

Undefined Boundaries and Grey Areas: The Evolving Interaction Between the EU and National Public Services



Dr Christoph Demmke

Associate Professor, EIPA

Abstract

Cooperation in Public Administration is of an informal nature because the Treaties of the European Union do not foresee community powers regarding the organisation of the Public Administrations, and for existing substantial differences in national personnel policies and administrative systems of the Member States. However, the impact of community law and administrative cooperation is increasingly affecting the administrative, organisational, legal and political structures of the Member States. Some experts even argue that this form of Europeanisation is leading to a *European administrative space* or a *European model of Public Service* in the long run. This article is discussing the how and why the integration process is affecting the national public services despite the limited competence of the EU. A special emphasis will be placed on the question whether the current development may produce – in the future – a convergence of the national public services.

1. The Europeanisation of national administrations

Studying the term “*Europeanisation*” of national law, policies, administrations and economies is “popular”, but at the same time difficult. A search on the Internet results in 10,700 hits (June 2002). There are currently countless studies and publications on the Europeanisation of the nation state; national parliaments; national environmental policies; immigration, research and industrial policies; development aid; regional and spatial planning; national private, criminal, administrative and constitutional law; national institutions; trade unions; accession countries; etc. In general, most studies examine the consequences and meaning of the European integration process for existing national law, policies and economies, as well as for processes and structures. Moreover, in recent years, the role of the Member States in EU decision-making processes has increasingly been subsumed under the term Europeanisation. In fact, the term Europeanisation is far more often defined as a process which has certain political, economic, legal and cultural effects in the Member States. Only in exceptional cases is it described as a “convergence process” in the sense of harmonisation and approximation.

Furthermore, it is becoming clear that different research angles in different subject areas (law, politics, economics, and institutions) lead to different outcomes. Particularly in the legal field, there is hardly an area that escapes the European influence.¹ This influence lessens the more political the subject matter is and the more implementation, administrative and organisational

issues are involved.

Europeanisation can be defined as the process of “progressively influencing and transforming a field of law through European law and through the legal thinking within European law”.² Through the transposition of European law into national law, national legal systems have been Europeanised over the years; this applies to national public law, administrative law, planning law, coordination obligations, as well as to information management systems and reporting obligations, to which all authorities at national level are subject.

Although the EU is in principle a legal and economic community, this form of Europeanisation is not limited to the impact of EU law on the Member States; it also represents the interplay of effects and influences of the national level “in Brussels” and of EU policies in the Member States. Therefore, Europeanisation stands both for “giving” and “taking” between European policy and

law and national policies, administration and law.³ Today, concepts of administrative cooperation have developed into (different forms of) network concepts.⁴ A

**In fact, nobody can say for sure where
the influence of the EU on national
administrations starts and where it ends.**

clear example is the proposal of the European Commission on the externalisation of the management of Community programmes of 2000.⁵ This proposal, like the Commission’s White Paper on European Governance, does however among other things aim at reducing the management deficit of the European Commission. Both documents actually contain extensive and very different proposals for administrative cooperation and networking. It is remarkable within this

framework that the concept of *partnership* (which originally stems from *structural policy* and has since then also been applied in other sectors), has increasingly been substituted by the more complex and flexible term “network”. Controversial questions are however whether through non-hierarchical networks a European administrative space can be built, how it should develop and what shape of integration it should take. In addition, it is still completely unknown what types of administrative cooperation and integration arise from different network concepts and whether they are more efficient and effective than traditional cooperation procedures.

Both the theory of the Europeanisation of public administration and public services and the emergence of a European Administrative Space are certainly of great intellectual interest. Today, it is a real challenge for scholars to do research in an area where the EU competence is not clearly defined or does not even exist (“Integration without competence”). Because of this, the question as to the impact of the integration process on national administrations and public services has – despite different views on the subject – basically been left unanswered. In fact, nobody can say for sure where the influence of the EU on national administrations starts and where it ends. One reason for this is that neither the EU, the national governments nor the public administrations are static concepts. The traditional concept of the public service is closely linked to the concept of the nation state. This implies that a changing role of the nation state will also affect the role of the national civil services. Today it seems that the nation state is undergoing dramatic changes although there are no signs that it is about to disappear. Furthermore, it seems that “Government will likely neither expand nor contract a great deal but it will certainly change”.⁶ In fact, today, globalisation and internationalisation trends can be observed, but not the development of a world state. The EU is in itself a dynamic concept but not one that is moving towards a nation state and the traditional nation state is being challenged from “above” (globalisation and EU integration) and from “below” (decentralisation, delegation, agencification, privatisation). So the question is not only how will “Government” and “Governance” change – the question is much more radical: what will the sense and role of the traditional (national) civil service be in a changing world?

