



GOOD GOVERNANCE IN THE EU MEMBER STATES

A comparative, interdisciplinary study on the interpretation and application of good governance in the EU member states and in the different functions of the government bodies.

Prof. Dr. G.H. Addink (g.h.addink@uu.nl)

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Preface and acknowledgments

This research report deals with the interpretations and applications of good governance in the 28 EU member states. The study was started in September 2014 and is about the problems and opportunities of good governance as a real public value, applied in practice. As a fundamental public concept, its roots can be found in the different phases of European history.

Good governance is relevant not only for preventing the malfunctioning of state institutions, but more importantly in ensuring these institutions are up to the high level of governance needed for a modern society in the member states. It is about integrity, honesty, objectivity and impartiality, and is at the heart of the changing state and the transformation of judicial review.

The concept of good governance has been developed according to the lines of rule of law, democracy and institutional development, and by different principles. This report gives - based on 28 detailed country studies - for the first time an overview and gains an insight into the contents of these principles - properness, transparency, participation, effectiveness, accountability and human rights - and their application by the different government bodies in the countries in various contexts and different binding effects.

Good governance is vital for further economic, social and cultural development in the EU. Increased gains can be expected from the development and application of good governance. It will create more trust among member states and their citizens, and will improve *a bottom-up discussion* within the member states regarding similarities and dissimilarities within a discussion on good governance in the EU.

I would like to thank the members of the research committee for their critical comments and suggestions on draft versions of the reports and their inspiring support during the research. Thanks to the students of the course Principles of Good Governance for their desk studies on the good governance situation in the different countries and the national experts for commenting on these draft-versions of the country reports. I am very grateful for the help from Ms. Mariette van der Tol, MA LLM, (Yale University) and Mr. George Necsa-Damacus (University of Cambridge) for their comments on draft versions of the reports, and Mr. Sjoerd Addink MSc for the graphics. Many thanks also to my colleagues at Utrecht University and other universities for the lively discussions we had about the concept and application of good governance.

0. Executive Summary

Good governance: an inspiring concept in the heart of changing EU member states.

In the study “**Good governance in the EU member states**” (July 2015) we investigated the interpretations and applications of good governance in the EU member states, taking into account the different functions of government bodies. Using a set of sub-questions, we investigated the differences among member states, conflicts between principles and influences on the attitudes of states towards European issues.

Good governance as a **fundamental public concept** in each of the member states has roots in the different phases of European history. In these phases we find aspects of the rule of law, democracy and institutional state development, representing common and emerging good governance dimensions.

Good governance is relevant not only for preventing the malfunctioning of state institutions, but more importantly in ensuring these institutions are up to the *high level of governance quality needed* for a modern society in the member states. It is about *integrity, honesty, objectivity and impartiality* and includes the prevention of fraud and corruption in the public sector.

There are more factors underlining the actual importance of good governance: the prevention of fragmentation of legal norms (which impedes legal certainty and equality), and the need for good governance norms for new and independent administrative authorities like agencies.

Also, the complexity of modern society calls for an effective and accountable administration, with an open view to latest societal developments related to the need for openness and involvement.

Those who are applying good governance norms require better knowledge of the interaction between the good governance norms applied by review makers like the judiciary and ombudsmen, and norms developed and applied by the legislator and administration.

Good governance is in the heart of the changing state and transforming judicial review

We found good governance norms developed in the member states sometimes in a general, abstract way - for instance, the concept of the rule of law, the notion of democracy and the functioning of classical constitutional institutions. There is, however, a tendency to specify these general dimensions of the good governance concept by principles, in some countries more than in others. We discovered a principle-based development and implementation of policies in case law and policy reports in member states. In different legal forms – constitutions, laws, policy papers, case law and reports of ombudsman and audit institutions – six principles of good governance were found: properness and human rights; transparency and participation; and finally effectiveness and accountability.

The principles have been developed by the classical and modern powers (independent administrative authorities like agencies) of the state, both as norms for the administration as well as rights for citizens. Research results were checked by experts and have an indicative, qualitative character.

