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Janko Jesenský Faculty of Law
Richterova 1171
925 21 Sládkovičovo, Slovak republic
Email: info@eulawjournal.eu

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Protection of fundamental rights in EU competition law – an overview

Michal Ďuriš & Rastislav Funta
Danubius University

Abstract

The legal bases in competition law at both national and European levels contain numerous administrative legal principles and procedural provisions. However, these are not formulated as fundamental rights guarantees of effective legal protection or as a guarantee of legal recourse, and they do not explicitly mention the protection of economic freedom, property or privacy. Even in the EU law, in which the general legal principles have long been recognized as part of the protection of fundamental rights, isolated references to fundamental rights can only be found in literature and practice on competition law. The inclusion of fundamental rights protection in European competition law was initially initiated and further developed through the case law of the European Court of Justice (ECJ) and the General Court (GC). The Advocates General (GA), whose opinions often represent detailed legal opinions and in this respect differ from the regularly brief judgments of the ECJ, had a significant influence on this. It is also the GA who refer in its opinions to the individual provisions of the Charter of Fundamental Rights (CFR). The reasons for greater inclusion of the protection of fundamental rights in European competition law is primarily in the great impact of the European Convention on Human Rights (ECHR), whose areas of protection are increasingly being used by the European Court of Human Rights (ECtHR) in Strasbourg. This development was further strengthened by the ECJ's comprehensive recognition of the ECHR as a source of legal knowledge for EU law and as one of the most important foundations of the CFR. The Regulation No. 1/2003, which regulates the Commission's antitrust procedure, makes explicit reference to the GRC in its preamble and emphasizes that antitrust procedural law must be interpreted in the light of the GRC.

Key words

CFR, ECJ, ECHR, ECtHR, EU competition law, GC, TFEU

1. The concept and areas of application of free competition

With regard to the term and the areas of application of the so-called free competition, a distinction must first be made between competition in the narrower sense and competition in the broader sense.

According to EU Law, competition law in the broader sense can generally be described as the system that protects competition within the internal market from distortion. This system also includes the bans on discrimination and damage to fundamental freedoms and the various policy areas of internal market law. EU competition law in the narrower sense refers to the antitrust, abuse and state aid bans in Articles 101, 102 and 107 TFEU.

In the area of the prohibition of cartels and abuse in accordance with Articles 101 and 102 TFEU, the ECJ has developed its case law on the fundamental rights of companies, particularly in investigation and challenge proceedings in connection with the setting of fines. The main areas of protection are the right to a fair trial[1] or the principle nulla poena sine lege.[2]

When it comes to substantive fundamental rights, it is primarily about the principle of certainty,[3] the principle of ne bis in idem[4] and the right to privacy,[5] which includes, among other things, the protection of data and secrets, commercial premises as well as when disclosure of confidential information is likely to be increasingly included in competition law proceedings in the future.

2. EU rules on state aid (Article 107 TFEU)

With regard to the ban on state aid according to TFEU, a case law[6] under EU law is also emerging which

[1] Judgment of the Court of First Instance (First Chamber) of 16 December 2003. T-5/00 und T-6/00, Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV v Commission of the European Communities. ECLI:EU:T:2003:342.

[2] Judgment of the Court (Second Chamber) of 8 February 2007. C-3/06 P, Groupe Danone v Commission of the European Communities. ECLI:EU:C:2007:88.

[3] Judgment of the Court of First Instance (Third Chamber) of 27 September 2006. T-43/02, Jungbunzlauer AG v Commission of the European Communities. ECLI:EU:T:2006:270.

[4] Judgment of the Court of First Instance (Third Chamber) of 27 September 2006. T-322/01, Roquette Frères SA v Commission of the European Communities. ECLI:EU:T:2006:267.

[5] SVOBODA, P. (2019): Úvod do evropského práva. 6. vydání. C.H.Beck: Praha.

[6] Judgment of the Court of First Instance (Second Chamber, extended composition) of 31 May 2006. T-354/99, Kuwait

specifies the fundamental rights of companies, particularly when collecting evidence. Here too, the focus is on the design and consideration of procedural and defense rights as well as the protection of legitimate expectations. It should be emphasized that administrative proceedings for violating the ban on state aid are only initiated against the Member State concerned. The companies benefiting from state aid are only considered participants within the meaning of TFEU and therefore have limited procedural rights. According to TFEU, the EU Commission must of course invite those involved to comment as soon as it opens a formal examination procedure, although it is sufficient if the notification of the initiation of a procedure is published in the Official Journal.[7]

3. Other areas of European economic and Competition law

The protection of fundamental and procedural rights is also becoming increasingly important in the other areas of European economic and competition law. The focus is on the fundamental freedoms of the internal market and the public procurement system based on it, as well as intellectual property law.[8] The fundamental freedoms guarantee the free movement of goods, the free movement of persons, including the freedom of establishment, the freedom to provide services as well as the freedom of capital and payments, and they primarily bind the EU member states. While the protection of commercial property in the free movement of goods is already expressly reserved in TFEU, according to the case law of the ECJ, fundamental freedoms can in principle also be damaged by fundamental rights.[9]

4. The concept and areas of application of fundamental and human rights in competition law

4.1. The concept of basic and human rights as well as fundamental freedoms

While human rights can be described as guarantees for the protection of all people under international law, i.e. guaranteed either by international treaties or customary international law or as general legal principles, the fundamental rights enshrined constitutionally in a state also guarantee, in principle, the same protection of these constitutional rights to all people present on the territory; The only exceptions to this are, as a rule, political rights and rights related to citizenship.

In contrast to the concept of fundamental rights, the fundamental freedoms in the EU internal market[10] only apply under the following two conditions: Firstly, only Union citizens and third-country nationals entitled to do so within the framework of any sectoral agreements or association agreements can rely on them; Secondly, they only apply when there is a connection to another EU member state, i.e. in a cross-border situation. The most important exception and thus a relativization of this definition that is common today is of course the ECHR itself, which has been referred to in its 14 additional protocols since its signing on November 4, 1950 in Rome as the Convention for the Protection of Human Rights and Fundamental Freedoms.

4.2. The scope of protection applicable in competition cases

The claims asserted in competition proceedings by the natural and legal persons directly affected can easily be qualified as so-called civil rights and obligations within the meaning of Article 6 Para. 1 ECHR. This is how fines, investigations and ban proceedings affect competition law in particular their economic and personal freedoms as well as procedural rights, which is why those affected have a legitimate interest in effective protection of fundamental rights and procedural rights.

The Charter of Fundamental Rights enshrines the same guarantees as the ECHR, i.e. the right to respect for private life (Article 7 Charter of Fundamental Rights), the protection of personal data (Article 8 Charter of Fundamental Rights, freedom of expression and freedom of information (Article 11 Charter of Fundamental Rights), the freedom of assembly and association (Article 12 of the Charter of Fundamental Rights), the freedom of art and science (Article 13 of the Charter of Fundamental Rights), the right to property (Article 17 of the Charter of Fundamental Rights), as well as the principles of equality and prohibitions of discrimination (Articles 20 and 21 of the Charter of Fundamental Rights). The right to good and orderly administration is of procedural importance (Article 41 of the Charter of Fundamental Rights).[11]

4.3. Positive protective duties and third-party effects

In the case law, the ECtHR and the ECJ have repeatedly recognized procedural guarantees within substantive fundamental rights provisions. Such procedural investigation and information rights apply before a complaint or legal procedure is initiated and

Petroleum (Nederland) BV v Commission of the European Communities. ECLI:EU:T:2006:137.

