



ORIGINAL PAPER

Public Administration Reform in Post-Communist Countries as a Requirement for EU Membership: Towards the European Administrative Space

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Abstract

After the end of the Cold war, former communist countries expressed their intention to become EU members. The EU started to prepare for the future enlargement and introduced new, more complex accession criteria- the 1993 Copenhagen criteria that were later supported by the Madrid criteria, according to which harmonious integration of Central and Eastern European countries into the EU would require adjustment of their administrative structures. The enlargement criteria recognize the need for countries to build a strong national public administration with the capacity to transpose and implement the *acquis communautaire* effectively. The forthcoming EU enlargement with Central and Eastern European countries implied administrative reforms that were not required by the countries that have joined the EU at the earlier stages. The aim of the paper is to analyze the impact of the public administration reform on the success of the EU accession process in the case with the Central and Eastern European countries. The European Union has not introduced specific model for the organization and functioning of public administrations. However, because of the great importance of the institutions of public administration in implementing of the EU *acquis*, they need to adhere to the general principles of good governance and meet certain administrative standards defined within the EU. The paper furthermore explores the European administrative space that represents an evolving process of increasing convergence between national administrative legal orders and administrative practices of member states.

Keywords: *European administrative space; public administration; reforms; EU accession.*

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Introduction

The European Union (EU) is open to new members since it was established in the 1950s, following the dream of its founding fathers to unite the European continent in order to make it prosperous and peaceful. This is especially the case after the end of the Cold war when the division of the continent was finally overcome and former communist states started the process of transition and proclaimed their aspirations to become members of the EU. Following these events, the EU has started to prepare for the future enlargement by clarifying the accession criteria and assisting these states in the transformation of their systems as part of the European integration process. In this way, the accession process became very complex and extensive- on the one hand, the candidate states were committed to the process of transformation of their societies following the will of their people; on the other hand, these reforms were conducted under the guidance and support by the EU, following their aspiration for membership.

The biggest enlargement of the EU happened on 1st of May 2004, when ten new member states joined the EU- Cyprus and Malta and the post-communist Eastern and Central European countries: the Czech Republic, Latvia, Lithuania, Estonia, Hungary, Poland, Slovakia and Slovenia. This historical integration of the East into the EU family marked the end of the Cold War division of the European continent between the West and the East and gave the EU a role of a unifier of the European continent and a possibility to spread the values on which it is established. Romania and Bulgaria joined the EU in 2007.

One of the most striking features of the eastern enlargement was its scale and magnitude and the transformative effect it has had on the shape of the EU. From a membership of six countries and 185 million people in the late 1950s, the EU expanded gradually 15 member states and a population of 375 million people after the 1995 EFTA enlargement. With eastern enlargement the Union expands to 25 member states with a combined population of 450 million (O'Brennan, 2006: 3). For the new members, accession presented the achievement of one of the central foreign policy goal that their governments had formulated more than a decade earlier, after the political transformations of the late 1980s (Sedelmeier, 2005: 3). The EU prepared itself for the forthcoming enlargement- it introduced changes in the decision-making process (extension of weighted majority voting in the Council to cover new policy competences), new legislative procedures were introduced, financial adaptation etc.

Since 1989, Central and Eastern European countries have been involved in a fundamental transition consisting of three parts: introducing democracy and democratic state institutions, shifting to a market system and moving toward integration into EU. Integration into the EU can occur only if democratic systems of governance and market economies are in place. Candidate countries must be able to implement effectively Union's directives and policies in their domestic context. The accession burden on candidates from CEEs countries was far greater than for other candidates or previous entrants (SIGMA/OECD 23, 1998: 121-123). Institution building means adopting and strengthening democratic institutions, public administration and organizations that have a responsibility in implementing and enforcing Community legislation. The integration process is not simply a question of introducing legislation; it also requires effective and efficient implementation of the texts. It includes the development of relevant structures, human resources and management skills (European Commission, 2003: 17). One of the great challenges for the new member states, acceding, candidate or potential candidate countries is to reform, adapt and strengthen their public institutions in order to apply

well EU institutions and procedures (or the *acquis communautaire*) and benefit fully from the membership in the Union. Twinning programme was launched by the European Commission in 1998 as one of the principle tools of institution building assistance in the context of the preparation for EU enlargement (European Commission, 2017: 10).

