To eight Eastern European states of the 2004 EU enlargement (i.e. the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) and two countries of the 2007 enlargement (i.e. Bulgaria and Rumania), their membership in the European Union have effected in serious political, legal and institutional tensions and challenges. An important area where these challenges can be perceived and subjected to research is their governmental administration. At this level, new tasks have emerged and the old ones have changed significantly reflecting completely new administrative reality - at least to the extent to which national administration of a member state is exposed to European Union law and governance. This article is to investigate the new challenges and requirements as they can be perceived and addressed by Eastern European EU member states. Its objective is also to identify the core European competences these states should have developed or, if necessary acquired, in order to become credible, effective, and efficient partners to the «old» member states in the field of European integration.

**Key words:** European Union, governmental administration, EU member states, European competences, European integration.

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1. The list does not contain two other states of 2004 EU enlargement, i.e. Cyprus and Malta, because they are not Eastern European countries.
Problem definition. Participation in the European Union (or any other type of international organization whose decisions should be implemented by its member states) is a learning experience for governmental administration irrespective of its country's tenure in this supranational organization. Even the very concept of «the Member State» as it has been for years rectified in EU law and enshrined in reflective of this law judgments of European courts guarantees fairly extensive responsibilities arising from the EU membership, thus making capacity of accelerated institutional learning an inherent need for all EU countries. In historical perspective, the legal nature of the notion of the Member State has expanded significantly since the emergence of the European Communities. In the late 50's the understanding of the «EEC member state» had been based on the concept of a state as it was construed in international public law. It soon has developed to cover manifestations of state's imperium (i.e. its capacity to exert powers onto entities subjected to its jurisdiction) – even these resulting from its delegation to private entities (Prechal 1995: 77–85).

Key findings of the research. The broad concept of «Member State» present in EU law has significant and somewhat peculiar ramifications for public administration of all new member states, irrespective of their political system or structures of their domestic government. The most important factors contributing to peculiarity of challenges being now faced by them at the 'inceptive' phase of each Eastern European country's membership in the EU (stretching even further beyond that stage) include:

– so called «institutional density» (Wright 2001: 151–152) at the EU and national levels, manifested in a large number of participants in the European decision-making and complexity of decision-implementation process involving vast variety of partners and interests to be reconciled;

– inherent organizational mismatch between the EU and national level of administration arising from a different level and type of agenda fragmentarisation prevalent in the EU and governmental administrations of its member States;

– continuously changing directions and scope of European integration (with regard to both its content and geographical dimensions) making many endeavors undertaken at the EU level per se unique, and thus resulting in an almost continuous administrative mismatch between specific European tasks and national capacities required to properly address them (Nowak-Far 2004: 79–82);

– accelerated decision-making which very often takes place in various EU committees and working groups associated with frequent dynamic (time-related) mismatch between policy impulses generated at the EU level and their necessary reflection at the national level (Ekengren, 2002: 1–21);

– uniqueness of coordination instruments and channels which ought to be used by national governmental administrations in the policy-formulation at the EU level and its subsequent implementation (which also means that even proven national arrangements used to solve policy problems at national level may and often are deficient when applied for the EU-originated tasks).

These factors result in a significant pressure exerted on national public administration to show (or, if necessary, to learn) enough flexibility, effectiveness and efficacy with respect to EU-originated tasks. All these tasks can be derived from Article 4(3) of the Treaty on European Union (TEU) which provides that:

Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take all appropriate measure, general or particular, to ensure fulfillment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardize the attainment of the Union's objectives.

Article 4(3) TEU provides for a general framework within which fundamental and general requirements are formulated with regard to EU member states and, thus, to their national public administrations. More strictly applicable principles and rules arise from
respective pieces of EU legislation. If such more specific provisions apply, they (rather than general Article 4(3) TEU) become a basis for construing governmental administration's EU-related obligations (see for example the Court of Justice judgment in the case C-374/89 Commission v. Italy, ECR 1990, I-2425). According to the CJ, these more «focused in scope» pieces of law are more appropriate to construe the very European notion of «member state» than mere Article 4(3) TEU.

This fairly complex legal construction makes the entire concept of the role of governmental administration in a EU member state somewhat blurred – and subject to reoccurring interpretative interventions of the Court of Justice. Some essential rules governing performance of national administration of EU member states are, however, crystal-clear and quite stable. Most importantly, from the very Article 4(3) TEU, a requirement of «sincere and loyal cooperation» was construed and thought to be applicable in relationships among EU member states and between respective member states and the EU (Calliess/Ruffert, 2002: 454–460).