[7] TICHÝ, L. a kol. (2011): Evropské právo. 4. vydání. C.H. Beck: Praha.

[8] WHISH, R. (2000): Competition Law. 4. edition, Butterworths: London.

[9] Judgment of the Court of 12 June 2003. C-112/00, Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich. ECLI:EU:C:2003:333.

[10] KARAS, V. - KRÁLIK, A. (2012): Právo Európskej únie. 1. vydanie, C.H.Beck: Bratislava.

[11] SVÁK, J. (2006): Ochrana ľudských práv. Poradca podnikateľa: Bratislava.

represent a supplement and strengthening of the material areas of protection. In its Luis Ostra and Guerra case law, the ECtHR derived from Article 8 of the ECHR, the duty of the state to carefully clarify the facts of the case, when it comes to building and planning measures that could affect the health of residents. In the Laserdisken case,[12] the ECJ developed strict requirements for copyright interference with the freedom to receive information based on Article 10 (2) ECHR.

This case law makes it clear that fundamental rights are no longer to be understood only as negating rights of defense against state authorities. Rather, in the sense of the doctrine of indirect third-party effect, it should also be possible to derive from them positive protective obligations of the state in favor of private individuals. This should also include the right not to have to be outside in order not to incriminate itself, as well as the right not to draw negative conclusions from remaining silent.

5. The practice of the ECJ and the GC

Some references to the recent practice, first of the ECJ and the GC and then of the ECtHR are intended to clarify the tendencies mentioned.[13]

5.1. The question of individual concern

In competition cases, individual concern must also be assessed according to the so-called Plaumann practice of the ECJ. According to this practice, individuals and companies with an action for annulment brought against decisions and regulations of EU institutions in accordance with TFEU are only admitted to the EU courts if they are directly and individually affected. If the plaintiffs are not the addressee of the contested decision, according to this Plaumann formula there are high hurdles for the assumption of direct and individual concern.[14]

This limited right to bring legal proceedings leads to unsatisfactory results, particularly in the case of burdensome regulations that do not grant the national authorities their own discretion. Because there is no legal protection in national courts, the strict application of the Plaumann formula is criticized. General Attorney Jacobs, for example, calls for the individual concern to be extended to cases that have a significant adverse impact on the interests of the plaintiff. Likewise, the GC does not see adequate legal protection in the fact that the plaintiff must have violated the law in order to then invoke the illegality of the regulation in the subsequent legal proceedings.[15] However, the ECJ rejected this view and stuck to the Plaumann formula.[16]

5.2. The fundamental right to effective judicial protection

Although the ECJ recognizes a fundamental right to effective judicial protection,[17] this is not fully guaranteed in the Commission's antitrust proceedings. Especially when so-called Dawn Raids (surprise or unannounced house searches) are carried out, legal remedies have no suspensive effect. No action for annulment can be brought against the Dawn Raids at the GC. This is particularly problematic when accidental finds reveal material that could give rise to a fine. The first appeal instance has comprehensive authority to review decisions that have imposed a fine or penalty payment; It can reduce the fine, cancel it, but also increase it.[18] The ECJ, on the other hand, can only review a decision of the GC for legal violations.

Furthermore, an affected company can also take legal action against a decision by the Commission ordering an investigation or obliging it to provide information. Because actions brought before the Community courts under TFEU generally do not have a suspensive effect, the company bringing the action should submit a reasoned application for a temporary suspension of the contested act. However, this will usually not be successful during house searches because the surprise effect will be thwarted. It is therefore crucial that the Commission must prove that it has sufficiently justified initial suspicions that justify a house search. Under no circumstances should this initial suspicion be supported by evidence found during the house search.

In addition to the Commission, the EU member states also have competences in competition law. However, due to the jurisdiction rule in the EU Law, the Community courts do not in principle have jurisdiction to decide on a legal dispute between a company and the competition authorities of a Member State. If national competition authorities violate fundamental EU rights, this must be brought before the national

[12] Judgment of the Court (Grand Chamber) of 12 September 2006. C-479/04. Laserdisken ApS v Kulturministeriet. ECLI:EU:C:2006:549.

[13] KLÍMA, K. (2014): Mythus a pravda o významu Evropského soudu pro lidská práva. In: OROSZ, L.; MAJERČÁK, T. (ed.): Ochrana ľudských práv a základných slobôd ústavnými súdmi a medzinárodnými súdnymi orgánmi - III. ústavné dni. Zborník vedeckých prác z medzinárodnejvedeckej konferencie. UPJŠ: Košice.

[14] Judgment of the Court of 15 July 1963. C-25/62. Plaumann & Co. v Commission of the European Economic Community. ECLI:EU:C:1963:17.

[15] Judgment of the Court of First Instance (First Chamber, extended composition) of 3 May 2002. T-177/01. Jégo-Quéré & Cie SA v Commission of the European Communities. ECLI:EU:T:2002:112.

[16] Judgment of the Court (Sixth Chamber) of 1 April 2004. C-263/02 P. Commission of the European Communities v Jégo-Quéré & Cie SA. ECLI:EU:C:2004:210.

[17] Judgment of the Court (Second Chamber) of 21 April 2005. C-186/04. Pierre Housieaux v Délégués du conseil de la Région de Bruxelles-Capitale. ECLI:EU:C:2005:248.

[18] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

courts.[19] In this context, the ECJ has repeatedly recalled that it is for the Member States to provide for a system of remedies and procedures to ensure compliance with the right to effective judicial protection. It is therefore the responsibility of the Member States to provide for legal recourse to a court against decisions made by their competition authorities. It should be noted here the importance for private claims for damages, which has become clear through the ECJ's Manfredi case law.[20]

5.3. Procedural rights and principles

According to the established case law of the ECJ, it is a general principle of EU law that everyone is entitled to a fair trial when applying EU competition law.[21] The ECJ has continually clarified the legal principle of a fair trial for the Commission's investigation into violations of the TFEU and has further expanded and strengthened the powers of the Commission by allowing the Commission to search private homes. The Community legislature has codified this case law in the applicable procedural regulations.

If the Commission wishes to keep the source of an incriminating document secret in a competition law proceeding, three conditions must be met in order to comply with the right to a fair trial:

a) Firstly, the companies against which documents whose sources must remain anonymous must be cited as evidence must have the opportunity to take note of them and to comment on them both in writing and orally. This also includes the possibility of submitting documents or other evidence to refute this;
b) Secondly, both the Commission in preliminary investigations and the court in its assessment in the first instance proceedings must proceed critically when examining the probative value of such documents and carefully investigate possible evidence against their credibility and authenticity.
c) Thirdly, when applying the free assessment of evidence recognized in case law, care should be taken to ensure that violations of the competition rules of the TFEU are not proven exclusively or predominantly by means of documents whose origin or author must remain unknown to the defense of the undertaking concerned.[22]

Related to the legal principle of a fair trial is the presumption of innocence. According to the case law of the ECJ, this also applies in proceedings for violations of competition rules, which can result in fines or penalty payments. The presumption of innocence should have a particular impact on the burden of proof. It is therefore up to the Commission to provide legally sufficient evidence of the existence of an infringement of TFEU. Of course, it is sufficient if a bundle of evidence presented by the Commission can, taken as a whole, be viewed as sufficient evidence of an infringement. This is particularly true given that providing evidence in antitrust cases is difficult when anti-competitive agreements are kept secret.

