, and probably will remain for many years, in the process of determining its own legal and political standards. It is still an open question whether it will be standards copied from the familiar solutions of its member states, from the international institutions (such as the World Bank's concept of *good governance* from the 1990s [1]), or whether new and specific standards of defining structures of the EU will be created. Even though the EU has already introduced some novel solutions borrowed from its member states (e.g. the Ombudsman institution, or the "freedom of information") or some copied from international law (e.g. the list of human rights from the European Convention of Human Rights), in the course of its further development, the EU will have to define a number of institutions characteristic for its unique institutional structure. This process is called "standard-setting" and an example of this process is the concept of *good governance*, which has been shaped by the EU institutions.

The aim of this article is to examine the hypothesis that there are intensive processes taking place in the European Union (EU) which will lead to the creation of the so-called "standard-setting of EU". The first objective of the article is to discuss the hypothesis that 21st century is the time of transition from *government* to *governance*, which is connected with the postulate of the necessity of *good governance* in the

European Union (EU) and in the Member States. The process of transition from *government* to *governance* has been discussed in the international scholarly literature on the subject for the last two decades and has been increasingly applied in the policies of European states in recent years. It devises structural and substantive reforms of the EU, which should be urgently implemented by the public administration, both at the national and the supranational level. The second objective of this article is to discuss the analytical issues related with the very concept of *good governance* in the EU.

## II. THE MODUS OPERANDI OF THE EUROPEAN UNION AND THE 'UNIQUE' LEGAL DETERMINANTS OF GOVERNANCE IN THE EU

Already during the formation the European Communities in the 1950s the European integration was launched as a strictly political project shaped, similarly to the foreign policy, in government offices, rather than in parliaments and societies. As the European Communities produced measurable economic benefits, the initial political motivation behind integration was replaced by a mainly economic one. Still, the development of the Single Market led to the initiation of a formal political integration (based on treaties) and the establishment of the European Union. In consequence, the EU has developed its own *modus operandi* that is still pursued. It concerns, for instance, the manner in which political decisions regarding European integration are negotiated and implemented in the member states. This 'EU style' of decision-making has not been laid down in any official documents and does not follow directly from the treaties establishing the EU.

The *modus operandi* of European integration is also based on the overlapping and conflicting powers of the EU and the member states and the limited decision-making autonomy at both the EU and state level [2]. The model of governance in the European Union is not based on the division of powers between legislative, judicative and executive but on the principle of institutional balance. The member states or, specifically, their governments have adopted a new supranational legal order of the EU and surrendered the exercise of some of their powers, as the national governments themselves actively participate in the European governance within this new legal order. As a form of compensation for the transferred powers, the EU offers new opportunities to the member states such as the right to take part in the designing of policies to be implemented in all EU member states (internal dimension) and in relation to third countries (external dimension). The EU's operational code is mainly based on the strategy of *fait accompli*, which renders useless public debate

Robert Grzeszczak is currently working as the Professor at the School of Law of the University of Warsaw, Poland (e-mail: r.grzeszczak@wpia.uw.edu.pl).

and the activities of the opposition in the member states. Monnet has openly claimed that since the people aren't ready to agree to integration, you have to get on without telling them too much about what is happening [3].

The idea of *good governance* is in opposition to the old style of European integration. In the recent decades, the law has been undergoing numerous changes, as it has been taking new directions and becoming increasingly more complex. On the one hand, there is a growing number of legal systems: national, regional, universal international, regional international, supranational and post-national [4]. On the other hand, the European law and the European polity have been created as a result of the interaction between private and public entities, EU institutions and Member States as well as experts groups, giving rise to what is known as European governance [5]. A distinguishing feature of the EU legislation is the tendency for the continuous increase in the law-making activity of the administration (associated by a strong regulatory push), which creates peculiar legal. These subsystems often modify the most fundamental legal standards and influence the legal and socioeconomic situation of the citizens [6]. Thus, the 'unique' legal determinants of governance in the EU are manifested in the fact that the basic source of European law are decisions taken by the executives of the member states at meetings of the Council, complemented by the extensive participation of the EU administration (European Commission).