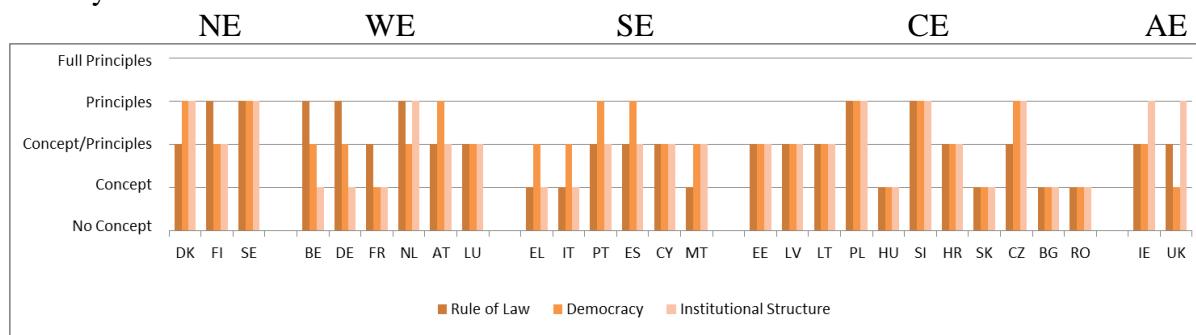
The countries of Europe have been individually investigated, resulting in country reports that were – for cultural, social, economic and qualitative comparative law reasons – grouped into five regions: Northern Europe (NE), Western Europe (WE), Southern Europe (SE), Central Europe (CE) and Anglo-Saxon Europe (AE). *In Northern Europe*, Sweden had a very strongly developed specification of the six principles of good governance, but the other countries were not far behind.

In Western Europe, the Netherlands had a strong focus on the rule of law and institutional development principles, while Austria focused on the democracy related principles. *In Southern Europe*, Spain and Portugal stand out by the development of the democracy principles of transparency and public participation. *In Central Europe*, Poland and Slovenia have developed all the principles of good governance very substantially. The Czech Republic is close behind, while the other countries are still in a general abstract phase. Finally, *in Anglo-Saxon Europe*, Ireland has developed these principles just slightly better than the United Kingdom.

General conclusion:

The general conclusion is that in the EU member states there is unity in diversity. Coherence is found in the contents of principles, while there is variety in the factual application. Differences are found in the focus on each of the three general abstract norms (rule of law, democracy and institutional development) and to the extent to which principles have been developed (more focus on human rights and transparency than on accountability and effectiveness).

In the overall chart below, we distinguish phases of a gradual development of good governance. All countries use the three general abstract norms, but differences are seen in the development of the dimensions. The results in the chart should not be read as a ranking of good or bad, but as the phase of good governance specification and application characteristic of each country.



We investigated the application of the six principles of good governance in different policy fields: health, economy, environment, education and social affairs. We found coherence in the principles qualification, variety in the contexts and differences in binding effect for governments and citizens. The specific varieties of government activities in the application of the principles in these policy fields can be found in the summary and the complete report; here, we only have some illustrations.

The principles of effectiveness and accountability are applied in an evaluative policy report in Austria describing negative effects of the differences in regulating public healthcare insurance and hospitals.

The principle of a human right to a healthy environment is according to the Administrative Court in Belgium not a subjective right and only by specific legislation can this principle be realized.

The principles of properness (legal certainty, carefulness), human rights (healthy environment) and effectiveness (implementation of law, achieving aims) were violated in a case concerning illegal landfills in Bulgaria because EU law was not implemented and appropriately applied.

Specific conclusions:

- consensus on concepts and dimensions of good governance;
- coherence in principles qualification, variety in contexts and differences in binding effect;
- context variation of principles like transparency: information, publication and manifestation;
- different focus on three dimensions: rule of law, democracy and institutional functioning;

- application of principles instrumentally, protectionally or a mix and different binding effect;
- good governance regulations in constitutions but often in general administrative acts;
- application also by informal codes which have an indirect binding effect;
- judicial good governance application by rule-interpretation and non-written principles;
- innovative good governance application in ombudsmen and audit institutions reports;
- differences conflict-solving good governance principles: legislator, judiciary, administration;
- bottom-up good governance discussion creates trust among member states and on EU level.