Goal of research. My own contribution to the discussion about the requirements arising from Article 4(3) TEU was the identification of areas in which member states should have their essential, «core» European competences in order to properly function within the EU (Nowak-Far, 2004: 154–179) which I labeled «relational areas». These include:

- negotiation-coordination area, where member states participate in the EU decision-making process;
- implementation area, where member states make the EU-generated law work at the national level in the manner intended by the European law-making institutions;
- legitimization area, where member states (together with relevant EU institutions) have to win adequate support for European measures mostly through properly structured and effective consultations between their governmental administration on one side and national parliaments, self-governmental bodies and representative interest groupings on the other side;
- litigation area, where member states have to organize systems for identification of their legitimate national interests and their protection before European courts (i.e. the Court of Justice, the European Court or specialized courts – as provided in the Treaty after its Lisbon amendment).

Member states should have organizational-institutional systems in place in order to make their participation in the EU complete and, thus, effective from both domestic and European points of view. Without meeting these requirements they encounter domestic and European-level credibility problems to the detriment of their own government's domestic and international (including the EU) perception. In other words, failure to effectively cope with the EU agenda is likely to cause significant reputational costs even at the international level. In the case of deficiency in the implementation area, such problems may lead to an action before the Court of Justice against a member state incurring them, with the same detrimental reputational ramifications as in other relational areas.

None of the new EU Eastern European member state has its genuinely own administrative tradition (i.e. the tradition to govern public affairs). All their tradition derives from traditions of states which throughout the entire 19th century politically dominated this part of the European continent. These dominating powers were Austria, Prussia, and Russia. Neither of these countries had developed a modern-type public bureaucracy by 1918 when the Eastern European EU member states regained their independence. The rather had continued tradition of governing public matters for which ideology of despotisme eclaire provided philosophical and political reasoning. Neither democratic administrative legitimacy, nor modern type effectiveness and efficacy as elements of general welfare were sufficiently prevalent in this ideology.

Poland provides for a very interesting illustration of difficulties and consequent deficiencies resulting from these circumstances. In 1918 she not only lacked unified administrative tradition (being a successor of Austro-Hungarian, Prussian and Russian ones) but even a common semantic terminology for administration. As a result, at the very beginning of independence, Polish state apparatus was a more or less chaotic alloy of different procedures and habits. Twenty years of Poland's independent development – albeit being a considerably successful an endeavor of building modern-type administration – did not suffice to completely overcome this negative heritage.

After the WWII, all the future EU Eastern European member states, including Poland, found themselves under the political domination of the USSR. They all were ruled by Communist regimes. That meant that administration had not at all been a meaningful source of regulatory initiative. Neither was it able to formulate administrative agenda of its own. Quite the opposite, it was completely dominated by the Communist Party and had been treated as an auxiliary instrument (in sharp distinction, for example, to secret services) used to enforce its domination of the society. Its control by the Communist Party was
total, whereas democratic scrutiny mechanisms were absent – even to the extent that governmental administration was allowed to issue legal acts without having been properly conferred relevant legislative powers (as it is evident from the study by Michalska, Wronkowska, 1980: 128–135). In the future this would have become a feeding ground for the illicit appropriation of various state functions by political parties and widespread corruption in the 90’s.) As a result, governmental administration was a facade rather than a real structural solution serving legitimate interests of the society. Until the 90’s, it had developed strong reactive features but was lacking capacity of being sufficiently sensible to public needs (and hence, to initiate any political action which would result in a formulation of a new public policy in a given area) and to properly serve democratic society. This all manifested itself in an authoritarian administrative culture coincided with an equally authoritarian perception of public administration by political parties which – in my opinion – greatly contributed to a failure to create genuinely apolitical civil service.

From the governance point of view, this had an obvious negative impact on the quality of public administration in Eastern European countries. Again, Poland may serve as an example of how strong and long-lasting this heritage is. My own research in 12 large governmental offices conducted in 2001–2002 and concerning the application of strategic management methodology in each of them (Nowak-Far 2003: 63–76) showed, inter alia, that these offices:

– encountered significant difficulty to formulate long-run plans based on adequate identification of both internal (office-related) and external (public-related) needs which could integrate political programs of their elected heads and purely organizational programs of their officers (the latter reflecting how the political program would be executed based on the existing office’s resources);

– hence, were not fully able to strike a balance between internal and external aspects of their strategic plans (if they had any) which jeopardized their proper execution;

– were prone to define their tasks more in terms and within the framework of the existing legislation, rather than in terms of policy directions (which reflected a weak leverage between political management of each of the offices and its civil service staff);

– very often did not have a systematic approach even to reoccurring policy questions not to mention atypical ones which significantly hampered their ability to address strategic public policy questions (including these which originate from the EU).

