



Role of Civil Society in Public Administration Reform
in Enlargement Countries

DISCUSSION PAPER

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“The theory and practice of public administration is increasingly concerned with placing the citizen at the center of policy-makers’ considerations, not just as target, but also as agent. To that end public servants are being exhorted to collaborate, not merely consult; to reach out not merely respond. This means engaging with people who are increasingly well-educated, attuned to their rights as citizens and voters, who have ready access to information and broad exposure to the voices of opinion-leaders, experts and advocates.”¹

¹ RESEARCH PAPER NO. 1, 2011–12 22 July 2011 Citizens' engagement in policymaking and the design of public services, Brenton Holmes Politics and Public Administration

INTRODUCTION

The role of civil society in the design, implementation and monitoring of public administration reform has so far been largely underestimated. Involvement of civil society in public administration reform has suffered from lack of will and/or capacity to engage, in both public and civil sector, resulting in a weak cross sector cooperation in this reform area.

So far, research and debate on this topic has been limited and practices of engaging with civil society in the area of public administration reform in the EU and enlargement countries diverse.

The conference "Role of Civil Society in Public Administration Reform - EU standards and practice" organized in the scope of People to People program, by TACSO and Kosovar Civil Society Foundation, aims to foster debate on this topic and explore models and best practices in involving civil society in the process of modernization of public administrations across the Western Balkans and Turkey.

The discussion paper aims to demonstrate that there is a special momentum for stronger involvement of civil society in public administration reform built on an enhanced enlargement strategy, a sustained interest for accession in the enlargement countries and a growing potential within civil society to engage in accession reforms.

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PUBLIC ADMINISTRATION REFORM IN A RAPIDLY CHANGING ENVIRONMENT

Current enlargement countries have undergone a multifold transition which has resulted with deep political, socio-economic, cultural and technological changes. Public Administrations need to adjust to this changes. Adjusting to rapidly changing needs of society and government goes beyond the transition countries and is a matter currently debated across Europe.

One of the recent changes can be described as a more equal relationship between the state authorities and citizens. Modern democratic governance has transformed both the role of the state and of the citizen. The citizen is not passive and the subject to exercise of state authority² but is seen as an asset; the citizen is given space as an active member, a partner who can contribute to the general welfare. His/her input, cooperation and participation is encouraged and sought after as a necessary condition for democratic and efficient governance, and for economic development. In this context, administrative decision making and provision of administrative services need to adjust. This involves a new place for values such as transparency, simplicity and clarity, participation, responsiveness and "citizen oriented" performance. They redefine the relationship as more "horizontal"³.

Ongoing Public Administration Reform processes in all enlargement countries offer a good opportunity to reflect this "horizontality" and strengthen civil dialogue. In the spirit of Article 11 of the Treaty on the European Union⁴ which requires "the Institutions to maintain an open, transparent and regular dialogue with representative associations and civil society" the civil dialogue is about better decisions, better policymaking and better governance responding to citizen's needs while harnessing the full potential of the individuals⁵.

When reforms are demanding and human resources limited, as is the case in most of enlargement countries, the entire potential of the society needs to be utilized. But this can only be done through transparent governance and public administration – open not only for external scrutiny but also external support⁶.

² SIGMA, (2012) Good Administration through a Better System of Administrative Procedures, A SIGMA assessment of the current Law on Administrative Procedures and proposals for enhancing the administrative practice in Kosovo* by a better regulatory framework for the relationship between citizens and the public administration

³ Rusch, W.(2014) Citizens first - Good administration through general administrative procedures

⁴ Treaty on European Union, Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>

⁵Roadmap for the implementation of Articles 11(1) and 11(2) of the Treaty on European Union Towards better EU civil dialogue and involvement of citizens for better policymaking

⁶ Muk, S. The Professionalization of the Civil Service between the Politics and Administration, 8th Annual RESPA Conference Proceedings,

UNDERSTANDING EUROPEAN ADMINISTRATIVE SPACE (EAS)

In order to understand the scope of reform that enlargement countries have undertaken in trying to fulfil the administrative capacity criterion which is part of the "fundamentals" according to the latest Enlargement Strategy, it is important to know what EU Administrative Space entails.