Final conclusion:

Good governance: vital for further economic, social and cultural development in the EU. The final conclusion of the research is that further gains can be expected from the active good governance development and application. It will create more trust among member states and citizens and will improve *a bottom-up discussion* within the member states regarding similarities and dissimilarities in the discussion on good governance in the EU. The ReNEUAL Model Rules can serve as a convenient framework. Further *the development of a practical policy related framework for the application of good governance principles* is necessary, besides *working on a further codification and harmonisation of good governance principles on national level.*

1. General Introduction

The issue of good governance in the realm of the European Union receives the attention of the member states,¹ and of course, also of European institutions themselves.² Good governance is a concept that is not confined to the legal system of individual countries (or to the central or decentralized level within countries only); its relevance extends to national, regional – European – and international legal systems. In the literature, good governance is denoted as one of the fundamental elements of the democratic rule of law (*rechtsstaat*).³ The notion of good governance stems from the 1980s, when international (financial) institutions used the notion as a requirement for (financial) aid, thus promoting the rule of law and democracy in newly developing states. The main objective of the international institutions was to fight maladministration on different administrative levels. In the context of the European Union, the term good administration is used rather than good governance. Much attention was given to the behaviour of national governmental bodies.⁴ Another factor was the development in the field of public administration concerning the shift from ‘government’ to ‘governance’, which scope includes much more than the formal and traditional governmental bodies.⁵

When looking at the historical and cultural development of good governance, artistic traces lead us back to, *inter alia*, the fourteenth century, when several elements of good governance were represented in a famous fresco in the Palazzo Pubblico in Siena: the virtues of government were maintaining public order and safety, promoting economic welfare, and employing many cultural and social activities. In the study “Urban Politics in Early Modern Europe”, we see that the national state was far less developed than today; and crucial decisions about economic, religious and social policy were often settled at the municipal level.⁶ Elements of good governance *avant la lettre* were further developed in the nineteenth and the twentieth century by the development of concepts like the rule of law and democracy.⁷

These ideas were rearticulated in a recent lecture by the (Dutch) scientist Gabriël van den Brink ‘Om de ziel van Europa’ (For the soul of Europe).⁸ He explained that the cultural dynamics led to several shared philosophical principles. According to van den Brink, these principles should be the foundation of a European-wide dialogue on good governance. Important is to incite the discussion on good governance between all member states of the European Union. The project that stems from this ideal aims at a broad and substantive discussion on the interpretation and application of the principles of good governance in the member states.

Good governance is part of the modern state. Good governance as a broader concept for activities in the public interest on national level is novel and has developed subsequently with to the rule of law and democracy. Good governance is also a process in which by interpretation and application in practice the principles are standards in development. The most common principles of good governance are properness, transparency, participation, effectiveness,

¹ G.H. Addink, *Goed bestuur*, inaugural lecture at Utrecht University, Deventer: Kluwer 2010; G.H. Addink, *Good governance: concept and context*, Oxford University Press forthcoming in 2015.

² D.M. Curtin and R.A. Wessel (eds.), *Good governance and the European Union. Reflections on concepts, institutions and substance*, Antwerp: Intersentia 2005.

³ A state adhering to the principles of democracy and the rule of law. Virtually all European states do so.

⁴ G.H. Addink, ‘Some remarks on the terminology’, in: D.M. Curtin and R.A. Wessel (eds.), *Good governance and the European Union. Reflections on concepts, institutions and substance*, Antwerp: Intersentia 2005.

⁵ R. Rhodes, ‘The new governance: governing without government’ (1996) *Political Studies*, Vol. 44, pp. 652-667.

⁶ C.R. Friedrichs, *Urban Politics in Early Modern Europe*, London: Routledge, 2000.

⁷ G.H. Addink, *Good governance: concept and context*, OUP 2015 forthcoming, chapters 5 (Rule of Law) and 6 (Democracy).

⁸ G.J.M. van den Brink, Rob-lecture, 25 September 2012; http://www.rob-rfv.nl/documenten/rob-lezing-definitief_2012_gabri_1_van_den_brink_webversie.pdf, last consulted 12-07-2015; he distinct the following philosophical principles; freedom, fairness, equality, independence, participation and dignity.

accountability, and human rights.⁹ The principles are articulated as a response to issues of malfunctioning of state institutions. Therefore, new principles can also be developed. An example of a newer principle is the principle of integrity. This research clarifies the actual situation of the concept and principles of good governance in the EU-member countries, based on research in each of the member states.

A normative framework has been articulated consisting of these six principles of good governance in the literature. The principles have been elaborated from the different levels of governance and have been specified in different legal forms and contexts like legislation, case law, and literature. The forms in which the principles have been codified are relevant because these indicate also their legally binding character, with consequences for the enforcement of the principles. The concept of good governance is not only legal, since it stems also from social science and is connected to the field of economics. One may argue that this concept has at least three approaches: a social, an economic, and a legal approach.¹⁰ A relevant question is how the three approaches are linked to the principles of good governance. These relations have already been explored and so have become clearer.¹¹ It is now a good moment to give an overview on the different approaches which have been developed in relation to these dimensions and principles, and to include the results of the good governance research to date. There is a second reason to specify the ideas on principles of good governance in more detail. Over the last years the results of different research projects on public administration and public economics have been published. These results give deeper insight into the research methodologies which have been developed and the actual relevance of the input from and the interaction between the different academic disciplines on good governance. Eventually, the principles of good governance have found their own significance and their own niche.