These findings made it possible to formulate a more general conclusion that these structures and organizational traditions did not make Polish governmental administration properly prepared to the EU problem-identification, policy-formulation, decision-making and policy-executing processes. Especially, it made the development of some core European competences considerably difficult. As a result, it was rather the constant pressure and direction from the European Union – something which, in Polish academic literature is named «structural violence», which should be construed as emotionally neutral term (Staniszczis 2003: 35).

Accession to the European Union was a strong stimulus for Eastern European countries to modernize their public administration. Nevertheless, competences developed over the period of preparation to EU membership and then, of negotiation of its conditions, are only of limited importance after the accession. Firstly, in the pre-accession period, some of conditions for membership had been formulated in very general and openly political terms. This statement refers especially to the 1993 Copenhagen criteria, but it is no less applicable even to 1995 White Book 2 (at least when it comes to its insistence on judicial and administrative effectiveness and efficacy. Secondly, even newly acquired competences (for example these which were developed within institutional-building programs under PHARE or TACIS) could only be tested fragmentarily since they prepared for future, not the existing or at least emerging, tasks. As a result, real administrative capacity of governmental administration could only be tested within the framework of pre-accession structural funding (leading to rather ambiguous conclusions) and within the pre-accession law approximation and accession negotiations (showing increased, yet not fully satisfying, improvements in effectiveness and efficacy). Thirdly, it is important to note that the agenda of pre-accession law approximation was dominated by the European Commission which, from the point of view of structures, placed the governmental administrations of acceding states in a well-known and highly reactive setting. Hence, this process did not only failed to contribute to development of modern administrative practices (which would require more strategic proactivity) but even reinforced traditional inertia. In the case of

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2 This White Book was a type of guidance Or «road map» which indicated the necessary modernizations and their sequence being prerequisite for EU membership.
Poland, this resulted in a real inflation of approximating national regulations and a significant problem of their proper enforcement in every aspect of its intended application. It also resulted in diverging administration's interests from identifying and solving long-term policy issues to scoring high in the Commission's law approximation schedules. It also represented some constraining element to the development of administrative action impact assessment capacity.

The accession negotiations exercise was a much better experience for Eastern European countries' governmental administration. It exposed it to legitimization problem (and hence, necessitated opening this administration up to its social and political partners, including especially the national Parliament). It also was a good (albeit often falling short of expectations) lesson of national interest identification, position-formulation as well as its subsequent presentation before EU partners (member states and the European Commission).

Although important, pre-accession learning process was not able to fully prepare Eastern European countries to their complete membership in the EU. The most important missing element in this process was the lack of participation in decision-making within the European Union institutions and bodies and a resulting lack of any influence on the content of political and legal program then to be executed at the national level. The European Commission had long realized this failure. In order to mitigate it, it introduced the system within which prospective member states would have to participate in an interim arrangement meant to prepare them to their future EU membership. Poland and other Eastern European countries were not exemptions from this requirement. Just after accepting draft Accession Treaty in December 2002, they were offered status of a more intimately involved in the EU-decision-making process consulted party (within a so called information and consultation procedure). After signing the Accession Treaty in April 2003, the rights and obligations of «apprentice» Member States expanded, thus evaluating into the, so called, active observatory status. Although slightly different from each other, both statuses made it possible for these states to partake in the EU committees and working groups and even initiate (under a special procedure) amendments of legislative solutions which were felt not to be in their interests. This interim period, however, lasted only about a year and was not sufficient to make up for a real lesson of how to cope with EU challenges. These challenges, when formulated in terms of the four already identified areas boil down to the urgent need to develop or nurture the following core competences (Nowak-Far, 2004: 185):

– in the implementation area – to assuring adequate recognition of acquis by relevant national authorities and bodies as well as its complete and effective implementation at the national level (enforced, when appropriate, by governmental administration);

– in the negotiation-cooperation area, to assuring identification of national interests at stake in the EU decision-making process, their substantiation and ultimate recasting into balanced mandates and persuasive negotiation argumentation to be presented at the EU level;

– in the legitimating system, to assuring that positions presented in various EU fora have legitimating support in main national authorities which are elected by broad suffrage (i. e. in the national parliament, as well as regional and local self-governmental bodies) or in representative groupings of interests;

– in the litigation system, assuring proper protection of national interests within the EU judicial system – irrespective of whether the state appears as a plaintiff or a defendant in a given case involving EC law.