However, the ECJ refuses to derive from the presumption of innocence an absolute right to refuse to testify for the company affected by the Commission's investigations.[23] In doing so, it supports the Commission's power, as set out in the relevant procedural regulation, to oblige such companies to provide information through a decision. The ECJ only grants a company the right to testify insofar as answers are required from it through which it would have to admit the existence of an infringement, for which the Commission must provide a proof. Of course, the burden of proof can be reversed if the Commission presents incriminating documents and then demands that the company in question invalidate these documents.

Art. 18 of the Regulation 1/2003 grants the Commission a comprehensive right to obtain information from the company concerned. The company expresses itself through authorized representatives or legally authorized employees, whereby it is obliged to organize itself in such a way that a legally authorized person is available. The Commission can only question other natural and legal persons if they agree. Witness evidence, which is so important in national criminal proceedings, can therefore only play a minor role in investigations into anti-competitive behavior. The focus of evidence is rather on written documents, although in practice these are sometimes difficult to obtain.

5.4. The principle of equal treatment

The principle of equal treatment recognized by the ECJ is particularly important in antitrust proceedings when calculating the fine imposed, which according to

[19] PERNICE, I. (2008): The Treaty of Lisbon and Fundamental Rights. In. S. Griller and J. Ziller, The Lisbon Treaty. EU Constitutionalism without a Constitutional Treaty?. Springer: Heidelberg.
[20] Judgment of the Court (Third Chamber) of 13 July 2006. Joined cases C-295/04 to C-298/04. Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA (C-295/04), Antonio Cannito v Fondiaria Sai SpA (C-296/04) and Nicolò Tricarico (C-297/04) and Pasqualina Murgolo (C-298/04) v Assitalia SpA. ECLI:EU:C:2006:461.
[21] Judgment of the Court of First Instance (Fourth Chamber) of 15 March 2006. T-15/02. BASF AG v Commission of the European Communities. ECLI:EU:T:2006:74.
[22] KINDL, a kol. (2021): Soutěžní právo. 3. vydání. C.H.Beck: Praha.
[23] According to which an absolute right to refuse to testify would lead to an unjustified hindrance to the Commission's tasks in competition law.

Art. 23 Para. 2 Regulation 1/2003 may amount to up to 10% of the total turnover.ᶜFor this reason, it is important that the plaintiff company was in a position to foresee the legal consequences of its actions at the time of the last infringement and to adapt its behavior accordingly. In this context, the Commission's guidelines for calculating fines should be mentioned. These are intended to increase legal certainty for companies with regard to the Commission's determination of fines.

5.5. The principle ne bis in idem

If the Commission finds anti-competitive behavior by a company, it is not obliged to take into account a sanction imposed by a national competition authority for the same behavior when setting the fine. The ECJ has repeatedly emphasized that there is no recognized principle in international law that prohibits the authorities or courts of different states from prosecuting and convicting a person for the same offense for which he or she was prosecuted in another state. This is justified by the fact that the exercise of criminal power continues to be viewed by individual states as one of the most important expressions of their sovereignty.

5.6. The principle of proportionality

When calculating fines, the principle of proportionality must always be observed, which is one of the constitutional principles of the EU due to its importance for the entire EU law and its express enshrinement in TEU.[24] However, for the more precise assessment of fines, this principle is difficult to grasp and predict.

According to established case law, various factors are taken into account when calculating fines. The seriousness of infringements must be determined based on many aspects, including, among other things, the specific circumstances of the matter, its context and the deterrent effect of the fine. However, there is no mandatory or exhaustive list of criteria that must always be taken into account. This even goes so far that the court does not consider it to be unfair if the fine imposed is higher than the turnover from the sale of the product in question in the EU during the period of the infringement.

6. Practice of the ECtHR

6.1. Articles 6 and 13 ECHR

Both antitrust and state aid proceedings as well as communication between lawyers and companies concern so-called civil rights and obligations within the meaning of Article 6 Para. 1 ECHR. In addition to the procedural guarantees, the Commission's sometimes extremely far-reaching prohibition, investigation and fine measures affect, in particular, the economic freedoms and property rights of the companies affected by competition proceedings. In addition to ensuring access to an independent court to challenge decisions of the competition authorities, the EU member states also have to guarantee, among other things, the presumption of innocence under Article 6 (2) ECHR.

Since the procedural guarantees of Article 6 ECHR go further than those of Article 13 ECHR, the latter provision is only relevant in competition matters outside the scope of Article 6 ECHR. At the forefront of the right to an effective remedy is the obligation of contracting states to provide legal means by which the guarantees of the ECHR can be enforced domestically. In particular, an opportunity to lodge a complaint with a sufficiently independent administrative body is required. In addition, the procedure must meet basic requirements of fairness, particularly with regard to legal compliance.

6.2. Articles 8 und 10 ECHR

According to the jurisprudence of the ECtHR, the right to respect for private life and the home under Article 8 ECHR also protects commercial premises. This practice has now also found its way into the case law of the ECJ. It is true that in the Hoechst[25] case the ECJ rejected the applicability of Article 8 ECHR to commercial premises, disregarding the ECtHR judgment in the Chappell[26] case. But in the Roquette Freres[27] decision, the ECJ refers to jurisprudence of the ECtHR, which it continued in the Colas[28] decision.

Based on this case law, the competition authorities of the EU Member States must therefore comply with the requirements of Article 8 Para. 2 ECHR if they want to conduct a house search in a company. The ECtHR sets certain requirements for the nature of the intervention norm. The state must therefore provide protection in its legislation against arbitrary interference with the rights protected by Article 8 ECHR. This protection must primarily be ensured procedurally.

[24] SKOURIS, V. (2006): Fundamental Rights and Fundamental Freedoms: The Challenge of Striking a Delicate Balance. In. European Business Law Review, No. 2.

[25] Judgment of the Court of 21 September 1989. Joined cases 46/87 and 227/88. Hoechst AG v Commission of the European Communities. ECLI:EU:C:1989:337.

[26] ECtHR decision in CHAPPELL c. ROYAUME-UNI, 14/07/1987.

[27] Judgment of the Court of 22 October 2002. C-94/00. Roquette Frères SA v Directeur général de la concurrence, de la consommation et de la répression des fraudes, and Commission of the European Communities. ECLI:EU:C:2002:603.

[28] ECtHR decision in COLAS EST AND OTHERS v. FRANCE, 16/04/2002. ,

7. Concluding remarks

The above statements are intended to provide an overview of the importance of fundamental rights in competition law. If the increasing connection between the protection of fundamental rights and competition law can be noted as an initial result, this does not seem surprising given the well-developed European protection of fundamental rights.[29]

What may be more surprising is the further observation that this development in teaching and practice began rather late and only hesitantly. With its far-reaching sanctions, investigations and prohibition regulations, competition law undoubtedly interferes heavily with the fundamental and procedural rights of the natural and legal persons. In addition to the procedural guarantees, the focus is on economic and personal freedoms, which can easily be qualified as so-called "civil rights and obligations".

In the future, both the ECJ and the GC as well as the ECtHR will add numerous other pieces to the mosaic to the increasingly emerging picture of a European competition law that is aligned with both the ECHR and the Charter of Fundamental Rights. If the other case law is not taken into account and mutual cooperation is refused, this coexistence could certainly lead to diverging judgments in the same or similar subject areas and thus to legal uncertainty in both legal systems. In order to avoid this, the two European Courts must continue to engage in open discourse with one another in the spirit of mutually beneficial, fair competition.