Good governance has a dual nature; it claims that good governance comprises both a real or factual dimension and an ideal or critical one. The factual dimension is represented by the realisation of good governance as an administrative fact and the ideal dimension is how governance ought to be. Once the conceptual way of governance is acknowledged as a necessary element, the picture fundamentally changes and a non-positivist concept of good governance evolves. So the dual nature includes not only positivism but also non-positivism. An example is that the administrative authorities must not only judge the technical information which is part of an environmental licence application for a factory. But these authorities should also have to take into account for democratic reasons the objections of the residents because of the inconvenience of the factory's activities and which can mean that the application has to be refused.

The dual nature of good governance seems abstract and formal, and should be explained and elaborated upon. For these reasons, the approach in this report is explicated using a single concept of good governance in which the two aspects of real and ideal are reconciled. The concept can be divided in two stages or levels: the first one refers to the ideal dimension only; the second refers to both the ideal and the real dimension. This second stage is – in the context

⁹ G.H. Addink, *Goed Bestuur*, Deventer: Kluwer 2010, p. 28; G.H. Addink, 'Good Governance', in: Addink, G.H., Anthony, G., Buyse, A.C. & Flinterman, C (Eds.), *Human Rights and Good Governance*, Utrecht, 2010, pp.11-134.

¹⁰ *Ars Aequi*, themanummer *Multidisciplinaire bestudering van de rechtswetenschap*, November 2007.

¹¹ G.H. Addink, 'Het concept van 'goed bestuur' in het bestuursrecht en de praktische consequenties', *Ars Aequi* April 2012, pp. 266-276. Several PhD-studies on good governance (conceptual or applied some special policy fields) have been (or will be) published. See UU PhD-studies of Felix Zigirinshuti (Good governance and public contracts), Maaike Stouten (Witwasmeldplicht, Money laundering reporting duty), Anoeska Buijze (The Transparency Principle in EU law), Margot Aelen (BeginseLEN van goed markttoezicht), Melissa van den Broek (Preventing moneylaundering, a legal study on the effectiveness of supervision) and Elvis Binda (Good Governance and Foreign Direct Investment), and several other publications. Other European PhD-publications on good governance are from England (The Right To Good Administration, Jill Wakefield, November 2007, Kluwer: Deventer 2007, ISBN 904112697X), from Germany (Das Recht auf eine gute Verwaltung, Kristin Pfeffer, 2006, 278 S., Broschiert, NOMOS, ISBN 978-3-8329-1851; Das Recht auf eine gute Verwaltung, 2011, Michael Nußbaumer; Gute Verwaltung im Recht der Europäischen Union, Kai-Dieter Classen, Berlin, 2008), from France (N. Marty, La notion de la bonne administration. A la confluence des droits européens et du droit administratif français, Montpellier 2007; J. Lassalle, Le principe de bonne administration en droit communautaire, Paris-2 2008; R. Bousta, Essai sur la notion de bonne administration en droit public, Paris 2010), and from Luxemburg (The right to good administration at the crossroads of the various sources of fundamental rights in the EU integrated administrative system, Bucura Cătălina Mihăescu-Evans, 2014).

of law – a matter of balancing between the creation and application of law. The two levels are also elaborated in the context of the description of the disciplines of social science and economics. Then, the conclusions are brought together, constructing a coherent and interdisciplinary view on good governance. The overarching idea is the institutionalization of reasons for good governance and the development of an integral approach to good governance. Good governance needs an interdisciplinary approach. With that in mind, this research included in its methodology a reading commission (as mentioned before) with experts from different subjects.¹² The literature discerns three main approaches of good governance: the legal, the sociological, and the economical approach.¹³ Of course these main approaches know various aspects in themselves.