Public administration has always been a domestic affair for EU Member States. "National public administrations have to implement EU directives and recommendations in such a way that European citizens are able to enjoy the rights granted to them by the EU Treaties, irrespective of the country in which they live, a fact which on its own could well justify the interest of the EU in ensuring that each national administration has comparable quality and professionalism and therefore in the administrative capacities of their Member States"⁷. Also, there is a relatively wide consensus on the key criteria that are crucial for the reliable functioning of the entire administration, which by now can also be considered as part of the *Acquis Communautaire*, and can be grouped into the following four categories⁸:

- *Rule of law*, i. e. legal certainty and predictability of administrative actions and decisions, which refers to the principle of legality as opposed to arbitrariness in public decision-making and to the need for respect of legitimate expectations of individuals;
- *Openness and transparency*, aimed at ensuring the sound scrutiny of administrative processes and outcomes and its consistency with pre-established rules;
- *Accountability* of public administration to other administrative, legislative or judicial authorities, aimed at ensuring compliance with the rule of law;
- *Efficiency* in the use of public resources and *effectiveness* in accomplishing the policy goals established in legislation and in enforcing legislation.

As far as these principles are shared, one can speak of a common "European Administrative Space". The EAS implies a common set of standards for action within public administration, which is defined by national law and enforced through relevant procedures and accountability mechanisms.

In most EU Member States the above governance principles are established by the constitution, and transposed through a set of administrative legislation, such as civil servants acts, administrative procedures acts and administrative disputes acts, but also organic budget laws and laws and regulations on financial control systems, internal and external audit, public procurement, etc.⁹

⁷ Cardona, F. (1998), " *Preparing Public Administration for the European Administrative Space* ", *SIGMA Papers*, No. 23

⁸ Cardona, F. and Freibert, A. (2007), " *The European Administrative Space and SIGMA Assessments of EU Candidate Countries* ",

⁹ Cardona and Freibert op. cit.

FROM REFORM TO PERMANENT IMPROVEMENT - QUALITY OF PUBLIC ADMINISTRATION IN THE EU

With around 75 million employees, the public sector is Europe's biggest single "industry", employing around 25% of the workforce. Given its scale and scope, public administration - the organization and management of publicly funded resources - has enormous importance for the daily lives of EU citizens, and performance and prospects of business in the EU.¹⁰

The EU supports Member States' administrations through the **European Semester process** and the **European Structural and Investment Funds (ESIF)**.

Recently, an **EU Quality of Public Administration Toolbox** was developed as a reference and resource to help Member States in following up their **country specific recommendations**, issued by the Council with the aim to improve the quality of their public administrations.

The European Structural and Investment Fund (ESIF) in 2014-2020, explicitly encourage and enable Member States to strengthen governance under thematic objective 11: "enhancing institutional capacity of public authorities and stakeholders and efficient public administration" while the **European Social Fund (ESF)** and **European Regional Development Fund (ERDF)** support institutional capacity building in the administration and judiciary with the objective of creating institutions which are stable and predictable, but also flexible enough to react to the many societal challenges, open for dialogue with the public, able to introduce new policy solutions and deliver better services. The investment in the human capital of the public sector is oriented towards better policy making and administrative service delivery, more efficient organizational processes, modern management and motivated and skilled civil servants and magistrates. Potential Action includes:

- Improving policy formulation and implementation (systems and methods for evidence based policy making, establishing forward planning and policy coordination units, tools for monitoring and evaluation, co-design and co-production mechanisms, etc.)
- Improving the interaction between the institutions (mechanisms for public participation, actions for better law implementation and enforcement, tools for increased transparency and accountability, etc.
- Enhancing the capacity of stakeholders to contribute to employment, education and social policies (social partners and non-governmental organizations)¹¹.

Other EU programs are also applicable such as: Connecting Europe Facility (digital), Europe for Citizens, Horizon 2020, Justice Program and the Right, Equality and Citizenship Program.