Public administration reform as a requirement for EU membership

The EU has clarified the membership criteria when the applications from the former communist states were imminent. According to the Copenhagen criteria for membership (defined at the European Council in Copenhagen in 1993), a candidate country must achieve: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy; the capacity to cope with competitive pressures and market forces within the Union; capacity to take on membership obligations (the *acquis*), including adherence to the aims of economic, monetary and political union (Mannin, 1999: 42).

The European Council in Madrid in December 1995 referred to the need, in the context of the pre-accession strategy, to create the conditions for the gradual, harmonious integration of the applicant countries, particularly through - the development of the market economy, - the adjustment of their administrative structure, - the creation of a stable economic and monetary environment (European Commission, 1997a). In this way, the Union emphasized the importance of the implementation of the legislation- it was necessary not only to transpose the *acquis* into national legislation, but to build adequate administrative capacities that will be capable to implement it efficiently as well.

Building on the requirement to embrace the *acquis* (the third Copenhagen criterion), 1995 Madrid European Council emphasized the importance of assuring the adjustment of the administrative structures of the candidate countries to enable them to meet the challenges of accession and to generate sufficient administrative capacity to effectively implement the *acquis*. A number of subsequent European Council meetings followed Madrid and Copenhagen emphasizing the importance of the reform of administrative structures, in the course of the Central and Eastern European countries' transformation and the role such reform plays in the effective transposition of the *acquis* (Kochenov, 2008: 180).

Because of this, it could be supposed that the Commission would assess the administrative structures and civil services of candidate CEEs countries that did not happen in the previous negotiations for accession or association. However, it needs to be stressed that the Commission have only the power to make recommendations to participate governments and its influence is merely due to its capabilities to look for the Union's common interest and capacities to assess the development of negotiations (SIGMA/OECD 23, 1998: p. 138). Member states who joined the EU after 2004 carried out substantial administrative reforms as part of their preparation for EU membership. These aimed to modernize policy-making, improve effective coordination and create a merit-based civil service able to attract and retain well-qualified staff. However, several years after accession in many of these countries the momentum was lost. Many aspects of administrative change remained fragile and fragmented. (European Commission, 2016: p. 2-3). The contexts of conditionality refer to different (stylized) stages in the Europeanization process. In the period starting with the beginning of post-communist transition in CEEs, EU conditionality was mainly democratic conditionality: EU external incentives were linked to the fundamental political principles of EU, the norms of human

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rights and liberal democracy and the institutions of market economy. These rules are not only fundamental for the EU, but for the entire western community of states. EU conditionality thus goes hand in hand with efforts of other organizations of this community (NATO, the OSCE, the OECD or the Council of Europe) to support the democratization and democratic consolidation of the transformation countries. Democratic conditionality prepares the political ground for the accession process and the transfer of more specific EU rules. Acquis conditionality sets in once candidate countries start to prepare for full membership, which becomes the major external incentive for rule adoption. In the case of the CEEs, the EU formulated rather strict pre-accession conditionality. It not only demanded full compliance prior to accession but insisted on significant progress with adopting the *acquis* as a precondition for starting accession negotiations. In many cases, *acquis* conditionality already began to apply before all the problems of democratic conditionality had been sorted out (Schimmelfennig & Sedelmeier, 2005: 211-212).