Before continuing this introduction, the question that needs to be answered is why we need good governance. The argument of malfunctioning of state institutions has already been mentioned, but there are more factors, such as:

- the problem of the fragmentation of legal norms, which impedes legal certainty and equality;
- the existing need for good governance regulations for new independent administrative authorities because of the risk of uncontrolled execution of governmental power;
- the complexity of modern society needs a high qualified administration which has an open view to society;
- the link between the good governance norms applied by review makers (like judiciary and ombudsmen) and the norms developed and applied by regulators; and
- the development of good governance to prevent corruption and maladministration.

In Europe, the rule of law matured in the nineteenth century, as democracy mostly did in the twentieth century. That does not suggest a linear development of the main features of the state, it does suggest that these features develop dynamically and may be given emphasis in different times. Both developments have already become known as elements of the concept of good governance. It is however the twenty-first century that witnesses the elaboration of the principles of good governance.¹⁴ In relation to the described developments, two remarks need to be made. First, the time frame of these developments differs per country and some aspects receive more attention in specific contexts. Second, the rule of law, democracy, and good governance all have legal, social, and economic connotations. These connotations are intertwined.

In this research we clarify the actual situation of the concept and principles of good governance based on research in each of the EU member states. The Swedish government declared in 2005 that it intends to work for a law on good administration for the institutions, bodies, offices, and agencies of the European Union. Earlier research of the Swedish Agency for Public Management described the regulation on good administration in place in the member states in 2005.¹⁵ The outcome was that a core set of principles of good administration is widely accepted among the member states. Most principles are enacted as general and legally binding rules in constitutional or statutory legislation. The material content of the rules varies significantly and the interpretation of the principles varies according to differences in legal

¹² The members of this commission: prof. dr. Cees van den Bos, Social Psychology Including the Social Psychology of Organizations; Empirical Legal Science; prof. dr. Maarten Prak, Economic and social history; prof. dr. Sebastiaan Princen Governance and Policymaking in the European Union and prof. dr. J.J. Schippers, Labour Economics, all from Utrecht University.

¹³ G.H. Addink, *Goed bestuur*, , inaugural lecture, Utrecht University, Deventer: Kluwer 2010; G.H. Addink, *The concept of good governance in administrative law and the practical consequences* (Het concept van “goed bestuur” in het bestuursrecht en de praktische consequenties), *Ars Aequi*, 4, 2012, pp. 103-124; G.H. Addink, ‘Governance and Norms: An interdisciplinary approach of good governance’, in: *Law & Governance. Beyond the public-private law divide*, The Hague 2013, pp. 241-272.

¹⁴ G.H. Addink, ‘Good Governance: overview and principles of properness’ (chapter 1), in: *Human Rights and Good Governance*, SIM special 34, Utrecht 2010, p. 4.

¹⁵ Principles of Good Administration in the Member States of the European Union, *Statskontoret* 2005, No. 2005.4.

traditions in Europe. This research looks into laws and regulation, and specifies the interpretation and application in the member states by case law and reports, taking into account different functions of the government bodies. So the starting point is not the realisation of a law for the institutions, bodies, offices and agencies; we are interested in the specification of the concept and principles of good governance in each of the EU-countries individually and based on that we find general norms in the member states developed by different governmental institutions in relation to good administration.

The countries have been investigated individually and, for cultural, social, economic and comparative law reasons, were grouped into five regions. There is a certain cultural coherence also partly based on the history between the countries in each of the groups. Also from a social perspective the countries in each of the groups are related looking to the different parts of the society. Also from an economic perspective we see that most of the countries of each group have strong economic relations with each other. And finally it is from a comparative law perspective attractive to compare countries which are legally rather strong interrelated. The five regions are: *Northern Europe (NE)*: Denmark, Finland, Sweden; *Western Europe (WE)*: Belgium, Germany, France, the Netherlands, Austria, and Luxembourg; *Southern Europe (SE)*: Greece, Italy, Portugal, Spain, Cyprus, and Malta; *Central Europe (CE)*¹⁶: Estonia, Latvia, Lithuania, Poland, Hungary, Slovenia, Croatia, Slovakia, The Czech Republic, Bulgaria, and Romania; *Anglo-Saxon Europe (AE)*: Ireland, the United Kingdom.

The central point of this research is an answer to the following research question:

What interpretations and applications of good governance exist in the member states, taking into account different functions of the governmental bodies?