### III. THE CRISIS AND EUROPEAN GOOD GOVERNANCE - EUROPE'S REVIVAL

In 2001, the White Paper of the Commission on European Governance, (COM (2001) 428 final - Official Journal C 287 of 12.10.2001), focused attention on the notion of good governance in the European Union. The Commission has launched a vast reform of governance in order to drive forward a wide-ranging democratic process in the Union, and proposes four major changes: more involvement of citizens, more effective definition of policies and legislation, engagement in the debate on global governance, and finally the refocusing of policies and institutions on clear objectives.

One of the possible criticisms on this White Paper is that it does not define the concept in any meaningful way. At the same time the Commission seems to try to re-invent the wheel without taking experiences from national and international legal systems into account [7]. The concept of *good governance* often emerges as a model to compare ineffective economies or political bodies with viable economies or political bodies. The concept centers on the responsibility of governments and governing bodies to meet the needs of the entire societies as opposed to narrow groups in a society. Unfortunately, the crisis shows that it is very easy to undermine public trust in the EU institutions. The economic crisis has exacerbated the mutual distrust among the EU member states, which is a crucial hindrance to further European integration. In many respects, the crisis has called into question the general belief in Europe's common destiny. In times of danger and insecurity, societies turn to national

institutions, even though these operate in accordance with the EU law and use EU funds. As a result, the relationship between the EU and its citizens is become extremely fragile.

In a sense, the EU is a moving target regarding traditional political and legal concepts. The theorists and visionaries of the last decade, particularly *Joseph Weiler*, *Jürgen Habermas*, *Fritz Scharpf* and *Giandomenico Majone*, presented models and possibilities for further development of Europe in the time of crisis as well as visions of Europe's future after the crisis. In the 21<sup>st</sup> century, the European Union has been associated not only with integration, consolidation, harmonisation and unification but also with disintegration and flexibility. Lawyers see the EU as 'an international legal experiment' [8], a collective entity situated 'between' a traditional nation state and an international organisation [9] or an entity with a cosmopolitan constitutional order [10].

Europe's revival is a function of at least two interlinked elements: firstly, *good governance* within the powers granted to the EU, and secondly, its economic efficiency [11]. Thus, politics and law are closely connected to economy. *Good governance* is an indeterminate term used in international development literature to describe various normative accounts of how public institutions ought to conduct public affairs and manage public resources. These normative accounts are often justified on the grounds that they are thought of to be conducive to economic ends, such as the eradication of poverty and successful economic development.

In the EU legal system, an evident transition is occurring from the classical model of government, delimited by state borders, to governance where the law-making power is divorced from institutions operating within a nation state [12]. The classical decision-making method determined by hierarchical relationships is giving way to a method emphasising mutual links and relationships.

The revival of Europe means adopting the community perspective based on loyalty and solidarity as well as defining the political form towards which the integration processes are supposed to lead. In view of the economic and fiscal policy crisis, it is necessary to create effective and legitimised institutional structures. A common financial government (a cosmopolitan economic government [13]) supervising the budgets of the Eurozone member states are necessary to manage the economy of the internal market, particularly the Monetary Union [14]. The matter is extremely delicate and difficult. The unprecedented crisis in the first two decades of the 21<sup>st</sup> century teaches us that the EU needs serious and lasting institutional and procedural changes.

### IV. TRANSFER FROM GOVERNMENT TO GOVERNANCE - A CLOSER LOOK AT THE PARAMETERS OF GOOD GOVERNANCE

Since the beginning of 21<sup>st</sup> century the EU has been confronted with the problems which were unknown to its founders in the middle of 20th century, as the first decade of 21<sup>st</sup> century was marked by a distinct transfer from *government* to *governance*. The concept of *government*, depending on the context is usually understood as executive power or authority, is contemporarily with more up to date

ideas which fall under the term of *governance* (exercising power, authority). The concept of *governance* assumes, among others, that hierarchical power exercise is increasingly complemented with participation- and network-related solutions with horizontal effects. In turn, the concept of *good governance* emphasizes the efficiency of the authority, which means an accountability of the government to the costs and expenses incurred to the effects achieved. There are numerous definitions of *good governance* in the literature of the subject. All of them feature various conceptual elements of the notion of *good governance*. They all agree to as to the fact that effectiveness of the governance, democratization, and economic development belong to principle elements making up the definition of *good governance*.

