

## Administrative capacity as the main factor of the "Acquis Communautaire"

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### Abstract

Administrative capacities constitute a very important component for the functioning of public administration in all countries, especially for those that are in the process of European integration. In this regard, countries are obliged to undertake various political, legislative, organizational and educational measures in order to increase the administration's capacities. Most of the countries that are undergoing the European integration process are developing administrative reforms, with particular emphasis on administrative capacity building in order to meet European criteria and standards for a functional, responsible, efficient and effective administration. To achieve these objectives, the EU has foreseen principles, rules, standards and criteria which are mandatory for each country aiming for EU membership. These objectives are realized through various measures, actions and strategies for the training of the administration in order to achieve approximate results in the implementation of principles, criteria and standards, as in the EU member states, known under the term *acquis communautaire*.

**Keywords:** capacities, public administration, European integration, administration reform, standards, strategy, *acquis communautaire*.

### Introduction

In the modern world, in which many international organizations such as the EU, the UN, numerous transnational and trans-Atlantic organizations are founded and operate, in times of globalization and high technological developments, the role of administration has a new and indispensable dimension towards facing all these changes and at the same time towards realizing its function. Apart from being a state activity, and more as a service to citizens and organizations both in the public and private sectors, the administration can carry out its mission and provide proper services only if it has the necessary capacities for such tasks.

Public administration, as one of the forms of power, as an activity, as an institution, and as groups of people working in it, cannot achieve its goals, mission and function when it faces a lack of capacities or has insufficient capacities. In this paper, we refer mainly to the administrative capacities in countries that are in the process of European integration. There is a general assessment of almost all EU mechanisms and organizations that evaluate and monitor the functioning of public administration that public administration in these countries despite some results still stands behind the integration goals and objectives firstly because of the lack of capacities. In many cases, the integration process has been understood as a process of "copying" EU laws and practices and less as a process of creating them in accordance with EU-defined rules. The process of capacity building means a "local" process built on European principles and rules, based on the genuine projects and strategies of the respective state, the level of overall social and political development, and the high

quality opportunities towards a more qualitative life, work and organization. Since its foundation, the EU has adopted many rules, laws, treaties, directives, etc. and has established implementing practices that are summarized in a single corpus of its policies and constitute the so-called *acquis communautaire*.

Many scholars, theoreticians and experts in the field of administration consider the administrative capacities to be the key factor in meeting the *acquis*.

The concept of administrative capacity in European terminology is being addressed more as a term related to "institution building" which will be prepared for the adoption and implementation of the *acquis communautaire*.<sup>1</sup>

Knowing that the EU has not adopted a basic and integral law for public administration and that there is no similar system of administration building and neither of its capacities, in different states, the treatment of this topic gains great importance both for the EU as well as for the particular countries.

On the other hand, most of the states undergoing the integration process are also undergoing the process of reforming public administration, with particular emphasis and priority in increasing the capacity of the administration or "institution building as a necessary prerequisite for the implementation of principles and meeting the criteria and standards for integration.

The adoption and implementation of the *acquis* in the states undergoing the process of integration and reformation can be said to be taking place at two levels: at the level of the respective state and at EU level, as its effort to prepare these countries for European integration, known as "external capacity" for integration. These processes constitute prerequisites for increasing the capacity of the administration for integration and at the same time maintaining its cohesion.

The strategic reform priorities of states for capacity building of the administration and, on the other hand, the EU support and assistance in this regard for the countries in the process of integration has given results which are the basis for the increase of the dynamics of positive changes in this field.

### **Administrative capacity as the main factor of the *acquis* The notion of "Acquis Communautaire"**

"Acquis Communautaire" is a French term which interlocks principles, rules, treaties, and other acts and judicial practices in a single body. In European terminology and the explanation made by the European Commission regarding this term, it is defined as "the cumulative body of European Union legislation consisting of principles (treaties and protocols) and by-laws (regulations, directives and decisions) and judicial practice of the European Court of Justice".<sup>2</sup>

In its general understanding it can be said that the "acquis" includes EU objectives, policies, rules and legislation.