What is certain though is that answering the question about the impact of the EU on the national administrations and public services is becoming increasingly urgent and is of growing practical interest in view of the growing “grey area” where Community and national competence overlap. In addition,

- The Candidate Countries will have to “Europeanise”

their civil services, build “capacities for integration” and adapt their civil service laws to the requirements of EU law and the case law of the European Court of Justice. Thus, it is becoming urgent to define exactly what the impact of the integration process on the national administrations and civil services is and – vice versa – the fields and areas where the EU is not allowed to act.

- The national administrations themselves are becoming more and more eager to learn about what others do. The Directors-General of Public Service of the Member States of the EU have set as one of their objectives to compare the different national experiences. Now a days, the term “best practices” has also reached the area of public services.

Because of this, it is also becoming more important to analyse, to compare and to look for similarities (and also differences) in those areas which fall under national competence.

- Indeed, generally the competence for implementing Community law has stayed with the Member States. In addition, the principles of subsidiarity and proportionality (Art. 5.2 ECT) apply, as well as the principle of enumerated competence (Art. 5.1 ECT) and institutional autonomy of the Member States. A clear area of tension particularly exists between the principle of institutional autonomy of the Member States and the obligations of national administrations arising from Art. 10 EC (the so-called Loyalty principle). Moreover, the impact of the EU on the national public administrations, public services and even national personnel policies is increasing. In addition, there are hardly any EU regulations or directives that do not place certain demands on the structure and organisation of public administration. However, at national level, there is too little awareness of this development. The consequence is a growing number of infringement procedures in the area of free movement of workers and in the area of social policy (e.g. Art. 137 ECT and Art. 141 ECT). In the future this is likely to continue if the Member States do not anticipate this development.

Considering this “grey area” between EU and national competence, it is becoming increasingly important to systematically establish (e.g. by making a detailed analysis of a policy area) what demands the integration process places on public administrations. This concerns administrative and organisational structures, legal and political processes, as well as civil service law and national personnel policies. An analysis of the effects of European integration on national administrations (e.g. on the public service in the environmental area) firstly requires however a distinction to be made between common developments which arise

The term “Europeanisation” has a different meaning than the theory of the “Emergence of a European Administrative Space”.

from general reform and modernisation processes and developments that result from the integration process. Furthermore, “convergence processes” (in the sense of harmonisation of structures) should be distinguished from processes which display certain similar trends. Finally, a distinction should be made between “Europeanisation” processes in fields which come under Community competence and areas which – despite the fact that the Community treaties do not provide for competence there – are “Europeanised”.

The term “Europeanisation” has a different meaning than the theory of the “Emergence of a European Administrative Space”. The first is about a process of growing impact whereas the second is about a convergence process. In addition, the paper proposes to differentiate between the impact of the EU on national administrations, national civil service law and national personnel policies. At the end of this analysis it should be possible to say something about whether, how and in which fields of public administration, public services and personnel policies have a European dimension – or not! This paper will reject the theory of the emergence of a European Administrative Space since it presupposes that competences are delegated to the EU and that harmonisation trends can be observed although – when looking into the subject more specifically – this is not the case.

2. Europe, between Unity and Diversity

Europe was never “one” and it is likely that it never will be. The notion of a *United Europe* is a contradiction in itself. Even under the Roman Empire, the reign of Charlemagne or *Napoleon*, Europe was never unified. Much more than this, Europe is and has always been a symbol of “Unity and Diversity”, and it was always the existence of plurality, different identities, languages, treaties and constitutions that marked the identity of the continent. The values of Christianity and the idea of humanity, enlightenment, the separation of powers and democracy are all based on the common idea of tolerance. European thinking and modernity is what Popper called a constant “falsification process” in the search for a better solution but never one *truth*. As such, this concept stands in sharp contrast to all other ideologies.