Effectiveness of the government implies effective, just and cost-saving implementation of the public policy. The key to the efficiency may be to ensure proper qualifications of the human resources in the public sector, proper regulatory competence and establishing uncorrupted administration system. The quality of public administration has a direct impact on the economic environment and is thus crucial to stimulating productivity, competitiveness and growth. In the context of the assistance programmes of the EU, *good governance* may also imply adjusting the scale of public interventions to real social needs. In particular, it relates to the provision of the primary social services, increase of living standards, elimination of poverty, guarantee of development, equal rights of the citizens, development of human resources, assurance of social security and employment policy as well as environmental protection and sustainable development.

The second component of the *good governance* is democratization, defined as clarity and transparency of public authority and administration, and also the ability to involve citizens in the operations of governmental and non-governmental organizations.

The subsidiary principle is related to this component, since democratization involves establishing of the control procedures, establishing of the responsibility of public and administrative authorities for the actions taken within the specific boundaries (delimitation). In the activities of the EU and Member States public administration particular elements of *good governance* may be identified.

#### V. APPLICATION OF *GOOD GOVERNANCE* PRINCIPLES

An example of application of *good governance* principles may be such EU initiatives as improvement of legislative environment (European Commission's programme entitled "*European Governance: Better lawmaking*" COM/2002/0275 final), fighting discrimination in its broad sense, implementation of *good governance* by improvement of the justice system, judicial control of EU administration, personal data protection, analysis of the influence of the *good governance* on the European investment law, legal efficiency of the investors protection in the EU, initiatives bringing Europe closer to its citizens (which support the internal and external security of the EU and its Member States, and reduce the threat of disintegration of internal market), introduction of

the principle of recognition of documents on marital status records, fighting discrimination, improvement of the justice system (including the motion of the European Commission regarding the electronic alternative dispute resolution - Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)), introduction of new technologies in the EU and supporting principles of democratic government in the EU.

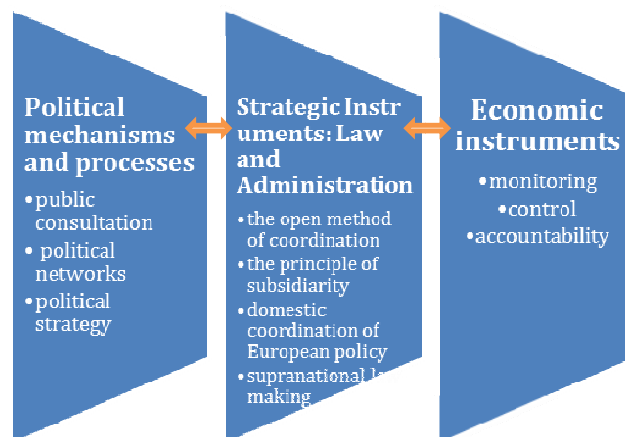


Fig. 1 The implementation of good governance in the EU

Some of the recent judgments of the Court of Justice of the European Union concerning Union citizenship, on meaning of Union citizenship and possibilities of strengthening the right to free movement and prohibition of discrimination on grounds of nationality have raised a broad discussion on the scope of application of the EU law, especially regarding the fundamental rights and fundamental freedoms as well as their limits [15]. In addition, a key issue could become the status of the Union citizenship. Freedom of movement of persons between the Member States starts to play an important role also in the field of influence of EU law on judicial control over administrative decisions in the Member States. Alone the possibility of reviewing of final administrative decisions, which is illegal under the EU law, especially, as it constitutes a restriction on freedom of movement within the EU, is a matter of fierce dispute. Judgments of CJEU, confirming such an obligation to some extent, created a number of new interesting dilemmas at the national law level as well as questions about the limits of EU influence on domestic politics of the Member States.

A further key element of realization of *good governance* principle in the EU is anti-discrimination law. In that field, there have been recently several significant new initiatives in the EU such as proposal of 40% quota in the seats in company's board for women. But still other areas of European antidiscrimination policy are plagued by controversies and problems.