¹⁰ European Commission (2015), Quality of Public Administration - A Toolbox for Practitioners. Available at: <https://ec.europa.eu/digital-single-market/en/news/quality-public-administration-toolbox-practitioners>

¹¹ European Commission (2015) DG Employment, Social Affairs and Inclusion, op.cit

REFORMING PUBLIC ADMINISTRATION TO MEET EU STANDARDS

"While public administration reform is increasingly important within the European Union, it is even more vital for enlargement countries because of its direct relevance not only to meet accession criteria but also to cope with the increased responsibility linked to accession and the necessary reliability for business environment".¹²

Public Administration Reform in Enlargement countries is necessary to raise national public administrations to European Standards: become able to adopt and enforce the Acquis as well as adopt and implement the "non-formalized acquis" i.e embedding the European Administrative Space values and principles in administrative institutions and processes at all levels.

Alignment with EAS has become a formal requirement in the EU approximation process since the Madrid European Council in 1995. It has ever since remained an important part of the political criteria for EU accession, and has been continuously addressed in the enlargement process.

The alignment with EAS standards is a "moving target", similar to the adoption of the Acquis, as it grows daily as a reflection of developments in the EU. The Europe 2020 objectives and specifically thematic objective 11 and potential action in support to its achievement as described above, illustrate the dynamics of improving public administrations in EU member states. It is that dynamics that EU candidate and potential candidate countries should keep in mind when planning modernization of administrations and alignment to European standards.

EU SUPPORT TO PUBLIC ADMINISTRATION REFORM IN ENLARGEMENT COUNTRIES

Enlargement Strategy and Country Reports (previously Progress Reports) have over the past years consistently underlined the importance of horizontal administrative reform in the candidate and potential candidate countries. The aim was to develop governance capacities necessary to ensure and protect citizens' rights by a professional service-oriented administration, to raise quality of public spending as well as to increase citizens' trust in government¹³.

During financial frameworks 2007-2013 and 2014-2020, European Commission has made available massive support to Public Administration Reform in Enlargement countries implemented through a mix of instruments such as:

1. "Stand alone" and integrated PAR projects /programmes at national and multi-country level that cover one or all six key areas of PAR (Strategic Framework for PAR, Policy development and coordination, Public services and human resources management,

¹² Speech by Johannes Hahn, Commissioner for European Neighborhood Policy and Enlargement Negotiations at the conference entitled "Reinforcing Public Administration Reform in the Enlargement Process" Brussels, 2014

¹³ Twining project fiche, IPA National Programs

Accountability, Service delivery, Public financial management (PFM including budget preparation and accounting)

2. Integrated programmes/projects, such as in the areas of rule of law and/or PFM that include areas or components also relevant to PAR, or Sector Budget Support programmes with components of PAR.

3. SIGMA¹⁴, TAIEX¹⁵, Twinning¹⁶

4. Regional School of Public Administration (RESPA)¹⁷

5. Sector Budget Support directly addressing PAR and PFM

All through this period, Country Reports found only limited progress in most of the PAR key areas and in most of enlargement countries. Tacking stock of this experience, Enlargement Strategy 2014-2015 brought PAR at the heart of the accession process, sustained by what is aimed to be a coherent policy and assistance approach. Together with Rule of Law and Economic Development, all mutually reinforcing, these criteria are now considered as pre-requisites for all other reforms to succeed and sustain.

This enhanced approach is supported by detailed description of key priorities and benchmarking of performance through Public Administration Principles for EU enlargement countries formulated by SIGMA/OECD¹⁸ jointly with the European Commission. By defining what good governance entails in practice and outlining the main requirements to be followed during the EU integration process, the Principles provide also a framework for civil society to address public administration reform.

In parallel, focus on civil society is increased. Guidelines for EU Support to Civil Society in enlargement countries¹⁹ put emphasis on enabling and stimulating participatory democracy. The Guidelines position civil society participation as a key factor in ensuring good quality comprehensive legislation, including the reforms that need to be implemented to qualify for EU membership.

In addition, ECs readiness to support civil society under sector programmes through measures that enhance their role and capacities to participate actively in formulation and implementation of sector strategies for EU financial assistance provide another important entry point for civil society to contribute to the Public Administration Reform Strategy design/review and implementation.