For many countries of the former Eastern bloc, reforms have to overcome realities that are difficult to imagine by Western administrators. The environment in which public administration is placed in the post-communist countries is not particularly stimulating for change and reform. The environment in which public administration is placed in postcommunist countries is not particularly stimulating for change and reform. This environment is characterized by precarious economic situation, market mechanisms functioning in a rather random manner, ubiquitous corruption, citizens who are not always aware of their rights and the nature of the relationship that should exist with public administration structures (perceived as a factor promoting unilateral authoritative approach), political elites that are not always able to provide clear, strong and coherent political decisions concerning administrative change and dangerous political instability ((Hintea, Sandor & Junjan, 2004: 146). The issue of public administrative and judicial capacity, as one of the requirements of EU membership, derives from the criteria established by the Copenhagen European Council (1993) and specifically from the first of these- the political criteria. In the years since 1993, public administrative and judicial capacity related reform efforts have been considered in terms of “best practice”, rather than a fixed model to be adopted (European Commission, 2006: para. 1-2). The Commission attaches the greatest importance to ensuring that the candidate countries reach an adequate level of administrative and judicial capacity by the time of accession. Starting from its 1997 Opinions and subsequently in the regular reports, the Commission has carefully monitored the progress made by each country in this area. The Commission has pointed out that while administrative and judicial capacity was a key factor for accession, building up administrative structures and strengthening administrative capacity, including horizontal administrative capacity, was a long-term effort that will need to be continued also after accession. The action plans for reinforcing administrative and judicial capacity constitute an additional instrument to monitor the implementation of commitments related to the development of each country’s administrative and judicial capacity (Commission of the European Communities, 2002: 3-13). The task of the Commission was unprecedented because the Copenhagen criteria are broad in political and economic terms and go beyond the *acquis communautaire* (for example, assessing administrative and judicial capacity), and because the *acquis* itself has expanded considerably since previous enlargements (European Commission, 1997b: 39). Developing adequate administrative capacity for EU membership is a demanding and

complex task that requires reforms in every sector and policy covered by the EU policies and legislation.

Table 1. Administrative capacity to apply the acquis in the Central and Eastern European countries

Country	Administrative structures and capacity	General evaluation
Bulgaria	<ul style="list-style-type: none"> -the government attaches high priority to the reform of administrative system; - a Strategy to establish a modern administrative system was adopted in 1998; -establishment of an integrated information system for public administration; -Bulgaria has set up a new European integration mechanism that is centered around the Foreign minister and Ministry of foreign affairs. 	<p>Bulgaria's capacity to implement and enforce the acquis is still weak. Important first steps have been taken in general public administration reform and in the areas of anti-trust, indirect taxation and regional policy administration. Bulgaria has recognized the importance of taking action on justice and home affairs and a number of concrete steps have already been taken. There is an ongoing need to build up capacity to formulate and coordinate policy inside the administration, including in the area of EU affairs.</p>
Estonia	<ul style="list-style-type: none"> -lack of highly qualified staff at the medium and technical levels of the civil service; - in 1998 the government set out the spheres of responsibility among ministries for the coordination of public administration development; - the approximation of laws is done by the ministries; - the priority target groups, the contents and methods of training of civil servants on EU matters have also been established; -staff has also been recruited to strengthen the public awareness on EU activities. 	<p>Although Estonia has taken some steps to reform public administration and judiciary, due in particular to limited human resources, progress is slow and administrative shortcomings exist in key areas such as financial market supervision, state aid monitoring, maritime transport and employment and social policy. The current reorganization of financial control institutions and the development of regional development structures need to be sustained and consolidated in order for Estonia to be in a position to effectively use EU funds.</p>
Hungary	<ul style="list-style-type: none"> -following the modification of the Act on the legal status of public officials, public service employees are being prepared for EU membership; -from 1999 management level public service employees will be obliged to pass a special examination, also covering EU topics, within 3 years; -the government has strengthened the ethical rules for the public service; -substantial structural changes within public administration at central governmental level since July 1998. 	<p>Has continued to make progress in building up its administrative capacity to apply the acquis. In doing so it has addressed one of the short term priorities of the accession partnership. The emphasis on training in European affairs throughout the civil service and the judiciary is a positive development which reflects the seriousness of Hungary's preparation for membership. However, administrative capacity in certain key areas such as standardization, state aid control and regional development is weak and a concrete effort will be needed to strengthen institutions in this areas.</p>