The European Integration process is first of all a transformation process. Stability, diversity and change are important integral parts of the integration process. Because of this, the Treaty on European Union obliges the Community to “contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore” (Art. 151 EC). However, the transformation process does not mean that the Union is entirely built on the principle of diversity. In contrast to this, Art. 6 EU states that the “union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”. As Siedentopf shows, despite differences in the details, the public services of the

Member States do rely on the same principles.⁷

The principles of “Diversity and Unity” are fundamental when it comes to understanding the integration process. However, looking from the very beginnings of the integration process (since 1951), it seems that the process of European Integration has gradually led to greater unity and less diversity. As regards the effect of EC law on the national public service, three general forms of influence can be identified:

- harmonisation of national law;
- approximation of national law;
- exertion of influence on national law through general legal principles (fundamental freedoms, Community fundamental rights, principles of law, requirements for administrative cooperation) and regulatory instruments.

Moreover, it is true that in some fields the integration process has not only brought with it forms of legal harmonisation but even some elements of political and administrative convergence. This is especially the case for those areas where the European Union has the power to act very widely. For example, in the agricultural sector, some legal instruments require the establishment of a specific agency to carry out certain tasks.⁸

In other sectors, the so-called principle of institutional autonomy of the Member States applies, since the Member States are responsible for the implementation and enforcement of community law. However, in reality, there is no clear dividing line between Member States’ competence and EU interference, as in the case of the Water Framework Directive (e.g. Art. 3.2 of the Directive 2000/60/EC requires the Member States to identify an “appropriate competent authority” with certain tasks). As regards the case of the candidate countries, Siedentopf/Speer⁹ show that during the accession negotiations the European Commission exerted tremendous pressure on the accession states to reform their national public services and to decide upon a modern civil service law. Because of this, it would be misleading to talk about the institutional autonomy of the Member States.

3. Public Management Reform and Convergence?

Because of the great importance of the integration process in general, it is easy to overstate convergence, but it should not be underestimated either. Also in the field of public management reform, recent public management theories suggest that even public management reforms are travelling the same road. Some claim that partial convergence exists whereas others are of the opinion that even among the most similar countries, convergence has been exaggerated. “These differing views may be founded partly on the sheer difficulty of doing large-scale comparative research on administrative change” due to the huge amount of material and linguistic barriers etc.¹⁰ In his paper “Clarifying convergence”, Pollitt proposes a distinction between

- Discursive convergence – more and more people are taking about the same concepts.

- Decisional convergence – the authorities decide to adopt a particular form, policy or technique.
- Practical convergence – public sector organisations begin to work in similar ways.
- Results convergence – reforms produce similar or the same results and effects.¹¹

Research about these different stages is obviously more difficult for ‘Practical convergence’ and ‘Results convergence’. In addition, ‘convergence at one stage does not necessarily mean convergence at the next’¹² – far from it. According to Pollitt, the ‘hypothesis proposed is that the extent of convergence declines rapidly as one moves through the four stages’.¹³ Within the OECD countries there is considerable evidence of discursive convergence and also some form of decisional convergence. There is, however, limited information on practice or results convergence.

The public service is perhaps the section of the politico-administrative system of each Member State that is the most heavily marked by its respective national traditions and history, and has been the least affected by European integration for the longest. As a result, none of the treaties have envisaged the competence of the Union to regulate the public service. The Treaty of Nice did not change this tradition either. Article 39.4 EC on the principle of free movement of workers with the exception clause to employment in the public service for example is one of the few articles which has not been amended with the integration process. To put it another way: the European Union does not have competence to regulate the public service, to reform the public administrations or to reorganise the administrative and organisational structures of the Member States.