Member States are obliged to implement all the rules in accordance with the *acquis*

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<sup>1</sup> A. Dimitrova (2002) "Enlargement, Institution-Building and the EU's Administrative Capacity Requirement, West European Politics", 25:4, 171-190, DOI: [10.1080/713601647](https://doi.org/10.1080/713601647).

<sup>2</sup> Glossary of Terms Related to the Common Agricultural Policy(2015), by European Commission.

communautaire because these rules have priority over the laws of the state. In most cases, member states incorporate these rules into the legislation and practices of their state.

States that are undergoing the process of European integration, especially those at the early stages of European integration, often use the term "approximation with the *acquis*" in order to express the integration purpose of the *acquis* at the stage when they achieve the necessary capacities for this purpose. In fact, these countries as well, even before they joined the EU, they are obliged to integrate the *acquis* into the legal system, in their practices and rules, and all the rules in force at the time of gaining the membership because the *acquis* is not a static rule but flexible alongside the political and legislative changes brought by the EU institutions.

"The ability to undertake the obligations of membership including the acceptance of goals for political, economic and monetary union called the *acqui criteria*"<sup>3</sup> are the core of administrative capacity and capacities in all other areas involved in the European integration process.

### **Administrative capacity and *acquis***

Administrative capacities are a very important part of the administration in performing the tasks and responsibilities that it carries, especially in the European integration process. Capacities are closely related to human resources in terms of strength and skills, professional preparation, etc. in realizing the individual competencies and responsibilities and the responsibility of the institution as well.

Capacities interlock the notion of ability, both at individual and institutional level, to responsibly carry out the respective duties and functions. The notion of ability is defined as "the ability of individuals and organizations (agencies, departments, etc.) to perform functions effectively, efficiently and with sustainability".<sup>4</sup>

This definition also implies the notion of public administration capacities as an administration with skills and professional preparation for the realization of competences, responsibilities and services for the state and for the citizens as well as its skills and professional preparation to fulfill its responsibilities in the field of European integrations.

In the European integration process, capacities are the key factor in the preparation and technical fulfillment of the integration criteria. European integration is a process which depends on two essential factors: the political factor and the technical factor. While the political factor is realized in the political governance lines, in relations between states, geopolitical and geostrategic circumstances, the technical factor is directly related to the public administration, with its capacities to meet the criteria for European integration, professional preparation, performance, human resources management, civil service system and civil service management, education of public administration staff and education system in this matter.

<sup>3</sup> Prof. Manuel Ballbé, Prof.Dr. Xhezair Zaganjori dhe Dr. Carlos Pablos, Dr. Eralda (Methasani) Çani, "Çështje të së drejtës administrative në vështrim krahasues", (2010, Tiranë).

<sup>4</sup> Public Administration in Kosovo, Analysis of the situation and strategy, DCES, United Nations New York, 2003, pg. 14.

Administrative capacities can be classified into: human capacities, institutional capacities and legislative capacities. In fact, the administrative capacities are a common designation of the operational capacity of civil servants and administration institutions in achieving the goals and realization of their function.

A topic that has been continuously discussed and debated is: how much EU has impact on the area of public administration capacities, in building and strengthening it in Member States and those undergoing the integration process. It is understandable that there are different theories and opinions about this topic because of the fact that there is not an EU model yet that would be applied by all, neither to the administration nor to the way of increasing its capacities. The EU public administration rules and directives guide states towards respecting the working principles and functioning of public administration but do not present a model of education and preparation in terms of achieving the necessary level of administrative capacity for member states or even those undergoing the integration process.