An open question remains the issue of normative

implication of the principle of democratic governance in the EU. It also examines whether the principle of *good governance* is reflected in current institutional EU system. A significant clash of the free market imperatives in the EU and regulatory power of politicians with the subject matter indolence is observed. This is addressed with the actions related to the legitimization of the EU directed towards Member States endangered by insolvency and the right of their citizens to contest the EU actions. In connection with the aspects, mentioned above, the idea of *good governance* also focuses on the process of 'bureaucratic breaking free', which points to the bureaucratic elites of the Member States of the EU (gathered around ministries of interior and ministries of justice) attempting to "break free" from the democratic control mechanisms of their national parliaments by transferring the decision-making processes concerning internal security (including anti-terrorist policy and migration issues) onto the EU level, where the control mechanisms are poorly developed.

*Good governance* includes a number of specific mechanisms for its implementation. One of its components is the EU internal security policy, including asymmetrical threats such as threats in the cyberspace. However, an effective security policy can only be implemented within the framework of efficient institutional system. In this respect, it remains a point of contention between the Member States and the EU institutions, which institutional set-up is the most efficient one. Hence, a lot of attention is paid to the area of Treaty competences of particular actors. Research will also identify the mechanisms protecting uninterrupted integration of the internal market in particular paying attention to the newest mechanisms of improving it, such as digitalization of the key elements of the internal market.

Further issues of *good governance* concern accountability and legitimacy in the EU. The accountability of public authorities has always been the biggest challenge in any legal and political system. In this respect, problems arising in the EU include the transparency of the decision-making processes, the way of executing the competences of individual actors as well as achieving the right balance between accountability and efficiency. In this context, legitimacy is connected with democracy, or rather with a democratic character of political power. The problems of democratic legitimacy of transnational rule and accountability gain an immense significance and complexity when the sovereign is not the nation of one state, but a collection of communities of all the Member States [16].

#### VI. EUROPEAN GOOD GOVERNANCE IN ACTION - SUPPORTING PUBLIC ADMINISTRATION REFORM

The quality of public administration is important for economic competitiveness and societal well-being. At a time when Member States are facing increasing pressures on public budgets, the challenge of ensuring high-quality public services requires technological and organizational innovation to boost efficiency.

This applies both in public administration and in delivering public services and quality public investment. At the same

time, good governance and legal certainty are necessary for a stable business environment. It is essential that the institutions that govern economic and social interactions within a country fulfill a number of key criteria. These criteria include the absence of corruption, a workable approach to competition and procurement policy, an effective legal environment, and an independent and efficient judicial system. Moreover, strengthening institutional and administrative capacity, reducing the administrative burden and improving the quality of legislation underpins structural adjustments and fosters economic growth and employment. The quality of public administration has a direct impact on the economic environment and is thus crucial to stimulating productivity, competitiveness and growth [17].

Practice good governance illustrates introduced in 2007-2013 in Bulgaria, the Operational Programme Administrative Capacity Directorate (OPAC). The Programme exercises the functions of a Managing Authority of OPAC financed under the European Social Fund (ESF) and the national budget. It organises, develops and coordinates the OPAC preparation and implementation and the preparation of other accompanying documents, including the criteria, procedures and deadlines for project selection. It monitors, verifies and controls the projects within the framework of the Operational Programme. The ESF amount devoted to administrative capacity inter the administrative capacity priority is horizontal in scope, its strategic objective being to improve the functioning of state administration. It aims to improve the implementation of policies and the quality of service delivery to citizens and businesses, and create the conditions for sustainable economic growth and employment. Another objective is to enhance the professionalism, transparency and accountability of the judiciary. In this respect the OPAC Directorate has the following specific objectives:

- Effective functioning of the administration and the judiciary;
- Improving human resources management and enhancing the qualification of employees in state administration, judiciary and civil society structures;
- Modern service delivery provided by the administration and the judiciary

The OPAC amount devoted to administrative capacity interventions is 153.7 m€ (excluding match funding), which represents 13% of the European Social Fund allocation to Bulgaria [18].