¹⁴ Support for Improvement in Governance and Management in Western Balkans (SIGMA) is a joint initiative of the European Commission and OECD, principally financed by the EU

¹⁵ TAIEX is the Technical Assistance and Information Exchange instrument of the European Commission.

¹⁶ Twinning is a European Union instrument for institutional cooperation between Public Administrations of EU Member States and of beneficiary or partner countries

¹⁷ RESPA is an international organization, located in Danilovgrad, Montenegro. <http://www.respaweb.eu/home>

¹⁸ SIGMA (2014) The Principles of Public Administration. Available at <http://www.sigmaxweb.org/publications/principles-public-administration-eu-enlargement.htm>

¹⁹ European Commission (2014) DG Enlargement Guidelines for the EU support to civil society in enlargement countries 2014-2020 Available at ec.europa.eu/.../pdf/civil_society/doc_guidelines_cs_support.pdf

The Sector Approach further involves the Sector Budget Support which creates space for more stakeholder involvement. If planned in an inclusive, strategic and result-oriented way, it provides for a greater and more sustainable reform impact.

Overall, there is an immense potential for synergy among these instruments that could lead to a very useful interaction to maximize the impact of EC support in enlargement countries as well as increase the ownership of local actors in the reform process.

STREAMLINING REFORM – PRINCIPLES OF PUBLIC ADMINISTRATION

The principles of Public Administration, developed by SIGMA/OECD in cooperation with the European Commission provide a detailed definition of good public administration that countries should be aiming at. Derived from EU Acquis, international standards and requirements, and good practice in EU/OECD countries, the Principles enable benchmarking of performance and provide a guide for countries in their reform process.

The six key reform areas set out by the EC form the basis of the Principles of Public Administration, as described below:

- **Strategic framework for public administration reform** - includes a well sequenced reform plan, financing for implementation, political and administrative mechanisms for monitoring of implementation
- **Policy development and coordination**, at the center of Government and among ministries
- **Public service and human resources management** – covers issues such as organization and functioning of the public service, de-politization, merit-based recruitment, promotion and training
- **Accountability of administration** requires transparency, access to information and possibility of citizens for administrative and legal redress. It is not only about fair treatment of citizens but also about accountability of performance.
- **Service delivery** - it includes better administrative procedures, cutting red tape and providing e-government services
- **Public financial management** - is crucial for democratic governance and a precondition for effective service delivery and prevention of corruption. A credible public financial management reform program will allow enlargement countries to use IPA funds in the form of sector budget support²⁰.

The Principles comprise only key requirements and criteria in line with European values for EU candidate countries and potential candidates - Western Balkans and Turkey and as such should be considered a minimum benchmark of good administration.

The principles offer a monitoring framework for governments and policy makers which will enable them to follow the implementation of reforms over time. This framework can be used by interested

²⁰ Reinforcing Public Administration Reform in the Enlargement Process, Conference, 12 November 2014, Brussels

civil society actors and CSOs for monitoring purposes, as well as research and advocacy as it also provides tools to analyze what has been achieved.

SUPPORTING STRENGTHENING OF CIVIL SOCIETY AND CIVIL DIALOGUE

“Public policy is made not only by politicians, but by thousands of public servants and tens of thousands of women and men who petition parliaments and ministers, who join interest groups, comment through media or represent unions, corporations and community movements. All have a stake in public policy. The entire community is affected by public policy.”²¹

By articulating citizens' concerns, civil society organisations (CSOs) - understood as all non-state, not-for-profit structures in which people organise to pursue shared objectives and ideals – foster pluralism and further participatory democracy²².

Key prerequisites for effective CSO participation in public affairs are a favorable environment in which CSOs develop as autonomous actors and agents of change *and* access to information. The Guidelines for EU Support to Civil Society in enlargement countries 2014-2020 have clearly described the key aspects of what is considered a conducive environment:

1. an appropriate legal, judicial and administrative environment for exercising the freedoms of expression, assembly and association, without disproportionate or unwarranted state interference
2. a financial environment enabling CSOs to pursue public interest activities through favorable tax rules for private donations, membership fee and philanthropy
3. rules for inclusive policymaking and monitoring of EU membership related reforms.