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<p style="text-align: center;">Latvia</p>	<p>-The Bureau of Public Administration Reform (established in July 1997) is responsible for making recommendations for rationalizing the structure of the public administration;</p> <p>-a medium-term public administration strategy and an Action Plan with a range of priority tasks including eliminating duplication of tasks between Ministries, pay reform, career development, internal audit, territorial reform, budget reform and transparency issues were adopted in March 1998;</p> <p>-The Ministry for Foreign Affairs is in particular responsible for preparing Latvian positions with regard to EU policy issues and bilateral relations with EU Member States and institutions;</p> <p>-a Council of senior officials which meets regularly to discuss and monitor EU integration issues has been established;</p> <p>- The European Integration Bureau is the central administrative institution which is responsible for the daily management of EU integration issues including the implementation of the National Programme for Adoption of the <i>acquis</i>.</p>	<p>Latvia has made a number of important steps in strengthening its public administration, recognizing the importance of setting up and developing enforcement capacity in areas such as standards and certification, state aids and banking supervision. However, further efforts are needed to clarify responsibilities in environment and regional development. Administrative capacity needs to be strengthened in agriculture, intellectual and industrial property, customs and tax administration, justice and home affairs. The capacity of the judiciary to apply the <i>acquis</i> should be strengthened by enhancing the status of the profession, through training and ensuring that vacancies are filled promptly.</p>
<p style="text-align: center;">Lithuania</p>	<p>- the 1998 law makes a distinction between the recruitment of career civil servants and political appointees;</p> <p>- during 1998 the number of civil servants in ministries and state institutions has been cut by 30%, but the European integration departments in line ministries were not affected by these cuts;</p> <p>- a Strategy for the training of the Lithuanian civil service for the accession to the EU (1998);</p> <p>- the management of the integration process has been strengthened.</p>	<p>A number of important agencies and institutions have been established since the Opinion. It is too early to judge their capacity to implement the <i>acquis</i> effectively. The tempo of institution building and strengthening of administrative capacity needs to pick up in order to keep pace with the rate of transposition, particularly in the internal market and environment sectors. There is a widespread need for training to improve staff qualifications.</p>
<p style="text-align: center;">Poland</p>	<p>-absence of a coherent and effective national policy for recruitment, remuneration, training and development of the civil service;</p> <p>-the Act on civil service (1996) has not been implemented as intended;</p> <p>-ongoing problems in maintaining institutional continuity at management level due to changes of key administrative personnel with successive changes in government;</p> <p>-a need to further develop a coherent integrated pre-accession strategy, focusing on upgrading knowledge of the <i>acquis</i> and foreign languages in particular at middle management level, to enable the administration to implement the <i>acquis</i>.</p>	<p>Has experienced difficulties in implementing planned public administration reforms which are needed to lay the foundation for further improvement of administrative capacities in specific sectors of the <i>acquis</i>. Efforts need to be made to enhance the capacity of the Polish administration to implement and enforce legislation in key internal market areas (standards and certification, intellectual property protection) and customs. Progress has been made in the regional development and financial control areas. There is a need to consolidate the functioning of administrative structures in a sustainable manner.</p>

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Czech Republic	<p>-a little progress has been made in public administration reform since July 1997;</p> <ul style="list-style-type: none"> - The absence of a civil service law, low remuneration and the lack of civil service-wide training, combined with insufficient government attention to these issues, impede the development of a modern effective administration capable of apply the acquis; - the government adopted a resolution laying down an indicative time-table for the reform of the public administration in 1998; - the new Government has made public administration reform one of its main priorities and has taken some encouraging steps, responsibility for public administration has been clarified, and salaries are being increased; - there is a Government Committee for European Integration. The new government has appointed a Deputy Prime Minister as chairman; - the Ministry of Foreign Affairs is responsible for the coordination of relations with the Union, including the preparation of the accession negotiations; - a Committee for European integration was established in 1998. 	<p>The Czech Republic has recognized public administration reform as a priority but has not yet taken the necessary steps to translate that political commitment into concrete actions. Nonetheless since the Opinion, banking and financial services capacities has improved, institutions in the standards and certification area have continued to strengthen and veterinary structures have undergone a period of consolidation.</p>
Romania	<ul style="list-style-type: none"> -as regards decentralization, the laws on Public and Local patrimony, on local public finance and on concessions were adopted in 1998, but their entering into force depends on the framework law on local public administration, which has not yet been adopted by the Parliament; -the Law on regional development, adopted in 1998, has created an appropriate framework for development and implementation of regional policies; -remuneration and career structures for civil servants as key factors for determining the effectiveness of the reforms; -systems and institutions for budgeting and expenditure management have developed slowly and unevenly, mainly due to the fact that the laws in this field are not effectively underpinned by appropriate administrative structures; -other areas that needed further attention: strengthening of mechanisms to ensure and monitor implementation of policy decisions, systematic elaboration of legislation and regulatory norms in line with the EU acquis, review of consultative mechanisms to involve non-central government actors in policy formulation process and improvement of governmental communication capacities; -public confidence in the civil service remained low. Romania has been slow to draft laws to protect citizens, provide redress and control the executive. The introduction of the acquis will place a burden on general administrative law and control mechanisms. Oversight systems should take account of the intensifying relationship between citizens, economic actors, and the administration. 	<p>“There has been little progress in strengthening the Romanian public administration. While in many areas steps have been taken to establish the legal framework for setting up the institutions responsible for the application of the acquis, there has been little progress in actually creating these institutions. The provision of the financial and human resources to permit the functioning of these institutions, once established, has not been ensured” (European Commission,1998: 50).</p>