This conclusion from EIPA’s publication on this topic (Bossart, D./Demmke, C./Nomden, K./Polet, R., ‘Civil Services in the Europe of 15 – Trends and Perspectives’, Maastricht 2001) is in clear contrast to the theory of the establishment of the European administrative space, which was first popularised by the OECD in 1998¹⁴ as well as theories on the ‘Europeanisation of public administration’ and of the ‘public services’ including Wessels’ fusion theory on European and national administrations.¹⁵ What is most important is the focus of the study: while EIPA’s study deals primarily with civil service law, all the other studies have a much wider frame of reference and deal with public administration in the wider sense.

4. Community law and its contribution to the development of a European concept of public service and public administration

European integration has *de facto* nothing to do with the public service – but still a great deal. To understand this strained relationship, a distinction should be made which takes account of the heterogeneity of the concept of ‘public service’. In this respect a distinction can be made between:

- the Europeanisation of national administrations through the implementation and enforcement of *EC law*;

- the Europeanisation of national civil servants through the *negotiation, decision-making and implementation process* at EU and national level;
- the Europeanisation of national administrations and the public service through *administrative cooperation*;
- the Europeanisation of national civil service law and personnel policies through the *case law of the European Court of Justice and through the building of networks*.

The fact that in the future the EU will probably still have no competence to regulate the public service and civil service law does not mean that at European level there is no possibility of stronger forms of administrative cooperation between public services *and* public administrations.¹⁶ Moreover, EC law affects public services and national civil service law. In this context, a distinction can be made between:

- the Europeanisation of basic principles (‘democracy, citizenship, efficiency and effectiveness, rule of law, market economy’)¹⁷ and the development of general principles for public administration (‘good governance’, ‘openness’, the ‘fight against maladministration’, etc.);
- the Europeanisation of national civil services because of the narrowly interpreted principle of free movement of workers and the public employment restriction in Art. 39.4 EC;
- Europeanisation through the implementation and enforcement of secondary legislation (of the equality provisions in Art. 137 and Art. 141 EC);
- Europeanisation because of the strict interpretation of Art. 10 EC and the case law of the European Court of Justice;
- Europeanisation because of the impact of the competition rules of Art. 86 EC and the privatisation of formerly public services and public undertakings (postal services, rail services, etc.).

Therefore, the fact that the Community has no competences to regulate the public service does not mean that European integration has no effects on national public services. On the contrary: almost through the backdoor, national public services are being increasingly influenced by the European integration process, and national administrative law is also increasingly being affected by the case law of the European Court of Justice. In addition, the legal and administrative systems of the Member States are subject to a permanent adaptation process to fulfil the requirements in transposing and implementing EC law. On the other hand, adaptation processes do not necessarily imply the development of a common administrative space.

5. Towards a European Administrative Space?

As far as the complexity of the topic is concerned, it is surprising that an OECD study conducted in 1998 reached the conclusion that a European administrative space already existed. The study was however kept

general and did not provide any concrete arguments as to where, how and why an administrative space is developing. Obviously, the theory itself has been provocative enough to become a fixed item on the agenda of many committees, institutions and research projects.

In 1999, the OECD published a second study,¹⁸ in which it is argued that as a result of the case law of the European Court of Justice on the implementation of Art 39.4 EC, a Europeanisation of administrative law can be seen¹⁹ and general legal principles (“rule of law”, “openness”, “accountability”) are becoming accepted throughout Europe. This theory reminds us of the earlier work of Jürgen Schwarze on European administrative law,²⁰ which produced comparable results on the (partial) convergence of national administrative law and constitutional law.

Similar conclusions were also reached by Nizzo in a study for OECD-SIGMA,²¹ in which he argues that the narrow interpretation of Art. 39.4 EC and the concept of “public sector” of the Court of Justice will lead to the development of an administrative space in the Member States. This theory is undoubtedly also important from a political viewpoint, because it presupposes that pressure to harmonise is exerted on public services through the interpretation of certain legal principles and of EU secondary law. This inevitably raises the question of whether these effects will also lead to the development of a European administrative space in the accession countries. Current research leaves this question unanswered: a study by Grabbe²² concludes that the integration process will cause certain institutional changes in the candidate countries, but the situation in the Member States shows that the integration process has only to a very limited extent led to the Europeanisation of a certain type of administration. In another study, Goetz concludes²³ that the theory about the development of a European administrative model is completely plausible. However – says Goetz – nothing definite can be said about this yet.