Adequate structures and mechanisms for CSOs' cooperation with public institutions as well as free, clear and accessible flows of information on matters of public interest through structured durable mechanisms are of critical importance²³.

Although, involvement of civil society in policy making remains low, mainly because most of the above mentioned preconditions have not been in place, accession process in general has been vital to the strengthening of civil society in the countries of the region. Civil society sector in enlargement countries has evolved and is increasingly able and willing to engage in accession reform endeavors.

²¹ P Bridgman and G David, *The Australian Policy Handbook*, third edn, Allen&Unwin, 2004, p. 1.

²² European Commission, COM(2012) 492 final: The roots of democracy and sustainable development: Europe's engagement with Civil Society in External Actions – Brussels 12/09/2012

²³ European Commission, DG Enlargement Guidelines for EU support to civil society in enlargement countries, 2014-2020, Available at http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf

This has been recognized in the Guidelines for EU Support to Civil Society which consider that "civil society actors and organizations can make a substantial contribution to addressing many of the challenges that enlargement countries face"²⁴.

When it comes to democratic governance and rule of law and fundamental rights, civil society is seen as a potential driver for change through "demand for enhanced transparency, accountability and effectiveness from public institutions " while it is best placed to "facilitate a greater focus on the needs of citizens in policy making"²⁵.

With this potential in mind, support to civil society within the enlargement policy will primarily focus on enabling and stimulating participatory democracy. "In its political support the Commission will encourage countries to make legislation more conducive for civil society. It will also promote the involvement of civil society in the pre-accession process, including in the formulation, implementation and monitoring of sector strategies for EU financial assistance that will be strengthened under IPA II"²⁶.

To respond adequately to the diversity of civil society, "the Commission's financial assistance will use an appropriate mix of funding instruments to respond to different types of CSOs, needs and country contexts". This enabling approach, further than being inclusive, will secure harnessing of civic potential to contribute to the demanding accession reforms.

Civil society will also be supported under sector programs through measures that enhance their role and capacities to participate actively in formulation and implementation of sector strategies for EU financial assistance. As the Sector Approach is seen both a key cross-cutting principle and strategic target for programming of IPA II, it may become a 'window of opportunity' for more civil society involvement. With *performance measurement* being reflected at early programming stage it will be particularly important to properly sequence the actions, have a clear intervention logic and target setting and most importantly remain realistic in terms of milestones. Duly consulting/involving stakeholders is therefore indispensable at all stages.

PRACTICES AND MECHANISMS FOR CIVIL SOCIETY INVOLVEMENT IN PUBLIC ADMINISTRATION REFORM

Over the past years, the number of initiatives and mechanisms for civil society involvement in public administration reform in the enlargement countries has increased. There is no prevailing standard or pattern – approaches vary based on domestic circumstances and policy processes.

²⁴ op.cit

²⁵ Rusch, W.(2014) Citizens first - Good administration through general administrative procedures

²⁶ op.cit

Involvement is mainly ad hoc, project based and initiated by CSOs. It comes in the form of shadow monitoring reports, policy recommendations, web monitoring tools, high-visibility events, advocacy campaigns. These are mostly funded by international donors.

In parallel, citizen participation is being advanced through institutionalized structures and dialogue through joint councils, working groups, advisory bodies and other.

Openness and readiness to involve civil society in public administration reform varies from country to country, also from issue to issue, and it ranges from mere information, through formal consultation, to full cooperation by method of co-production. Most of the mechanisms seem to be challenged in the process of implementation. Challenges remain at the level of political will for open and transparent governance and capacity to engage. For genuine engagement requires a major shift in the culture and operations of government, skilled public servants and citizens willing and capable to contribute to the improvement of public administration.

CONCLUSION

This discussion paper has tried to demonstrate that there is a momentum for fostering public administration reform and strengthening the role of civil society actors and organizations in the reform agenda.