We can say that the influence of EU on administrative capacity is of particular importance given that it does not foresee solutions to all issues of public administration and the rules do not affect all states in the same manner because "the EU has no direct competency to regulate or monitor the administrative capacities of member states, and even less of non-member states".<sup>5</sup>

The EU has powerful influence on administrative capacity expressed in different forms for the fact that it affects, inter alia, the "style and direction of administrative procedures within the national political systems of the Union".<sup>6</sup> The impact of EU on administrative capacities is realized in several directions. Firstly, the Member States are required to take the necessary measures to meet the obligations of membership. This is not an easy task because according to this rule national (state) administrations should be able to participate effectively in the EU policy-making process.

Hence the increase of administrative capacities to the level of skills necessary for the implementation of EU acts is not a matter of wishes or goals but a necessary task for the fulfillment of its function, for the state's own performance and ultimately for avoiding the major legal and financial consequences deriving from its insufficiency. On the other hand, the influences of EU on administrative capacities can be noticed in the area of administrative co-operation between member states themselves, between these states and the European Commission and recently between these two parties and the countries undergoing the integration process. This cooperation has had very important effects on the "harmonization of their administrative systems, not just in the aspect of institutional development and analogous processes of policies, but at the deeper level, in the values, assumptions and common experience".<sup>7</sup>

For countries undergoing the process of integration this means that administrative capacity is not just a matter of will, but it is a necessity for the functioning of the administration and its development for European integration. Its significance

<sup>5</sup> Edward Moxon-Browne, *Administrative Capacity in the European Union: How high can we jump*", Centre for European Studies, University of Limerick.

<sup>6</sup> Edward Moxon-Browne, *Administrative Capacity in the European Union: How high can we jump*", Centre for European Studies, University of Limerick.

<sup>7</sup> Edward Moxon-Browne, *Administrative Capacity in the European Union: How high can we jump*", Centre for European Studies, University of Limerick.

increases even more with time, when it is now being debated and worked very seriously towards what is called "European Administrative Space", which aims at harmonization, cooperation and establishment of a common European administrative system<sup>8</sup>.

States undergoing the process of European integration are still at the stage of creating and implementing "best practices" of EU countries even when dealing with administrative capacities. More than once this syntagm is used only to "cover" the copying and formal application of the administrative rules and procedures required for any progress in the reports that the EU drafts for these countries. Best practices are those that make the administration functional and capable to fulfill its obligations, and this situation creates difficulties in finding an "original" model for the relevant administration capacities.

Governments can get the best models from other countries for capacity enhancement, but they themselves need to find the best and fastest path for sufficient administrative capacity by continuously measuring outcomes and avoiding shortcomings in this regard. This assertion is confirmed by many authors who in their works deal with state, administration and governance issues. *Woolcock and Pritchett (1992)* argue that "in development policies, we must be very attentive when we acknowledge the existence of widely applicable rules and lessons for public sector reform, project management or service delivery"<sup>9</sup>. Further on, they underline very convincingly the "often ineffective character of the" best practices "mentality, where a practice that goes well in a part of the world is immediately advertised and defined as a model to be followed by the rest"<sup>10</sup>.

Based on these concepts of "best practices", we can say that there are no opportunities or projects for implementation in a state of "best practices" for administrative capacity because "successful programs are often individualistic, including what James Scott (1998) labels as mixed blood - the ability to use local knowledge to find local solutions."<sup>11</sup> Public administration, including the capacities, can be said to be individualistic and not subject to generalizations but this should be distinguished from respecting the administrative principles that are binding for everyone. The general principles of public administration are mandatory for all states. These principles are fully and accurately presented by SIGMA, but also by other EU regulations and directives.

In modern administration, the capacity of administration and its management is taking new dimensions in terms of its functionality and management known as "New Public Management". As a new management concept, this form represents a new way of management based on private sector management principles. Management in administration and increasing its capacity according to the principles of the private sector can not be fully realized while one pursues public interest and the other his own private interest, but this does not prevent the administration, with such a large technological development, from taking something from the private sector management. In this regard, "the biggest disadvantage of public administration

<sup>8</sup> Edward Moxon-Browne, *Administrative Capacity in the European Union: How high can we jump*, Centre for European Studies, University of Limerick.