During the Spanish Presidency, the Ministers responsible for public administration stated in a (so far rather unnoticed but remarkable) resolution (on 27 May 2002): Although the Treaties of the European Union do not make express reference to the Public Administrations of the Member States, the “free movement of people and the exchanging of ideas and experiences is leading to a (...) gradual convergence (...) of the administrative cultures and systems (...) across the enlarged European Union...”. It is not explained – however – how this (converging) process is possible if the Treaties of the EU do not provide for competence in the area of public administration and public services.

In the meantime, Bossaert et al. rejected the theory about the development of a European administrative space in 2001.²⁴ However, EIPA’s publication does demonstrate that the integration process is having an increasing and significant effect on the structures of national public services.

The authors’ main point of criticism concerns the

following arguments:

- Firstly, an analytical distinction should be made between the theory of “Europeanisation” (in the sense of general political or legal effects of the integration process) and the theory about the development of an administrative space, which presupposes a “convergence development”.
- Secondly, it has still not been possible to establish in a methodological way how “Europeanisation” takes place. Is it a consequence and manifestation of a general (global) modernisation and internationalisation process? Or are there real Europeanisation processes in the public service which only take place in the EU as a result of the integration process?
- Thirdly, it is true that quite similar trends can be seen in the framework of administrative reforms in the Member States (e.g. the “agencification” trend). EIPA’s study on the public service in the Europe of fifteen shows however that these trends prove to be very different when looking at them more carefully. For instance, in Sweden the concept of agency is completely different from that in the United Kingdom or Germany. An article written by Jacques Ziller²⁵ in 2001 therefore warns against the temptation, in the framework of the best-practice theory, to compare concepts which in national terminology are understood and used in an entirely different way.
- Fourthly: the by far most important argument disproving the development of a European administrative space is however provided by the question: to what extent does a European administrative model, which would be capable of “Europeanising” national models, actually exist. In a study on “European administration” (1986) the administrative judge Cassese²⁶ concluded that in Europe there are three dominant administrative models: the English model, the French model and the German model. None of these three models has so far emerged as the “winner”. On the contrary, in the European institutions all three of them can be found. In his article “European Models of Governance: Towards a Patchwork with Missing Pieces” (2001),²⁷ Ziller took up this theory again and elaborated it. Ziller argues that mainly four models predominate in the EU: the Westminster model, the Napoleonic model, the Weberian model and the Swedish model. According to Ziller, the Swedish model, in particular with its principles of openness, its ombudsman and its independent agencies etc., has had a very important influence in the European integration process over the past years.
- Finally, the fact that by now many civil servants know their European colleagues just as well as their national colleagues does not mean that the negotiating officials change “loyalties” (as a result of the negotiation process).²⁸ Also, the regular and informal meetings of the Directors-General of the Public Service, the informal meetings of the national Ministers of the Public Service and the setting up of

various working groups in the area of public service and human resource management do not (necessarily) produce a common “output”. A study of the University of Oslo and the European Institute of Public Administration shows that national officials do not “shed” their primarily nationally oriented interests, although the influence of European committees on individual national behaviour is quite significant.²⁹ What is also important is that in many different ways the daily work of national senior officials is determined by the European agenda.³⁰ This applies however far less to local implementing officials.

6. Tentative conclusions: the changing role of the national civil service and the impact of the EU

The changing character of the national civil services can only partly be explained by the impact of the European integration process. In the coming years, the European Union will – probably with good reason – not be given a specific competence to regulate the civil service law and personnel policies of the Member States. This means that in the near future there will only be informal meetings of the Council of Ministers of the Public Service. In addition, there will be no approximation of pay, staff evaluation, recruitment, promotion and pension systems. In this respect, only certain reforms in national civil service law can be attributed to the regulatory competence at EU level and be regarded as a direct effect of primary or secondary EC law (e.g. concerning the equality principle). Other developments in the field of national civil service law or personnel law originated in modernisation and reform processes which followed on from the new public management theory and are global developments. Where reform and change processes were brought on by the integration process and where they originated in a modernisation process can only be determined with great difficulty by carrying out in-depth analyses. In addition, several other reasons can be given as to why a European Administrative Space is unlikely to emerge.