8. Literature summary

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WHISH, R. (2000): Competition Law. 4. edition, Butterworths: London.

[29] Judgment of the Court (First Chamber) of 25 January 2007. C-411/04 P. Salzgitter Mannesmann GmbH v Commission of the European Communities. ECLI:EU:C:2007:54. The amount of fines imposed often varies considerably; The Commission's obligation to justify its decisions is therefore given particular weight when determining the fines.

Positive measures for more diversity in public administration in the light of EU law

Alexander Klein & Viktor Ladychenko
Danubius University

Abstract

The diversity of society has so far been inadequately reflected in the institutions of public administration around Europe. With regard to the dimension of migration-related diversity, numerous studies and also survey data confirm this finding. Especially in times of increasingly clear demographic change, it is in the public interest to recruit qualified staff from the entire population. At the same time, the symbolic dimension of a more diverse composition of staff in public administration should not be underestimated, because for the people living here and interacting. Closing this gap is an important prerequisite for the success of overall social cohesion.

Key words

Public administration, EU Law, ECHR, ECtHR

1. Introduction:

Although there is widespread agreement about the need to open up the labor market to interculturality, legal concerns about the admissibility of positive measures are repeatedly raised. For the public service, reference is made to the constitutionally guaranteed principle of performance (also known as the principle of selecting the best). The legal opinion is therefore intended to show which measures can be taken to promote the intercultural opening of public administration. In this way, HR managers should be given clarity about the legal situation and should be enabled to act in a legally secure manner. At the same time, the scope for achieving more diversity in the administration while maintaining the principle of selecting the best is clarified. If the legal framework does not provide sufficient scope for positive HR policy measures, the need for and possibilities for change are identified.

2. Positive measures in international law

International law is based on the idea of equality for all people. This idea is reflected in the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR) and numerous agreements and treaties under international law. In addition to declarations of principles that guarantee the equality of all people in terms of dignity and rights, international human rights instruments contain a wide range of prohibitions on discrimination.[1]

2.1. General permissibility of positive measures

The negative approach of prohibitions of discrimination as a defensive right is supplemented in various legal acts by the obligation to take positive measures. For example, the signatory states to the UN Convention on the Elimination of Racial Discrimination (ICERD) commit themselves to "specific and concrete measures to ensure the appropriate development and adequate protection of certain racial groups or individuals belonging to them". These should cover social, economic, cultural and other aspects and aim to ensure that all people, regardless of their skin colour or descent, national origin or ethnicity, can exercise their human rights and fundamental freedoms on an equal basis. Article 1 ICERD makes it clear that such special measures are not considered to be discrimination on the grounds of "race". Their aim is not to maintain or establish separate rights for different "racial groups". The measures will therefore be discontinued as soon as the objectives they pursue - namely equal participation - have been achieved.

The same applies to the law of the Council of Europe. The European Court of Human Rights (ECtHR) has approved positive measures and refers to the wording of Article 14 of the ECHR, according to which the "rights and freedoms guaranteed in [the Convention] must be guaranteed without discrimination". The prohibition of discrimination does not guarantee absolute equality, but allows for differentiation: “certain legal inequalities tend merely to correct factual inequalities” (ECtHR, 23 July 1968, case no. 1474/62, para. 10). Positive measures are therefore inherent and recognized in international law in order to enable effective protection of human rights.[2]

2.2. Access to public offices according to the International Covenant on Civil and Political Rights (ICCPR)

Article 25 (c) of the International Covenant on Civil and Political Rights (ICCPR) is of particular interest for positive measures to open up the administration to

[1] FUNTA, R. (2021): Medzinárodné právo. Sládkovičovo: Vysoká škola Danubius.
[2] GREER, S. (2009): European Court on Human Rights. Cambridge: Cambridge University Press.

intercultural issues. According to this, every citizen has the right and opportunity to access public office in his or her country. This right must be guaranteed regardless of the categories mentioned in Article 2 of the ICCPR – including race, colour, language, religion, origin or birth – and without undue restrictions.

According to Article 2, paragraph 1 of the ICCPR, the rights are to be granted to all persons without distinction. Conditions that contribute to discrimination prohibited by the ICCPR or that contribute to its maintenance are to be eliminated. The ratifying states must take specific measures to this end, including by "granting the relevant part of the population a certain degree of preferential treatment in certain matters compared with the rest of the population for a certain period of time". Such measures, as long as they are necessary, imply legitimate differentiation. If equal access to public office is not guaranteed in practice, concrete measures must be taken to eliminate disadvantages.

3. Positive measures in the light of European law

Union law is also shaped by the idea of equality for all people and extensive prohibitions on discrimination. The influence of international law is unmistakable.

3.1. Primary law

Article 19(1) of the Treaty on the Functioning of the European Union (TFEU) requires the Council to take appropriate measures to combat discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. It is generally believed that positive measures are also possible to counteract the actual discrimination against certain groups, since equality in the law alone is not enough to achieve equal opportunities in society. Although positive measures cannot be based directly on Article 19 TFEU, it does form a basis for further legislation at Union level, including for the benefit of third-country nationals.

Article 21 of the Charter of Fundamental Rights of the European Union (CFR) stipulates a comprehensive prohibition of discrimination, the scope of which, however, only covers EU citizens. The categories go beyond Article 19 TFEU and also include skin colour, social origin or membership of a national minority. The wording of the norm prohibits "discrimination". This does not exclude all differentiation, but it is open to justification. "Affirmative actions" are explicitly mentioned. Positive measures are also not foreign to the Charter of Fundamental Rights. This is explained by the fact that the guarantees of equality have a freedom-securing dimension: they are intended to enable a life of equal freedom.[3]

However, the Charter of Fundamental Rights primarily binds the Union and its institutions. Member States must respect fundamental rights when and to the extent that they implement Union law (Article 51 of the Charter). This means that situations without a cross-border or other Union law connection are not covered. Member States implement Union law, for example, when they implement directives or take "national accompanying measures" to implement directives - provided they do not implement secondary law beyond what is obligatory. The participation of people with a migration background in the labor market can be assigned to the anti-discrimination directives.

The Council has made extensive use of the authorization in Article 19 TFEU. The Anti-Discrimination Directive 2000/43/EC[4] and the Framework Directive 2000/78/EC[5] are of particular interest for the intercultural opening of the administration. While the former aims to provide comprehensive protection against racially and ethnically motivated discrimination in employment and civil law, the scope of the latter extends only to employment law and is intended to provide protection against discrimination based on religion, among other things. The directive law specifies the prohibition of discrimination in Article 21 of the Charter of Fundamental Rights.[6]

3.2. Anti-discrimination Directive 2000/43/EC

The Anti-Discrimination Directive aims to implement the principle of equality in the Member States and prohibits direct and indirect discrimination on the grounds of "race" and ethnic origin (Article 1 and 2 of Directive 2000/43/EC). This is not only intended to achieve a generally high level of employment in the EU and an improvement in living and working conditions for all people, but also to promote tolerance in society as a whole. The material scope of application extends, among other things, to access to employment, regardless of the field of activity. This also covers the public service.[7] Selection criteria and recruitment conditions are explicitly mentioned in Article 3 paragraph 1 letter a) of Directive 2000/43/EC.

Article 4 of Directive 2000/43/EC allows differentiation on the grounds of "race" or ethnic

[3] SCHÜTZE, R. (2023): An Introduction to European Law. Oxford: Oxford University Press.