<sup>9</sup> Francis Fukuyama "State-Building, Governance and World Order in the 21st Century, pg.128.

<sup>10</sup> Ibidem. pg.128.

<sup>11</sup> Ibidem. pg..128.

compared to private sector management is that private companies are exposed to the ruthless Darwinian competition and selection process, while public sector agencies are not.<sup>12</sup>

States that are undergoing the process of integration, but also those that are members of the EU and which have developed the administration in the communist system for decades, have faced numerous problems in this area. Difficulties in the administrative capacity as well as in other areas reflect the changing mentality that is considered to be the most difficult. The shift from the monist mentality and an administration prepared for the exercise of state violence, to a law-based administration, with principles, respect for human rights, high-capacity administration, administration in the service of the citizens, was a great challenge for many states because in some of them and in certain areas, there are still relics of the past system, camouflaged by "democracy".

The transformation of the work of the administration on the basis of the principles and under the new conditions of the democratic system and the rule of law was developed with great difficulty because "among different components of institutional capacity, the public administration is most vulnerable to systematization and transfer."<sup>13</sup>

In fact, the transformation of the administration and its capacities in some countries has lasted for decades, and in others it is still continuing. This transformation, known as a period of transition in some states, has become a "permanent" category. The long duration of this transition period is the result of many negative phenomena in the field of administration.

Human capacities comprise an essential factor and the most important category in the process of European integrations. They are, first of all, significant for the functioning of the state's administration, and, second, for the realization of goals and objectives for the European integration. Human capacities also represent a mandatory criteria for increasing institutional, legal, capacities, etc., because the human being and its capabilities are at the core of overall change and development.

Countries in the integration process have made positive steps within the legal plan in fulfilling the *acquis* criteria. In those countries, (Kosovo), no law can be adopted without a prior statement that a certain law is in accordance with the *acquis* criteria, given by the relevant governing institutions.

For a long time, the countries that are still in the process of integration have had great difficulties in understanding the meaning of European integration. To this end, entire campaigns have been organized by both state institutions and non-governmental organizations. In the present stage of the integration process in those countries, it is now clear that countries meet the obligations for integration because it is in their interest in the first place, and, second, because European rules are imposed to be implemented by all states.

Actually, each country of the Western Balkans in this process is assisted by "the entire EU", but the "authorship" and "ownership" of fulfilling the criteria and obligations must be of the relevant country. In this direction, the first task of the government of each country in the integration process is to assess the administrative capacities

<sup>12</sup> Francis Fukuyama "State-Building, Governance and World Order in the 21st Century, pg.129.

<sup>13</sup> *Ibidem*, pg.130.

for integration. The assessment cannot be superficial and focused only on creating institutions for integration, ministries, commissions, departments, etc., but rather on preparing and qualitatively developing professional human administrative capacities. Such a goal is considered to be achievable with specified education, specializations on specific fields and programs of administration, better utilization of EU's financial means through the Instrument for Pre-Accession Assistance (IPA) and other organizations from Europe and beyond, in projects and programs devised clearly and with definite aims. Strengthening the cooperation with relevant European institutions would spark and motivate the increase of administrative capacities. It is crucial that more specific criteria as well as greater legal competences be applied particularly for high employees of the administration during the recruitment process. As the majority of countries are in the process of reforming the public administration, increasing administrative capacities occupies an important place in their strategies and plans. Kosovo, Albania, Macedonia, Serbia, Bosnia and Herzegovina, Montenegro, have designed strategies to reform the public administration and projects to implement it. Within these projects, the issue of further increasing the administrative capacities has been presented with special emphasis.

Increasing public administration capacities and the standard of the services provided by the public administration comprises concern and obligation of at least three internal factors:

The first factor, which may be considered the most important one, is the political leadership which should be aware that to satisfy the EU standards, to fulfill the *acquis* criteria, it is crucial that the reforms that would improve its organizational structure, legislation and effective functioning be enhanced and expanded.