Again, the Polish example can illustrate the problem of making the governmental administration work in all the four areas where its contribution is essential for guaranteeing high quality participation of new entrants in the EU. In the implementation area, no concept of policy changes has yet been conceived (leading to continuous production of very often «dump» laws approximating only seemingly but lacking hard solutions to be effectively enforceable). Moreover, in this field, «artificial» coordination arrangements also exist. According to the present regulations, the central coordinating power in all EU Eastern European Countries is invested into a type of European Secretariat (in most cases responsible directly to the Prime Minister). Yet, this power applies to a fairly developed EU decision-making process, since it triggers at the COREPER level. Before this stage, implementation tasks are well spread across the entire public administration with no significant coordinating support from this body. The resulting «real» arrangement (with devolution of EU-related tasks up to the COREPER level) is, nevertheless, beneficial since it allows ministries to react adequately and without undue delay to legislative impulses from the EU. As a result, in a typical setting, the real coordinating authority is shared between the European Secretariat, respective ministries and the national
parliament (the latter being involved if the implementation tasks necessitate the adoption of a Parliamentary act).

Similar unofficial spread of powers has been present so far with regard to negotiation-coordination area, where the European Secretariat covered only COREPER and the Council works but has not reached either Mertens or Antici groups or any other committees or working groups active in earlier stages of EU decision-making process. With regard to legitimization area, respective ministries have still frequent problems to fit consultations to their EU agenda mostly due to the fact that schedules for legislative activities in various decision-making fora are tight and ministries' internal processes are not yet sufficiently effective (Nowak-Far, 2004: 174–179). In the litigation area, in the EU Eastern European countries there is a centralized system for preparing cases to be presented or defended before European courts (where relevant competence is invested with a section in the European Secretariat). Yet, with regard to preliminary rulings (i.e. the questions addressed by national courts to the Court of Justice under Article 267 of the Treaty on Functioning of the European Union, they do not have any system in place similar to ones already adopted in Denmark and Spain which would work as a check for directing unjustified requests for the CJ preliminary rulings but in the same time respect independence of judiciary power (Ibaez 1999: 260–269; Biernig, 2000: 925–969). This means that they all adopted an ad hoc approach to this foreseeable litigation task.

**Conclusions.** Eastern European countries' preparation to their membership in the EU has exerted significant and unique in its character pressure on their public administrations at all levels of public governance. This pressure was unique because public administration of all these states has developed in special circumstances. Firstly, it was based on foreign (i.e. not nation-specific) administrative traditions of powers which had dominated in Eastern Europe before 1918. Secondly, after 1945 it was subject to Communist regimes for which it played just auxiliary role in state governance (with Communist parties' being dominant in policy setting and with definitely no effective rule of law which could reduce the level of administrative inaccuracies).

The effectiveness and efficacy pressure arising from the forthcoming EU membership was especially intensive in the central governmental administration since at this level most goals and objectives related to the preparation of this membership had to be achieved. However, this process failed to bring Eastern European states' administrations to a significantly higher level of performance. In the membership preparation process, agenda was set almost exclusively by the European Commission (i.e. without an active role of national public administration of states aspiring to become EU members). This (rather inevitable) failure to assure a more intensive involvement of this administration in agenda-setting had significantly reinforced its old managerial «instincts» to strive to be reflective to bottom-down political core's directives rather than to create active, consultative, and open to societal partners public policy-setting environment. Only in the last, pre-accession stage, were the Eastern European countries assigned a more active role within a special information-consultation procedure to be followed by active observatory status (just months prior to their official entry into the EU). This special period during which Eastern European countries were allowed to partake, although within some limits, in the EU decision-making process was too short to significantly increase proactive behaviour of Eastern European states' public administration in policy-setting.

At an operational level (as contrasted to strategic level at which policy-setting takes place), the preparation to European Union membership made all the Eastern European national administrations organizational and procedural failures visible in all areas where EU-related issues were at stake. As a result, especially in the law implementation area, quality of administrative performance in these states greatly increased. Improvement with this regard was especially noticeable in the legitimization area, where representative bodies and societal partners were involved in the national law-transposition of EU directives.

The post-accession period has proven to be the strongest modernization stimulus for the EU Eastern European countries' governmental administrations. Under the EU membership, these administrations have continued to work on a further increase of quality of their performance. Firstly, they found themselves under a strong pressure to quickly develop their competence in policy-setting (mostly in the strategic setting, because this capacity was especially important for the EU structural and cohesion policy-planning at the national level). Secondly, they had to address in a well-thought manner all four (relational) areas important for assuring high standards of a country participation in the EU i.e. in addition of law implementation area, negotiation-coordination, legitimization, and litigation areas. This required political stimuli and support for a more proactive, strategically-thinking and, above all, apolitical governmental administration since only such an
administration provides for enough continuity for improvement to be long-lasting and its effects sustainable. It proved to be essential for national administrations of all EU member states to exchange experience with one another and, as a result, learn best practices (the process which lead to a significant policy transfer between the «old» and «new» EU member states.

References