- Particularly in countries with a traditional career system, the special status of civil servants was and is justified partly by the special nature of their tasks. The exercise of official powers is to be reserved for civil servants; this involves measures aimed at protecting society, keeping public order and protecting citizens. However, the classic question of what tasks civil servants (and not public employees with a private contract) should perform could never be definitively settled. Hence, to date, the question of what functions should be reserved for civil servants has remained a highly controversial one and is therefore mostly left to the discretion of the respective countries themselves.
- Still, at the beginning of the 21st century the civil service status is under discussion together with the concept of the traditional bureaucratic state: as the classic model of the “civil service state” is directly linked to the idea of the nation state and national

citizenship, major challenges to the traditional concept of the civil service status and its capacity for reform are posed by globalisation and internationalisation trends, the influence of European law (particularly Art. 39(4), Art. 141 EEC) and the change of the role and function of the state (“governance”) (on account of the changed definition of the concept of nationality, the growing multicultural dimension of society, the decentralisation of administrations, privatisation, agencification and externalisation of responsibilities, etc.). However, these challenges present themselves in different ways to the national civil services.

- Indeed, in many countries the reforms of the national civil services are leading to alignment with the private sector and resulting in partial abandonment of traditional principles of civil service law. At the beginning of the 21st century, there seems to be increasing agreement on the fact that treatment and status different from that in the private sector can often no longer be justified. Furthermore, social situations, client orientation, mobility wishes and requirements, training, motivation as well as recruitment of staff are becoming aligned, just as the problems faced by the public and the private sector are. However, from these developments we cannot infer that the reform results produce convergence.
- On the basis of the unclarified concept of “official” powers and the different roles of the state and society, different civil service systems have developed in Europe. However, different paradoxes have also developed according to the type of administration which – depending on the model – have little to offer as a model or example for the candidate countries. Germany has *Beamte* (civil servants), *Angestellte* (contractual staff) and *Arbeiter* (employees) working in the public service. However, all groups may perform tasks which are related to the exercise of official powers (although the German Constitution (*Grundgesetz*) stipulates differently in Art. 33 GG). In the various job categories, tasks are carried out which are also performed in the private sector. Precisely because of this inconsistency in the allocation of tasks the question keeps cropping up as to why these differences between *Beamte* and *Angestellte* actually exist and what the meaning is of the concept of “function connected with the exercise of official powers”, if *Angestellte* can perform these functions just as well (or badly). In some other countries (e.g. the Netherlands and, to some extent, Finland) the majority of people working in the public service have employment relationships governed by public law. However, in these countries the employment relationships in the public sector have mostly been aligned with those in the private sector, though the public service performs functions which traditionally involve the exercise of official powers. This basically raises the question of the legitimacy of the employment relationship governed

by public law, when the differences left on account of specific features are only few. In the French civil service there are practically only civil servants with public law status, whose employment relationship is fundamentally different from that in the private sector. Here, the question is rather why nearly all employment relationships are governed by public law while most of the tasks are not connected with the exercise of official powers and can just as well be regulated by employment contracts modelled on the private sector. Finally, in Sweden, there are hardly any differences left between employment relationships. The following question can therefore be asked:

what is the point or purpose of the public sector as an alternative sector to the private sector?

- The issue of what tasks should be performed by a) the general public service and b) civil servants, is regulated differently throughout the world. There is no best practice model here either. The reason is that in all public services many technical tasks are carried out which are in no way different from the activities in the private sector and are therefore also regulated “privately” in many countries. Even the distinction (for instance) between the tasks carried out by the national police and private security services is becoming increasingly unclear. A growing number of different employment relationships can also be seen in the health sector and the teaching profession. For instance, in Malta teachers at state schools are usually civil servants, but this does not apply to teachers at other educational establishments and schools. Moreover, while certain staff in hospitals are governed by public service law, employees in special medical institutions and other hospitals are not. The definition of a job in the health sector is not standard either (see e.g. Malta). Reason: the treatment of a sick person in a state hospital is subject to exactly the same rules as in a “private” clinic. Nevertheless, in some Member States hospitals are public while in others they are “private”. If tasks are performed by public and private institutions in the same way, i.e. if the required knowledge and level of qualification are the same, the demands on the staff in the public service are no different from those in the private sector. In some areas things are different again: in the environmental field, municipal waterworks need in no way be different from private waterworks from a technical perspective. As a result staff also have to meet mostly the same requirements. The call for privatisation of the water management has therefore been getting louder and louder – especially after the privatisation wave in the United Kingdom in the eighties and nineties. On the other