[4] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

[5] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

[6] Judgment of the Court (Grand Chamber) of 16 July 2015, C-83/14, "CHEZ Razpredelenie Bulgaria" AD v Komisia za zashtita ot diskriminatsia. ECLI:EU:C:2015:480.

[7] KUHLMANN, S., & WOLLMANN, H. (2019): Introduction to Comparative Public Administration. Administrative Systems and Reforms in Europe. 2nd ed., Cheltenham: Edward Elgar.

origin, provided that this is intended to meet a significant and decisive occupational requirement. However, this presupposes that the tasks involved cannot be carried out at all or cannot be carried out properly if a person does or does not have the characteristic in question. In fact, no constellations or reasons are apparent in which such differentiation could apply. At most, scope is seen with regard to the ethnic origin of an applicant, for example in order to achieve a supposed authenticity of the work to be performed or with regard to language skills that must be mastered in the context of the activity.

The requirement of equal treatment does not preclude specific measures to compensate for or prevent existing inequalities (Article 5 of Directive 2000/43/EC). This applies as long as full equality is not guaranteed in practice. The Directive 2000/43/EC gives Member States the right to reduce de facto disadvantages due to racist attributions in access to employment through positive measures. Some may argue that only the support of individuals is permissible, for example through language courses that improve the individual qualifications of an applicant. However, the wording of the directive leaves no room for such a narrow understanding. It is also based on the assumption that a lack of participation in the labor market is based on individual deficits of the people concerned, but not on structural obstacles. The 8th recital of the Directive 2000/43/EC also makes it clear that the elimination of discrimination against certain social groups is a key concern, so that the collective must also be protected in addition to the individual.

3.3. The Directive 2000/78/EC

The Directive 2000/78/EC is broader than the anti-discrimination directive. It is intended to provide a framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation. In terms of substance, however, it is limited to employment and occupation (Article 1 of Directive 2000/78/EC). Direct and indirect discrimination is prohibited, including with regard to selection criteria and conditions of employment (Article 2 and 3 of Directive 2000/78/EC). This also applies to employment relationships in the public sector.[8]

With regard to the prohibition of discrimination on the grounds of religion, the Directive 2000/78/EC protects not only freedom of belief, but also its external expression, in particular through the wearing of religious symbols. Various decisions of the Court of Justice of the European Union (ECJ) have been issued on this matter, which have led to heated discussions in some cases. The core issue is whether employers can prohibit their employees from wearing such symbols in the interests of a policy of religious, cultural and political neutrality. According to the ECJ, there is no discrimination on the grounds of religion if the wearing of all religious symbols is prohibited without distinction. If an employer decides to maintain an image of neutrality to the outside world, this is justified by entrepreneurial freedom. However, such a policy must also be pursued coherently and consistently, as otherwise it is not suitable for actually documenting neutrality.[9] If, on the other hand, the ban is not based on a corporate neutrality policy, it depends on whether the nature of the activity justifies certain clothing regulations (Article 4 of Directive 2000/78/EC). Other reasons that are not related to this - such as (alleged) customer requests or complaints - are neither lawful nor appropriate.[10] The neutrality policy must also correspond to a genuine need of the employer; the religious freedom of employees under Article 21 of the CFR must also be respected. According to Article 7 of Directive 2000/78/EC, the introduction or maintenance of specific measures to ensure complete equality in professional life does not conflict with the prohibition of discrimination if they are intended to counteract disadvantages based on the categories of Article 1.

4. Permissibility of concrete positive measures

There is no general statement as to whether and to what extent positive measures are permissible. Rather, it depends on the respective measure and the specific circumstances of the individual case. In the following, various positive measures are therefore discussed in order to provide guidance for the specific case.

4.1. General measures before working in the public service

Positive measures must be implemented well in advance of specific application procedures. If migrants or their descendants do not even consider training and study courses that qualify them for a job in the public sector, subsequent human resources measures will not be effective. In order to expand the circle of potential applicants, various general measures should therefore be taken to make public administration more attractive as an employer, especially for people with a migrant background.

For example, advertising and image campaigns could be used to present diversity, openness, respect and recognition as values of public administration and to present equal opportunities for all people regardless of their sexual identity, age, disability, skin colour, religion and cultural and social background. Such

[8] MAURER, H., & WALDHOFF, C. (2017): Allgemeines Verwaltungsrecht. 19th ed., Munich: C.H.Beck.

[9] Judgment of the Court (Grand Chamber) of 14 March 2017, C-157/15, Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV, ECLI:EU:C:2017:203.

[10] Judgment of the Court (Grand Chamber) of 14 March 2017, C-188/15, Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA, ECLI:EU:C:2017:204.

measures do not raise any legal concerns, as they are aimed at an indefinite group of recipients and therefore leave no room for discrimination against people who are not directly addressed by them. Informing and addressing potentially interested people in schools and in the context of careers advice is also legally unproblematic.[11]

4.2. Positive measures in the application process

In general, if certain groups are underrepresented, it is recommended that job positions be advertised publicly. This automatically expands the pool of potential applicants.

4.2.1. Express invitation to apply

The job advertisement can include references to the intercultural openness of the administration or an explicit invitation to people with a migration background to apply. Measures of this kind do not constitute discrimination against the group not explicitly invited to apply, as long as the group addressed is underrepresented.

4.2.2. Anonymous or anonymized application

To avoid discrimination, application documents could be limited to the necessary information on suitability, ability and performance by making anonymous application forms available or by anonymising application documents after receipt. Personal information that could allow conclusions to be drawn about the existence of certain characteristics or that could be linked to prohibited discrimination has to be omitted. This gives all applicants the same chance of being invited to an interview. This is intended to prevent factors that are not related to qualifications from influencing the decision on filling the position. As a result, anonymized application procedures serve precisely to ensure the selection of the best candidates.

4.2.3. Quota for invitation to the selection procedure

A quota can also be considered as a positive measure. According to this, people with a migration background should be invited to the selection procedure at least in proportion to their share of the population, provided that they have the required qualifications and there are sufficient applications from such people. The principle of selecting the best candidates requires that the entire application process be designed in such a way that a substantively and legally correct selection decision can be made among all applicants.[12]

4.2.4. Specific eligibility criteria in the requirements profile

Another way to motivate migrants and their descendants to apply for a job in the public service and to promote their recruitment is to indicate specific language skills or intercultural competences in the job profile. A job advertisement that explicitly makes a person's own or family's migration history a prerequisite for employment is obviously not permitted. The precise formulation of such a requirement would already cause difficulties, as the term "migration background" is by no means clear, but can, for example, include different generations. Depending on how broadly the term is defined, applicants would be forced to address their family biography and thus very personal experiences in their application - this could have a deterrent effect. In addition, the migration history of an applicant as such does not allow any conclusions to be drawn about their suitability, performance and professional skills. Finally, such a requirement for employment would automatically and across the board disadvantage certain groups - namely people without a migration background - as their applications would not be assessed individually.[13]

However, migrants and their descendants may have specific knowledge and skills that affect their suitability, performance and professional ability. Depending on the profile of the position to be filled, this may be an advantage. It is conceivable to include proof of certain language skills in the requirements profile. This means that people without a migration history are not automatically excluded from the application process, because languages can also be learned. This means that only language skills alone should be important, not native speaker. This is so closely linked to ethnic origin that it has an indirectly discriminatory effect as a prerequisite for employment.