The second factor is related to public institutions as well as those of the private sector which, likewise, must possess professional, qualified, human capacities and modern technology and infrastructure to achieve their objectives and goals.

The third factor concerns the public administration employees themselves who provide services based on the respective rules and laws. The administration employees cannot be sufficed with the knowledge obtained during preparatory education because work in the administration, as much as it is led by rules and laws, is not a statistical work which is always known. This work requires "continuous education", continuous theoretical training, and quality and effective services in practice.

Within human capacities, in satisfying the *acquis* criteria, managing human resources comprises an essential factor in functionalizing and increasing capacities. The procedures and methods of recruiting civic workers, appointing tasks and duties at work, employees' salaries, their advancement and system of advancing, motivation at work, make up some of the significant elements in managing human resources in the public administration which directly affect the administrative capacities.

As concerns managing human resources, it can be said that every country uses its own methods to manage civil employees with the aim of enhancing the administration's performance and achieving its goal, and, to this end, no country is obliged to apply a model because such a model does not exist.

Therefore, even in developed countries, "modern bureaucracies" present considerable variation in relation to the method of recruiting, training, promoting and educating

civil employees.<sup>14</sup>

Only the best practices of the EU member states are not sufficient for the increase of administrative capacities. Neither complying with the EU rules for the public administration and its capacities is enough. Also, we can say that the institutional construction and structuring of the administration institutions itself according to a "European mode" is not entirely sufficient.

Every country should find "its own way" of building and functionalizing the administration even in the area of administrative capacities due to the fact that each country has the human and institutional capacities different from other countries, different capabilities for faster or slower development, greater or smaller abilities to absorb funds from the EU, etc., but always based on the EU principles, criteria and standards.

Concerning the increase of administrative capacities, it is worth mentioning that the principles pertinent to the efficacy and efficiency of the public administration comprise integration criteria, which influence the increase of administrative capacities. As a principle, efficiency is a feature of the private sector, but in the contemporary world it is already a necessary principle even in the work of the public administration, particularly when one considers that fact that the administration has entered the era of "New Public Management".

Governments and other public institutions in countries in the integration process but also in EU member states, within the measures for the increase of capacities, have also established various institutes and other institutional and non-governmental mechanisms which develop projects for capacities and work refinement in the administration. Within the EU, the European Institute of Public administration, and other similar institutes have been established by countries separately for this purpose. The influence and importance of these institutes is reflected in the continuous training of civil employees and other officials of the administration to increase their capacities for the duties they perform, but they also largely affect and influence the greater refinement of the administration's work and the continual progress in increasing administrative capacities.

The main problem in the work of institutions is that these institutions act mainly by means of "trainings" which not rarely have become a means of themselves because of the absence of their seriousness and measuring instruments of the results of the trainings.

At the financial aspect, countries use financial means from the internal budget and financial opportunities offered by the EU for projects and programs to increase administrative capacities. One of the problems highlighted in the countries in the process of integration is the absence of capacities to absorb funds from the EU, to finance various projects that are enabled by the EU in every stage of the integration. In this direction, the biggest problem appears when there are no administrative capacities to design and implement projects for the increase of capacities. This is a serious problem which some countries still face in early stages of the integration process.

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<sup>14</sup> Francis Fukuyama "State-Building: Governance and World Order in the 21st Century", pg.132.

## EU's financial support in increasing administrative capacities

The influence of the EU in the administrative capacities of countries in the integration process is exerted in several ways, by laws, regulations, directives, trainings, monitoring, and financial support.

Laws, regulations and directives determine the systematic rules of work, principles, institutions, and administrative mechanisms of EU which are part of the cooperation with some member countries whereas countries in the integration process achieve the standards offered by these mechanisms.

In countries in the integration process, the EU acts more in the field of trainings, monitoring and financial support of projects for administrative capacities. Thus, various EU mechanisms design reports and measurements of the results in this field. The concept of administrative capacities from the EU is being treated more as a term that has to do with "building institutions" which will be prepared to approve and implement the *acquis communautaire*.<sup>15</sup> Adopting and implementing *acquis* in the countries in the integration and reformation process can be developed at two levels: at the state level and at the EU level. EU offers support to countries through its mechanisms to prepare for European integration. This support is known as "external capacity" for integration.