The answer to the question as to the point and purpose of the special civil service law and the development of the public service might however well come from the candidate countries.

hand, municipal/state waterworks are not merely motivated by and focused on efficiency (and even less on profit maximisation), but first and foremost on provisions for public health, the ability to withstand crises and reasonable prices. However, this conclusion does not imply that private waterworks might not be able to meet these requirements just as well or even better. Water is moreover the most important human “foodstuff”, which is why some Member States see water as “a public responsibility”.

- Furthermore, on the one hand the definition by Community law (and following the developments in the Third Pillar) of the traditional function connected with the exercise of official powers is increasingly being “Europeanised” and structured. Nevertheless there is no uniform approach here either: for instance, many

positions in the police are classified as “connected with the exercise of official powers” and can only be held by nationals. On the other hand, terrorism, crime and immigration have for a long time been treated as international phenomena with responsibilities coming under the Third Pillar of the EU. In addition, an increasing number of police authorities take on foreign police officers to facilitate contacts with foreigners in society.

The public service in Europe is not a static structure. An example or model cannot be discerned. On the other hand, the public service is subject to crisis-like circumstances and is being criticised from all sides. The answer to the question as to the point and purpose of the special civil service law and the development of the public service might however well come from the candidate countries: the fact that there is an express wish on the part of the candidate countries to set up a public service (with civil servants) makes clear that the public service is still necessary and that no state can function without a public administration. The urgent necessary debate on the need for the public service in the 21st century could therefore be initiated by the candidate countries.

The only thing that seems sure is that a European public service model will not develop – if at all desirable – and that there will even be an increasingly strong differentiation of certain aspects of civil service law in Europe. However, parallel to these differentiation developments, there will also be strong Europeanisation and approximation trends as a result of general internationalisation, modernisation efforts, best practices and the growing importance of the integration process. Both processes are not mutually exclusive. However, it would be an illusion to believe that

administrative systems are converging, since precisely concepts such as “decentralisation”, “implementation and enforcement”, “openness” or “transparency” or – in the field of personnel policies – “performance-related pay systems”, “personnel appraisal systems” or “decentralisation of human resource management responsibilities” are applied in completely different ways at the national level. On the other hand, it is conceivable that important institutional, legal or

political structures can be “exported” or “imported”.

The significance of national administrative traditions should therefore not be underestimated. This conclusion is all the more important since it presupposes a critical view of the possibility of comparing administrative reform theories (“New Public Management”) at the international level. Conversely, this view presupposes that national administrative cultures only change in the long term.