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Slovakia	<p>-civil service law has not been adopted;</p> <p>- low civil service remuneration has contributed to a high turnover of staff;</p> <p>- there has been substantial political interference in nominations and promotions;</p> <p>-The number of EU integration and accession related structures in the Slovak administration has multiplied since the Opinion;</p> <p>-Administrative weaknesses and lack of co-ordination can be noticed on all three levels involved with the approximation process: there is a lack of interministerial coordination; the Institute for approximation of law, the second level in the approximation process, is not able to provide clear and transparent information on progress made in the different fields of the approximation of legislation. Furthermore it does not seem to have sufficient expertise and know-how to make full use of the different assistance projects (approximation and training) and other tools (TAIEX etc.) at its disposal. It is questionable whether the Institute has sufficient resources in terms of numbers and qualifications of staff;</p> <p>The National Council (Parliament) is the third level in the approximation process. Officials of the division of approximation of law at the Chancellery check the contents of the EU compatibility clause provided by the Institute for Approximation of Laws. Each bill is then discussed at the Committee on Constitutional and Legal Matters of the National Council, and is also assessed for compliance with EU legislation. The Parliament and its supporting services do not appear to have the capacity to discharge this function effectively.</p>	<p>Slovakia has made little progress in developing the necessary administrative and judicial capacity to effectively implement the acquis. Civil service legislation has been delayed, progress in judicial reform has been limited and recommendations in the Opinion to reform, strengthen and establish new institutions in the internal market area have not been followed up.</p>
Slovenia	<p>-The Commission's Opinion pointed to widespread shortages of staff in public administration in Slovenia, especially at middle and senior management levels, as well as the need to further develop administrative skills. In the meantime, the civil service has expanded;</p> <p>-An amendment to the Law on Local Self Government was adopted in October 1997, and the debate over the issue of decentralization has been launched;</p> <p>- In general, there remains clear scope for improvement of the efficiency and effectiveness of public administration</p>	<p>Slovenia has made little progress since the Opinion in general public administration and judicial reform. The measures taken to enhance administrative capacity vary between sectors. While there has been some progress in the process of institutional consolidation in employment and social affairs, agriculture, customs and environment areas, concerted efforts still need to be made in the internal market, taxation, state aids and justice and home affairs areas. There is a general need for clarification in the scope of responsibilities of the various administrative structures and for more and better qualified staff.</p>

Source: 1998 Regular reports from the Commission on countries progress towards accession

The European administrative space

The EU has no specific competences in the administrative sphere but still has a strong indirect impact on the administrative practice in member states through the administrative standards set in the acquis, the transfer of best practices with EU financial instruments, the promotion of management practices of its own institutions etc.

(European Commission, 2018: 3). This is underlined in one of the SIGMA reports—“although the EAS does not constitute an agreed part of the *acquis*, it should nevertheless serve to guide public administration reforms in candidate countries. The extent to which a candidate country shares these public administration principles and adheres to the standards of EAS gives an indication of the capacity of its national public administration to effectively implement the *acquis*, in accordance with the criteria made explicit by the European Council in Copenhagen and Madrid” (SIGMA/OECD 27, 1999: 6).