On the other hand, countries need to build a cohesive policy for the administrative capacities so that the increase and enhancement of capacities be more measurable and that the monitoring in this area be easier, in the sense of meeting the criteria to become members of the EU.

The criteria that the EU uses to assess administrative capacities in the member states are different from those used for countries in the integration process. Part of the assessment for the member states is the appropriateness of sectorial administrative capacities to implement *acquis* whereas an assessment of the overall capacities is done for the countries in the integration process.<sup>16</sup>

There are three main factors that are used to explain the growing importance of assessing administrative capacities.

The first one concerns the rapid development and expansion of the EU particularly after the membership of Central and Eastern Europe countries, which has influenced the review of the EU Treaties<sup>17</sup>.

The second factor is related to the European Commission's change of attitude which began to place more importance on "Performance Indicators", based on which policies were oriented towards achieving a better performance. Thus, member states published their laws and especially the degree to which they had fulfilled their obligations of membership, exposing in particular the shortcomings in the performance of the national administration.

<sup>15</sup>A.Dimitrova (2002) "Enlargement, Institution-Building and the EU's Administrative Capacity Requirement," *West European Politics*, 25:4, 171-190, DOI: 10.1080/713601647).

<sup>16</sup> Same, Verheijen, 2000; 2007; Dimitrova, 2002.

<sup>17</sup>Administrative capacity-building and EU cohesion policy, European Policies Research Centre, School of Government and Public Policy, University of Strathclyde, Glasgow G1 1QE, United Kingdom, [eprc@strath.ac.uk](mailto:eprc@strath.ac.uk).

The third factor concerns the absorbing capacities of Central and Eastern Europe countries. It was evaluated that these countries had great shortcomings in the administrative capacities to absorb funds from the PHARE program. The same assessment applies to the countries in the integration process which face great absence of capacities to absorb financial means from the pre-accession program, IPA. In the studies undertaken in this area, the assessment of absorbing capacities was developed based on these elements:

- administrative absorbing capacity: which implied the ability of institutions to prepare plans, projects, programs, etc.
- financial absorbing capacity: the ability to co-finance programs supported by the EU and projects.<sup>18</sup>

On the other hand, assessment of capacities in countries in the integration process is done based on three main components:

- *structure*: clear appointment of responsibilities and duties toward institutions, particularly at the level of departments or units within these institutions;
- *human resources*: the ability to detail duties and responsibilities at the level of job description; evaluating the number and qualifications of the staff as well as fulfilling recruitment needs; time-availability of experienced, capable and motivated personnel;
- *systems and tools*: availability of instruments (methods, guidelines, manuals, etc.)<sup>19</sup>

Several EU mechanisms as well as other international organizations are involved in building and increasing administrative capacities, which offer their help in these countries. The most important ones are:

OECD/SIGMA; The World Bank; EIPA networks; Centre of Learning at the Common Assessment Framework (CAF); European Public Sector Awards (EPSA); European Public Administration Network (EUPAN); Common Assessment Framework (CAF); European Institute of Public Administration (EIPA).

Increasing administrative capacities with the aim of implementing the acquis criteria comprises the strongest foundation for European integration. Administrative capacities do not make up a phase; they represent a process, a value, a function and a duty for countries, for providing good services for the citizens, efficiently, responsibly, and effectively, as well as accelerated European integration.

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A.Dimitrova (2002) "Enlargement, Institution-Building and the EU's Administrative Capacity

<sup>18</sup> Edward Moxon-Browne, Administrative Capacity in the European Union: How high can we jump", Centre for European Studies, University of Limerick.

<sup>19</sup> Edward Moxon-Browne, Administrative Capacity in the European Union: How high can we jump", Centre for European Studies, University of Limerick.

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