The need cannot be assumed to apply to all positions in public administration in general. This could be justified by the fact that a large proportion of customers or users typically do not speak sufficient e.g. national language, but instead speak another language in which they can better present and pursue their concerns to the administration. However, the requirement of language skills can also be detrimental to diversity in the administration in the opposite sense, namely when excellent or very good national language skills are made a requirement. This can deter foreigners who have only been learning national language for a relatively short time from applying. Finally, the requirements for proof of language skills must also be designed in a non-discriminatory manner. For example, it is not permissible to make proof dependent on the presentation of a specific certificate that can only be obtained in the country. This would

[11] HAJNAL, G. (2003): Diversity and convergence: A quantitative analysis of European Public Administration education programs. In. Journal of Public Affairs 9(4): 245–258.

[12] HOFFMANN-RIEM, W., SCHMIDT-ASSMANN, E., & VOSSKUHLE, A. (2012): Grundlagen des Verwaltungsrechts (vols. 1–3). 2nd ed., Munich: C.H.Beck.

[13] BOHNE, E. (2018): Verwaltungswissenschaft: Eine interdisziplinäre Einführung in die Grundlagen. Wiesbaden: Springer-Verlag.

make it impossible to individually assess language skills acquired in other countries, and the people concerned would automatically be excluded.[14]

Another way to attract a diverse pool of applicants is to require intercultural competence as a prerequisite for employment. This in turn raises terminological questions. Intercultural competence is generally understood as the ability to interact successfully and appropriately with individuals and groups from other cultures. In this respect, several vague legal terms are used - "successful" and "appropriate" - which need to be interpreted with certainty. Provided that the terms are clearly and comprehensibly defined, the requirement of intercultural competence is unproblematic in that it does not automatically exclude any group from the pool of applicants. Openness to "others" and freedom from prejudice are characteristics that every person can have. In addition, such skills can be promoted and (further) developed in the CV through intercultural learning.[15] At the same time, it must be taken into account that migrants and their descendants cannot per se be attributed a higher level of intercultural competence than other people; this group cannot therefore automatically be given preference, but each individual application must be assessed, as required by EU law.

Finally, it should be noted that the consideration of intercultural competences when drawing up the requirements profile is only permissible if it is objectively based on the tasks involved in the activity. This requires justification. this can arise, for example, from the information and advice needs of a diverse structure of customers or users of the administrative services in question.

4.2.5. Auxiliary criteria for equally qualified applicants

If the above-mentioned suitability criteria cannot be anchored in the job profile in a legally secure manner because neither specific language skills nor special cultural skills are required for the advertised position, the question arises as to whether any characteristics may be used as auxiliary criteria for equally suitable applicants. An auxiliary criterion would then mean that, in the case of equal suitability, persons who fall into the relevant category or who possess the relevant characteristic would be given preference. When hiring women, an agency may give preference to women with the same qualifications as its competitors if they are underrepresented in a particular area. However, this does not apply if legally protectable interests in the person of a competitor outweigh them. Only such a flexible quota system, which allows the special personal requirements of all applicants to be taken into account, meets the requirements of the ECJ. It would therefore also be necessary for auxiliary criteria that serve to open up the administration to interculturality. With regard to the permissible criteria themselves, a distinction must be made. If a so-called migration background is to be used as an auxiliary criterion, the same concerns apply as with the specific employment requirement: on the one hand, the term is too vague, and on the other hand, the need to address one's own migration history or that of one's family in the application letter may deter some applicants. In addition, there is a constitutional problem that is based on the principle of selecting the best candidates: it requires a legal basis.

The criterion of intercultural competence is also subject to conceptual uncertainty. If it is associated with openness, tolerance and empathy for people from other cultures, this does not raise any concerns, but it would not necessarily lead to more diversity among administrative employees, since every person can have these characteristics regardless of their origin.[16] With regard to language skills, the question of the precision of the criterion would also arise: it would need to be clarified which specific language skills should lead to preference being given to one applicant if they are equally qualified. The only conceivable criterion here would probably be multilingualism, as otherwise it would require an abstract selection of languages that is not based on suitability criteria, which would be difficult to achieve. Since everyone can be multilingual, this criterion would not necessarily contribute to more diversity in the administration. It is questionable to use intercultural competence and multilingualism as an auxiliary criterion if the primary aim is not to eliminate structural disadvantages of a certain group, but if the administration is pursuing its own goals, namely the improvement of its own performance through diverse teams.[17]

4.3. Positive measures in ongoing employment

Positive measures can also be taken to benefit employees who have already been hired. These not only benefit the employees themselves, but can also contribute to the attractiveness of public administration as an employer. After all, good working conditions are also good advertising.

Whether and to what extent women of the Muslim faith are deterred from taking up a career in the public sector by the debate about so-called headscarf bans cannot be examined within the scope of this legal opinion, but it cannot be ruled out from the outset

[14] Judgment of the Court of 6 June 2000. C-281/98. Roman Angonese v Cassa di Risparmio di Bolzano SpA. ECLI:EU:C:2000:296.

[15] ONGARO, E., & van THIEL, S. (eds). (2018): The Palgrave Handbook of Public Administration and Management in Europe. Basingstoke and London: Palgrave Macmillan.

[16] WRIGHT, B. E. (2011): Public Administration as an Interdisciplinary Field. In. Public Administration Review 71: 96–101.

[17] POLLITT, C. (2016): Advanced Introduction to Public Management and Administration. Cheltenham and Northampton, MA: Edward Elgar.

either. Muslim women who wear a headscarf have no choice to take it off due to their individual understanding of religion. If in doubt, they will therefore not decide against the headscarf, but against working in sectors in which they cannot wear it or if they fear that they will only be employed in areas without customer contact. Even if legal bans generally only apply to civil servants and the ECJ sets high standards for their proportionality, they can contribute to uncertainty and affect the perception of the state as an employer. Muslim women may therefore not consider jobs as employees in the public sector that would not be affected by the headscarf ban. The explicit permission to wear religiously connotated clothing can be interpreted as a sign of tolerance on the part of the employer and thus as a clear commitment to diversity. Only if there are indications of any kind of bias or "religious bias" based on past or current behavior in an individual case is a different assessment indicated; in this case, however, measures under service or employment law are also possible. Employers in the public sector cannot invoke the freedom to conduct business, on the basis of which the ECJ has allowed private employers to introduce a policy of corporate neutrality.

Employers in the public sector cannot invoke the freedom of enterprise on the basis of which the ECJ has allowed private employers to introduce a policy of corporate neutrality. Rather, they are obliged to act in the public interest. In this respect, it should be remembered that even negative freedom of religion does not give anyone the right to remain "unmolested" by religious symbols in public spaces. The ECJ has also repeatedly pointed out that the mere fear of negative reactions from customers or users is not enough to justify such a serious infringement of fundamental rights. The benchmark is rather the individual exercise of office, so that every employee should first be trusted to carefully fulfill their contractual or civil service duties - even if they openly profess their religion. The openness to displaying religious symbols could, for example, be anchored in the authority's mission statement; corresponding ministerial decrees should be questioned.[18]

5. Conclusion remarks

In our opinion, general support measures that address disadvantageous structures and do not serve to promote specific individuals are unproblematic and, within the framework of applicable law, generally permissible. In addition to empowering disadvantaged people, they also serve to raise general awareness of structural disadvantages. These include: Marketing campaigns for the public sector; Providing information as part of training and career advice; Mentoring programs; ecc. Positive measures are also permitted within the framework of individual personnel measures. However, the applicable legal framework must be observed, in particular the principle of selecting the best candidates, which must guide the entire application process and the selection among all applicants. The following is not permitted: the establishment of auxiliary criteria such as intercultural competences in order to pursue internal administrative objectives, for example increasing performance through diverse teams or the establishment of auxiliary criteria, since neither the preference for multilingual applicants nor for applicants with intercultural skills would necessarily lead to an increase in the proportion of people with a migration background.