The assumption is mainly based on:

- the “theory of change” reflected in the new EC approach towards public administration reform which is combining strategy, policy dialogue, financial assistance in a more coherent and result-oriented manner.
- the reiterated commitment of enlargement countries to the European agenda with EU membership as the ultimate goal, but also higher expectations and demand by the citizens in the candidate and potential candidate countries for tangible results during the accession process.
- the clear guidance towards establishing an enabling environment for civil society development and operation provided by the EU Guidelines for support to civil society in enlargement countries, supported by policy dialogue and a mix of funding instruments
- the increased interest and capacity of civil society actors and organizations to contribute to the public administration reform agenda by more involvement in the policy making and monitoring of reform implementation.

Below is a set of recommendations that will be further developed during the works of the conference.

The recommendations would ideally feed the mid-term evaluation of Enlargement support to CSOs that will be carried out mid-way (2017) to assess progress towards objectives and results as well as the continued viability of the strategy as well as Public Administration Principles review process.

RECOMMENDATIONS

To the European Commission

- Use policy dialogue in support to the implementation of Guidelines for EU support to Civil Society in enlargement countries
- Establish a formal framework for regular and structured dialogue with civil society on implementation of Guidelines at national and regional level
- Support independent monitoring of the implementation of Guidelines for EU support to Civil Society at national and regional level
- Establish a formal framework for regular and structured dialogue with civil society on PAR at national and regional level
- Monitor the civil society involvement in Public Administration Reform at national level
- Support independent monitoring of the implementation of PAR strategic documents at national level
- Support capacity building of CSOs to engage in PAR at national level
- Support CSO networking to strengthen participation in PAR
- Support CSO actions relevant to PAR
- Promote OECD Guiding Principles for Open and Inclusive Policy Making²⁷ at national and regional level
- Monitor implementation of OECD Guiding Principles for Open and Inclusive Policy Making
- Take the opportunity of the mid-term evaluation of Enlargement support to CSOs to mainstream civil society involvement in PAR

²⁷ OECD Guiding Principles for Open and Inclusive Policy Making, Available at: <http://www.oecd.org/gov/42370872.pdf>

To National Authorities

- Create an enabling environment for civil society development and activity as per the Guidelines for EU support to civil society in enlargement countries
- Establish formal structures for cooperation with civil society
- Design and implement strategy for cooperation with civil society
- Review policy framework for effective public consultations²⁸
- Establish a formal framework for regular and structured dialogue with civil society on PAR
- Implement OECD Guiding Principles for Open and Inclusive Policy Making
- Design public funding programs for the support of CSO capacity building and specific PAR related projects

To Civil Society

- Engage more actively in policy making and monitoring of implementation of Public Administration Reform Strategy and Action Plan at national level
- Promote SIGMA/OECD Principles of Public Administration
- Engage in regular dialogue with the EC/SIGMA on public administration reform
- Establish/engage in national and regional networks for monitoring of implementation of Public Administration Reform Strategies
- Make use of Civil Society Facility/National Resource Centers for Civil Society for capacity building, in general, and specifically on engaging in a structured dialogue with the government
- Strengthen capacities for research and advocacy for better advocacy
- Strengthen internal governance to improve image and credibility
- Establish/engage in national and regional networks to advocate for an enabling environment for civil society development and operations
- Engage in implementation and monitoring of EU Guidelines for Support to Civil Society in enlargement countries at national and regional level

²⁸ As defined in the EU Guidelines, effective public consultation entail:

1. There is a legal obligation to publish draft laws on the Internet and drafts are regularly published
2. There is sufficient time to comment: minimum 15 working days
3. If there is a working group or other advisory body established for the preparation of specific draft, the working group members represent various stakeholders and criteria for appointment of the representatives are transparent, open, inclusive and known in advance
4. There is an obligation to publish a feedback report with a summary of received comments/proposals, their impact on the draft law and justification of rejected comments/proposals

KEY ISSUES AND QUESTIONS TO BE DISCUSSED DURING THE CONFERENCE

- Discuss prerequisites for civil society participation in public administration reform
- Discuss legal and institutional framework for civil society involvement in public administration reform
- Exchange practices of civil society participation in public administration reform
- Explore modalities for a better involvement of civil society in public administration reform

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