#### VII. CONCLUSION

The European Union does not lack ideas. On the contrary, it struggles with the accumulation of ideas, which results, among other factors, from the varying degrees of integration within the EU itself. One of these ideas is the model of *good governance*.

From an institutional perspective EU can be described as a coordinated market economy. In such a structure, political actors strive for unanimous policy decisions in accordance with the main stakeholder groups. Thus, there is a strong

preference for dialogues, strategic concessions and trade-offs, allowing different actor groups and coalitions to influence policy decisions. The good governance concept is not defined coherently and it is designated for the distinct goals of the EU. A crucial element of good governance is the ability to fulfill the social needs of the EU citizens. Each of the policy areas mentioned above takes into consideration the concept of good governance and puts emphasis on the realization of specific aims or on developing of tools to implement good governance. Good governance and the quality of public administration is a key aspect in ensuring a country's long-term competitiveness and well-being. Improving the quality of public administration is an important funding objective of the European Structural Investments in several Member States. However, the main issue of exercising good government in the EU pertains to the fact that the EU makes short-lived decisions. As a consequence, changes concern only some elements of the concept and often result from the current course of events. It may be said that the way of reforming of the governance system in the EU has an ad hoc character. Thus, the usefulness of these ongoing reforms will only be possible to be assessed with the benefit of the hindsight.

Fund thematic paper, Publications Office of the European Union, 2014.

[18] <http://www.opac.government.bg>

#### REFERENCES

- [1] World Bank, Managing Development - The Governance Dimension, 1991, Washington D.C., p. 1.
- [2] F. W. Scharpf, Optionen des Föderalismus in Föderalismus in Deutschland und Europa, Frankfurt-New York 1994.
- [3] G. Ross, Jacques Delors and European Integration, London 1995, p. 194; G. Majone, Europe as the Would-be World Power, Cambridge 2009, pp. 43-45.
- [4] N. Walker, J. Shaw, S. Tierney (eds.), Europe's Constitutional Mosaic (CUP 2011) 404.
- [5] C. Joerges, R. Dehousse (eds.), Good Governance in Europe's Integrated Market, London 2002.
- [6] M. Ruffert (Ed.), Legitimacy in European Administrative Law: Reform and Reconstruction (Europa Law Publishing 2011) 360.
- [7] D. Curtin, R. A. Wessel, Good Governance and the European Union: Reflections on Concepts, Institutions and Substance, Oxford-New York 2005, pp. 276.
- [8] G. de Burca, B. de Witte, The Delimitation of powers between the European Union and its Member States (w:) A. Arnall, D. Wincott (eds.), Accountability and Legitimacy in the European Union, Oxford 2007, p. 192.
- [9] N. Walker, J. Shaw, S. Tierney (eds.), Europe's Constitutional Mosaic, Oxford 2011, s. 404.
- [10] D. Halberstam, E. Stein, The United Nations, the European Union, and the King of Sweden: Economic Sanctions and Individual Rights in a Plural World Order, CMLRev. 2009, No. 46, p. 60.
- [11] J. Gaspers, The EU's position as a global foreign policy player has been impacted by the debt crisis (w:) European Foreign Policy Scorecard, 12/02/2012, <https://matisak.wordpress.com/2012/02/12/the-eus-position-as-a-global-foreign-policy-player-has-been-impacted-by-the-debt-crisis>
- [12] C. Joerges, R. Dehousse, (red.), Good Governance in Europe's Integrated Market, Oxford 2002.
- [13] J. Habermas, Die Kriese der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts. Zur Verfassung Europas: ein Essay, Berlin 2011, p. 39.
- [14] P. J. Rhys Morgan, Euro Crisis. Aggregate Demand Control is European Single Currency Weakness, Morganist Economics 2012., pp. 12-15.
- [15] See, inter alia, Judgment of the Court of Justice from 18 September 2014 in Case C-549/13; of 5 September 2012 in Case C-83/11 Rahman and Others; of 16 October 2012 in Case C-364/10 Hungary v Slovakia; of 8 November 2012 in Case C-40/11 Iida.
- [16] E. Fisher, The European Union in the Age of Accountability, Oxford Journal of Legal Studies No 3/2004
- [17] European Commission, Promoting good governance European Social