Even if the aforementioned measures are permissible within the framework of existing law, a legal regulation would be recommended in the interest of uniform application. Contrary to what is often feared, there are only a few legal obstacles to the intercultural opening of the administration. Employers have a wide range of options open to them due to their organizational sovereignty. They should use these - in the interest of equal opportunities for all people living in the EU, but also in the interest of the acceptance and exemplary effect of the administration itself.

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One-stop eGovernment for companies in the EU

Alexander Klein & Matej Šebesta
Danubius University

Abstract

In view of the EU Services Directive, providers of public services are required to realign their product and process organization. The key requirements are the establishment of a single point of contact for companies and the electronic processing of formalities and procedures for starting and carrying out a service activity. This has a direct impact on the design of the underlying information systems and IT infrastructure. Virtualization and service bundling are introduced below as key differentiation criteria.

Key words

E-Government, EU Services Directive, One-Stop-eGovernment

1. Introduction

The European Commission has been dealing with the development of the "information society" since the 1980s. Various initiatives and programs have been developed, which have been further developed and adapted over time. The European Commission deals with the topic of e-government primarily within the DG CNET (Directorate-General for Communications, Content and Technology), DG DIGIT (Directorate-General for Informatics) and DG GROW (Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs).

With the "Digital Decade" initiative, the European Union wants to accelerate digital transformation throughout Europe. The Digital Agenda for Europe 2020 is a European Union program for information and communication technology (ICT). The core objectives of the Digital Agenda for Europe concern the areas of digital society, digital economy, access and networking, as well as research and innovation. The program is part of the Europe 2020 strategy, an overall program for more competitiveness and productivity without hindering social cohesion in the member states. The European Commission's "eGovernment Benchmark" has been examining digital administrative services (e-government) in the EU member states and selected European countries since 2001.

There are efforts worldwide to create improvements in interaction and information obligations within the framework of e-government through digital technologies and the digitization of processes and working methods.

In the past, the focus was on setting up citizen-oriented service centers and eGovernment offerings. Due to the requirements of the EU Services Directive,[1] the focus is shifting towards business-oriented applications and the customer perspective is becoming even more important. The article is structured as follows: In the second part, the main requirements of the EU Services Directive for administrative simplification are described and the resulting requirements from the perspective of companies and the consequences for public administration are presented. The necessary foundations for developing a one-stop eGovernment are then discussed using the dimensions of virtualization and service bundling. This includes the development of a reference framework for structuring. The paper concludes with a summary and an outlook.

2. EU Services Directive

The EU Services Directive is intended to significantly simplify and facilitate the free movement of services within the EU. The core of the objectives is administrative simplification for the benefit of companies (Article 2). Member states have been required to:

- review the existing procedures and formalities for taking up and carrying out a service activity for their simplicity and simplify them if necessary (Article 5 - administrative simplification),
- establish single points of contact through which service providers can handle all procedures and formalities within the scope of their service activity (Article 6 - single point of contact),
- ensure that all procedures and formalities can be handled remotely and electronically without any problems via the single point of contact or with the competent authority (Article 8 - electronic processing of procedures).

[1] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

The EU Services Directive calls in particular for a simplification of business-related administrative processes. From the perspective of companies, the focus is on the consistent reduction of legal and procedural regulations (administrative simplification) and the associated formalities. If procedures must continue to be carried out for reasons of legal certainty, they should be significantly accelerated, simplified and bundled. In addition, official services should be available electronically in order to be able to handle formalities and procedures as completely as possible, regardless of location and time.

Public administrations are required to create the legal, fiscal, personnel, organizational and IT-technical prerequisites for implementation. A particular focus is placed on the legality of administrative action. Public procedures and decisions must be reliable and therefore legally secure. In terms of IT-technical aspects, this means that in the context of paperless processing of public services, particular attention must be paid to ensuring that the procedures used reflect the necessary legal aspects. From the EU Commission's point of view, the important basic requirements include electronic identity management (eIDM) for access to public services, electronic document authentication and electronic archiving.

3. One-Stop eGovernment

One-stop government describes organizational concepts for bundling public services in one place and from a single source. Typical examples of this are citizens' offices or service centers. More complex processes can be carried out in the "front office" and then in the "back office" with more or less division of labor. Nevertheless, the "customer" must physically visit the central service point to initiate or process his request. By making the range of services of the one-stop government available electronically, this becomes an electronic one-stop government, or one-stop e-government in short.[2]

With regard to the EU Services Directive, companies should also be able to handle the formalities and procedures required to start and provide services "remotely". Virtualization requires that public services are available digitally and thus paperless. The degree of virtualization describes the extent to which a request can be handled from the customer's perspective regardless of location and time. From the two dimensions of service bundling and virtualization, a matrix for categorizing service provision from the customer's perspective can be drawn up in the sense of a "one-stop e-government" reference framework. Four central scenarios for providers of public services can be described as a possible manifestation:

- Office organization (scenario I): Services are only partially bundled - if at all. For customers, this means that in order to complete formalities, the offices involved, which provide partial services for the matter, usually have to be visited individually, so that the degree of service bundling is consistently low. The range of services is also strongly function-oriented and not customer/product-oriented, so that products may first have to be defined before services can be bundled. The services offered are only partially available online, so that the degree of virtualization of public services is also low.[3]
- Service center (scenario II): The second scenario characterizes public administrations that offer bundles of services based on the customer's perspective. An example is a central service center that provides the core services of a public administration related to a specific target group (e.g. citizens' offices). The bundling of services is high. However, this scenario requires that customers usually go to a central location in order to be able to deal with their concerns. Public services can only be initiated or processed electronically in isolated cases (e.g. making appointments), so the degree of virtualization is therefore low.
- Virtual office organization (scenario III): Public administrations offer their services, similar to Scenario I, in a way that is largely office-related and without any significant service bundles. The level of service bundles is therefore also low here. The difference to Scenario I lies in the virtualization of the services. Customers generally do not need to physically visit the offices involved, which provide partial services for a matter, to complete formalities, but can initiate and process the necessary communication and applications electronically to a large extent. Examples of this in the municipal sector include office portals that electronically store public services for their respective areas of responsibility and offer them online. Nevertheless, in order to receive a complete service, customers may have to visit a large number of different office portals.
- Virtual service center (scenario IV): Scenario IV represents services offered by public administrations that offer a high degree of service bundles that are recognizable and useful from the customer's perspective. The level of service bundles is therefore high here. In addition, these service bundles are usually also available electronically, so that a customer can access them regardless of location and time and can

[2] WIRTZ, B.: E-Government. Berlin: Springer-Verlag GmbH & Co. KG. 2022.

[3] AZELMAD, S.: eGovernment Whole-of-Government Approach for Good Governance: The Back-Office Integrated Management IT Systems. Boca Raton: CRC Press. 2024.

initiate and process administrative procedures electronically to a large extent.[4]

According to the framework described, various strategies in public administrations can be imagined against the background of the implementation of the EU Services Directive.[5] The framework enables public administrations to classify their concrete strategy approaches in a (starting) quadrant from which the various scenarios can be addressed, taking into account the local framework conditions and objectives. As a consequence of the implementation of the EU Services Directive, there is a need to set up virtual service centers, particularly for business-related services (scenario IV). Starting from scenario I, there are therefore three possible migration paths:

a. Transition from Scenario I via Scenario II to Scenario IV,

b. Transition from Scenario I via Scenario III to Scenario IV,

c. Transition from Scenario I directly to Scenario IV.