NOTES

- ¹ Hatje, A., Europäische Rechtseinheit durch einheitliche Rechtsdurchsetzung, in: *Europarecht, Beiheft 1*, 1998, pp.7; Haibach, G., Die Rechtsprechung des EuGH zu den Grundsätzen des Verwaltungsverfahrens, in: *NVwZ*, No.5, 1998, pp.456.
- ² Kämmerer, J.A., Europäisierung des öffentlichen Dienstrechts, in: *Europarecht*, 2001, No.1, pp.27.
- ³ Ibid.
- ⁴ Cf. The White Paper of the European Commission on European Governance.
- ⁵ Communication from the European Commission on the externalisation of the management of Community programmes, COM (2000) 788 final of 13.12. 2000.
- ⁶ Thomas, E. Mann, “Is The Era of Big Government Over?” *The Public Perspective*, Vol. 9, No. 2, 1998, pp. 27-29.
- ⁷ Siedentopf, H., Du personnel pour la fonction publique, in: *Mélanges en l’honneur de Guy Braibant, L’Etat de droit*, Dalloz, Paris 1996, pp.642.
- ⁸ For example: Council Regulation 2075/92 of June 1992.
- ⁹ Siedentopf, H./Speer, B., Der Europäische Verwaltungsraum, in: *Die öffentliche Verwaltung*, in preparation, 2002.
- ¹⁰ Pollitt, C., Clarifying convergence, in: *Public Management Review*, No. 4, Issue 1, 2002, pp.470.
- ¹¹ Ibid, p. 477.
- ¹² Ibid, p. 478.
- ¹³ Ibid, p. 483.
- ¹⁴ OECD-PUMA, Preparing Public Administration for the European Administrative Space, *SIGMA-Papers*, No.23, 1998.
- ¹⁵ Wessels, W., Verwaltung im EG-Mehrebenensystem: Auf dem Weg in die Megabürokratie?, in: *Jachtenfuchs, M./Kohler-Koch, B. (eds.), Europäische Integration*, Opladen, 1996, pp.165; Wessels, W./Rometsch, D. (eds.), *The European Union and Member States. Towards Institutional Fusion?*, Manchester, 1996.
- ¹⁶ Schmidt-Aßmann, E., Verwaltungskooperation und Verwaltungskooperationsrecht in der Europäischen Gemeinschaft, op.cit, pp. 270.
- ¹⁷ Speer, B., Die Europäische Union als Wertegemeinschaft, in: *Die öffentliche Verwaltung*, No.23, December 2001, pp.980.
- ¹⁸ OECD-PUMA, *European Principles for Public Administration*, No.27, 1999.
- ¹⁹ About the definition, cf. Schoch, F., Die Europäisierung des Allgemeinen Verwaltungsrechts, in: *Juristen Zeitung*, 3 February 1995, No.3, pp.109; Weber, A., Entwicklungen im europäischen Verwaltungsrecht, in: Ipsen, J./Stüer, B. (eds.), *Öffentliche Verwaltung in Europa*, Köln, Berlin, Bonn, München, 2000, pp.35.
- ²⁰ Schwarze, J., *Europäisches Verwaltungsrecht*, Baden-Baden, Vol. I and II, 1988; Schwarze, J., *Das Verwaltungsrecht unter europäischem Einfluss*, Baden-Baden 1996; Schwarze, J., *Konvergenz im Verwaltungsrecht der EU-Mitgliedstaaten*, in: *Deutsches Verwaltungsblatt*, No. 16, 1996, pp. 881. See also: Schwarze, J. (ed.), *The Birth of a European Constitutional Order*, Baden-Baden 2001.
- ²¹ Nizzo, C., National Public Administration and European Integration, in: *OECD-SIGMA*, 2000.
- ²² Grabbe, H., Hoes does Europeanization affect CEE governance? Conditionality, diffusion and diversity, in: *Journal of European Public Policy*, December 2001, pp.1013.
- ²³ Goetz, K., Making sense of post-communist central administration: modernization, Europeanization or Latinization, in: *Journal of European Public Policy*, December 2001, pp. 1032.
- ²⁴ Bossaert/Demmke/Nomden/Polet, op.cit.
- ²⁵ Ziller, J., European Models of Government: Towards a Patchwork with Missing Pieces, in: *Parliamentary Affairs*, No 54, 2001, pp. 102.
- ²⁶ Cassese, S. (ed.), *The European Administration*, International Institute of Administrative Sciences/European Institute of Public Administration, Paris/Maastricht 1986.
- ²⁷ Ziller, op.cit.
- ²⁸ Wessels, W., Comitology: fusion in action. Politico-administrative trends in the EU system, in: *Journal of European Public Policy*, No.5, 1998, pp.209.
- ²⁹ Trondal, J., Beyond The EU Membership – Non-Membership Dichotomy?, Explaining Supranational Identities Among EU Decision-Makers, in: *ARENA-Working Papers*, No.5, 2001, cf. The Experience of Member State Officials in EU Committees: A Report on Initial Findings of an Empirical Study, Guenther F. Schaefer, Morten Egeberg, Silvo Korez, Jarle Trondal, in *EIPASCOPE*, 2000. No.3, pp.29.
- ³⁰ Beyers, J., Where does supra-nationalism come from?, Paper presented for the Third Pan-European Conference on International Relations, Vienna, 16.-19. September 1998. □