Since 1957 and the signatures of the Treaties of Rome, the guiding principle of European integration has been to create “an ever closer union among the peoples in Europe”. As the case law of the European Court of Justice shows, this is more than a philosophical statement. It is a guiding principle of a process of approximation of the economic, social and even political systems of the EU members. Approximation does not mean harmonization: there is neither a project nor a need for having identical systems and institutions throughout the Union. Approximation means that EU members look more and more at each other and find a source of inspiration for reforms in success and failures of their neighbours. As demonstrated in the legal sphere with the concept of general legal principles common to member states which has become an important source of the case law of the ECJ, a set of standards common to EU members exists and is developing in the fields of law, institutions and economy. Becoming a member state of the Union means accepting those general standards as features relating to the *acquis communautaire* which is constituted not only by the Treaties, but mainly by all existing European Community legislation, case law and policies (SIGMA/OECD 23, 1998: 137). Stressing the harmonizing potential of public administration standards does not mean that administrative institutions should be homogeneously set up across EU member states. The important thing is that, independently of institutional arrangements, national public administrations must recognize principles and adhere to standards that are shared by EU member states (SIGMA/OECD 27, 1999: 7).

There is no general body of European law in the public administration filed and member states are independent in organizing their administration. Because of this, public administration structures and regulations vary among the EU member states. However, member states must have an administration that is capable to implement EU policies and legislation in their countries. Because the Union has no administration at individual country level, it relies on each member states to implement its decisions. While candidate countries are not under any requirement to as to the means they use, they do have to satisfy “performance requirements” (or “obligation of results”) (SIGMA/OECD 23, 1998: 13).

SIGMA (support for improvement in governance and management) is a joint initiative of the OECD and EU aimed to help the process of public administration reforms in countries in transition as a part of the European integration process, in order to help the process of professionalization of civil servants, to increase the accountability of public administration, to improve the quality and modes of delivering of public services and to create citizens oriented public administration. A well functioning public administration is necessary so that the state can function properly and is a precondition for the transposition and implementation of the *acquis*.

In one of the SIGMA specialized reports it lays the foundations of the concept of European administrative space as a: shared principles of public administration among EU member states constitute the conditions of a “European Administrative Space”

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(EAS). The EAS includes a set of common standards for action within public administration which are defined by law and enforced in practice through procedures and accountability mechanisms. Countries applying for EU membership should take these standards into account when developing their public administrations (SIGMA/OECD 27, 1999: 5).

Conclusion

Public administration capacity has a crucial role in the success of candidate countries in the accession towards the EU, as well as in the period after joining the EU, because of its great importance in the effective implementation of the EU legislation and in the representation of national interests in the EU. The process of EU accession influences the reforms in the candidate countries that need to fulfill the accession criteria. The accession criteria imposed on the Central and Eastern European countries were more strict and complex in comparison to those required in the previous enlargements. The reason for this arise from the large number of expected applications from the CEEs countries after the end of the Cold war and the specific nature of the political and economic systems of the communist period, that were radically different from those existing in the current Western European EU member states. The 1995 Madrid criteria complemented the initially established Copenhagen criteria and refer to the administrative capacity of the candidate countries to implement the EU acquis. Candidate countries need to reform their public administrations in order to be prepared to become part of the EAS. This criteria were later clarified in the Commission's reports and in the pre-accession period. The Commission monitors the fulfillment of the obligations of the negotiating countries and identifies the eventual problems so that the countries can take appropriate measures to develop adequate public administrative structures and legislation and meet the membership requirements.

The forthcoming EU enlargement with Central and Eastern European countries implied administrative reforms that were not required by the countries that have joined the EU at the earlier stages. CEEs countries own administrative capacity is weaker than most prior acceders, due to large part to the need to break radically with incentive systems and human resource policies of the communist period, inadequate to the emergent systems of market capitalism and democracy. The administrative capacity requirement was further reinforced by the Commission's opinions on each country's application for membership. The precise meaning of this requirement for each case must be derived on a specific basis. In general, the literature identifies two types of necessary administrative strengthening (Nunberg, 2000: 1-2): building the explicit management requirements of accession process itself and the direct membership responsibilities countries will have to assume in the future and enhancement of government's stability to function with roughly equivalent competence and neutrality with current EU member state public administrations.

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Article Info

Received: May 14 2019

Accepted: September 18 2019