4. A use case (example)

A city X, has around 600,000 inhabitants. The public administration of the city X employs almost 9000 people spread across around 400 administrative buildings. The organizational structure is decentralized, with several departments, each with numerous assigned offices and institutes. Based on a fat client-server architecture, the approximately 6,000 IT workstations are designed and are fully networked with one another via a city-wide communications system.

With a view to the EU Services Directive, the city X is required to realign its process organization, especially since the support of company-related activities is increasingly becoming a decisive location factor in international competition. On the way to a virtual service center, the priority is to further bundle services. The aim is for companies to receive even more administrative services from a single source, particularly in cross-departmental and cross-authority procedures. Nevertheless, the degree of virtualization is already high, as a large number of office-related services can be accessed via office portals.

In city X, around 99% of all companies have fewer than 500 employees and can be classified as medium-sized companies using the definition of medium-sized enterprises (SMEs). If one also takes into account that the implementation of the EU Services Directive becomes more important as the size of the company decreases, medium-sized companies are primarily the target group of a virtual service center in the city X.

Against the background of creating the conditions for electronic processing of procedures in accordance with the EU Services Directive, even "from a distance", the focus is on the aspect of virtualization. The main method of communication with the city X administration is by telephone, while the city's X Internet offering is used by lets say 2/3 of companies. It should be noted that companies (as well as citizens) are free to choose which communication channel they want to use to handle their concerns.

City X one-stop eGovernment concept for companies is aimed directly at the requirements of electronic processing, even "remotely" in accordance with the EU Services Directive. The portal is a central component through which the city further focuses its online orientation on the target group. At the same time, external and internal perspectives must be integrated. The problem of the lack of consideration of the internal administrative perspective in portal-heavy eGovernment projects may be recognized and should be further addressed in follow-up projects.[6]

One of the main requirements of the EU Services Directive is the establishment of a single point of contact for companies. Contacts have therefore been appointed at the City X for all company-related areas. These have a bundling and coordination function for company matters, especially for administrative processes that cross departments or departments. They are also technical partners for companies, especially in the context of approval procedures. The city X approach is supplemented by employees of the Office for Economic Development, which accompany companies to appointments on a case-by-case basis or advise them on their preparations. Service lines have also been set up in all company-related offices, via which telephone inquiries can be processed directly and contacts can be made immediately. All contact details can be accessed directly via the portal.

Inquiries and interactions received via the portal are viewed centrally in the city's X Office for Economic Development, processed directly or forwarded to the central contact person in the administration or, if other responsibilities apply, to the relevant institutions. Each request is accompanied personally and via a so-called "job function" in the city's communications software. This procedure is also extended to personal, telephone and paper-based contacts. The employees in the Office for Economic Development are thus always informed

[4] WIMMER, M. – SCHOLL, H. J. – FERRO, E.: Electronic Government. Heidelberg: Springer-Verlag GmbH & Co. KG. 2008.

[5] HUŇADY, J. - ORVISKÁ, M. - ŠČERBA, K.: Public Usage of E-Government in EU Countries: Are There any Consequences for Tax Evasion? In. Economic Review, 52(3), 2023.

[6] HOMBURG, V.: Understanding E-Government. London: Taylor & Francis Ltd. 2008.

about the processing status and can inform the companies of the current status. In addition, they can actively accompany the administrative process in the sense of internal tracking as part of the electronic order tracking.

Thus, it will need to be examined, among other things, how the "philosophy" of a one-stop government for companies can be communicated to junior staff and employees in company-related areas of local government. A qualification concept is therefore being designed through which the objectives of the city X approach are communicated in the form of information flyers, internships in areas of economic development and at city X companies, and through components of seminars, information events and workshops. In addition to the "training aspect", further developments can be communicated and prepared at an early stage; for example, related to the improvement of administrative processes.[7]

5. Conclusions

The article addresses the two differentiation criteria of virtualization and service bundling of a one-stop e-government for companies. On the basis of the two differentiation criteria, a reference framework is derived from which four central scenarios for providers of public services can be derived. The strategic approach of the city X when implementing the EU Services Directive with a focus on small and medium-sized enterprises serves as an application case.

The importance of e-government as a far-reaching reform and modernization concept has become apparent. While it was initially a buzzword that was primarily used to refer to the online offerings of the state and administration, its meaning and area of application have expanded considerably in recent years. The term is seen as a revival of the New Public Management concept based on the drive for modernization through IT. Some go even further (and we agree with this interpretation): e-government is seen - similar to e-commerce - as a broad-based innovation concept in public administration, whose changes not only affect the IT area, but also require organizational, legal and socio-political considerations. Last but not least, e-government combines many reform approaches and technical developments from a long tradition of administrative IT. In this respect, e-government opens up new perspectives for the reform of the state and administration. A new structure of government and administration while preserving the indispensable characteristics of public action is unavoidable; this will lead to a redesign of processes with significant changes: organizational structures, forms of communication and cooperation, access to systems, user interaction methods, type and distribution of knowledge, etc.

With the introduction of the company portal, both the level of virtualization and the bundling of services in city X will be significantly increased. In analogy to "life situation concepts" for citizen portals, a distinction is made here according to the company situation (1) founding, (2) consolidation and growth, (3) crisis and (4) succession.

However, this can only be an intermediate stage. The establishment of central contact persons also forms the basis for the transfer of the function of the single point of contact within the meaning of the EU Services Directive. The implementation of the EU Services Directive requires in particular that, with regard to electronic processing, office-related partial services are further combined into customer-oriented service bundles. In addition, the service offerings for local medium-sized businesses will be further optimized together with the economy.

One-stop government is a current vision and an important global driver in the modernization of public administration. This involves a rethinking of the state and administration towards performance and customer orientation and self-service for administration customers. Administrative cooperation and the integration of authorities at all levels of the state are also a fundamental requirement.

However, it should be remembered that a number of complex challenges must be overcome with the implementation of the one-stop government concept. This means that further research is needed in the following areas:

- Organizational changes including the redistribution of local competencies and responsibilities;
- Reorganization and re-engineering of administrative procedures and integral service design distributed across different locations (central one-stop front office, local back offices);
- Interoperability is based on open standards. Many new technologies are not yet fully developed. Proprietary technologies of local systems must also be converted to new, open interfaces if these are not yet based on international standards;
- The legal framework must be examined and, if necessary, adapted to enable service processing via online one-stop government;
- Finally, a rethink is also required in politics, among administrative staff and in society. Self-service via a central one-stop portal and administrative networking requires a rethinking of many strict data protection regulations and procedural principles.
- Last but not least, from a social perspective, the administration must not exclude anyone

[7] NIXON, P. – KOUTRAKOU, V.: E-government in Europe Re-booting the State. London: Routledge. 2007.

from access to services. The administration must therefore continue to ensure that all state and administrative services are equally accessible to all social classes and are provided in the same quality.

Today's IT technical possibilities allow for a variety of further developments to support one-stop eGovernment for companies. Development areas such as form management systems (in the context of which cooperation with the economy is identified as the number one growth area), process optimization or application status tracking/dialogue (in the sense of external tracking) are further potential areas. The current considerations regarding an electronic ID card with PIN code suggest that a significant boost in these topics is expected.

6. Literature summary

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