The research project is divided into three different steps. In *September – November 2014* the 28 country reports were written and based on desk studies and sometimes by email-contact with persons from these countries. The country reports all have the same structure: 1. Introduction. 2. Context of the country. 3 Good governance general aspects. 4. Good governance by six specific principles. 5. Four policy cases applying principles. 6. Conclusions including answering research question(s). In *December 2014 – February 2015* we asked the *contact persons* of the European Ombudsman – experts on governance – in each of the 28 countries to make comments on the national desk studies. We received comments and suggestions from 20 contact persons. In *February – March 2015* we finalized the country reports and made some general provisional conclusions based on these revised country reports. In *April – July 2015* the final report was written.

The final report follows after this general introduction, and specifies the research-object, the central point of the research worked out in specific research questions, and the research process including the relevance of developing a normative framework. Then we describe and analyse the importance of good governance in the practice of the EU member states. It is about the growing relevance of good governance in the practice of the central and decentralised government, the changing position of the powers – the government – within the state on all levels. But also the problems of malgovernment, the position of the different powers of the government, the interactions with questions and advice from the civil society. This is followed by a description of the theoretical framework for good governance in the context of the member states. Of importance are the definitions of the terms good governance, good administration, maladministration, integrity and integrity violation; good governance and good administration in relation to integrity-policy; and the executive power as administration. Then the research approach that makes a link between the theory and practise on good governance is clarified.

¹⁶ In the EU the abbreviation is: CEE (Central and Eastern Europe).

We formulate a normative framework based on the research questions and the research process. In this normative, principles-oriented framework attention is given to the regulatory aspects. The focus is not only on provisions in the law and in the administrative regulations, but also the consequences of policy rules and self-binding effects and of the case-law, including the non-legal aspects. This normative framework is applied on the research results of the different countries. These results are different types of good governance norms coming from different government institutions and in different forms like regulations, policy rules, internal rules, case-law, advice and reports, not all of which have the same binding effect. Based on these findings we will answer the six research questions. Finally, we present answers of the research question, and conclusions.

2. Research approach: research questions, research process, collecting information and, development normative framework

In this chapter we start with the theoretical framework by defining the problem and the development of the research questions. The research questions are further elaborated and illustrated by concrete examples. The research process and the way the information is collected are explained, as well as the relevance of the development of a normative framework.

2.1 The theme: theoretical framework and research questions

In the Netherlands we seek to incite a discussion on the interpretations and applications of good governance in the EU member states. This discussion is needed because good governance is understood differently in various academic disciplines and in national and European institutions. This applies to both the interpretation and the application of good governance. Insight in (supposed) differences and similarities could lead to: 1) a shared frame of reference and vocabulary regarding good governance; 2) a better understanding of different points of view and their historical and cultural backgrounds, and the benefits and threats of maintaining the differences. The Netherlands is because of the research and activities related to promoting good governance, well positioned to incite this discourse on good governance.¹⁷

This discourse is even more opportune since the increasing interest in the principles of good governance was included in the Lisbon-Treaty (2007). This interest is shown by the many activities of the Council of Europe, the European Ombudsman, and the European Commission (DG Justice). The ReNEUAL Model Rules of 2014 have further contributed to the development of a European General Administrative Law Act.¹⁸ By steering the discussion at the level of member states, they can contribute to the development of good governance in the framework of the European Union and prevent top down regulation of good governance.

One could say the ‘European project’ is in a difficult phase of development. The economic crisis had incited and enlarged tensions between ‘Northern’ and ‘Southern’ Europe. There is doubt about the effectiveness and democratic legitimacy of the European Union. Discussions usually emphasize the differences between the member states and how the relationship between the state and its citizens is perceived. But especially regarding the ideas about this relationship, there are at least as many analogies as is shown by the Swedish research project realized in 2005.¹⁹ It has pointed to a European culture based on certain shared moral principles. The future of European cooperation and integration needs a discussion about our shared values, but also a discussion about diverging values and how these differences can be expressed in European politics. This research project can underlie the discussion on the interpretation and application of the principles of good governance. What interpretations and applications exist in the member states regarding the concept and principles of good governance? This central research question is not a theoretical one because we want to know: what differences emerge and how the different parts of the governments in the countries of the European Union deal with these differences?

The relevance of the research question is given by the fact that good governance is a citizen’s right since the Treaty of Lisbon and in the light of the ongoing work to develop a European General Administrative Law Act. It is also important to know about the development of good governance at European and national level. Several research questions related to the central question in chapter 1 are formulated:

¹⁷ This links up with several activities undertaken by the Netherlands Ministry of Interior Affairs in the last few years to strengthen the knowledge and the authority of the Department in the field of good governance. See the special edition on Good Governance of the Netherlands Public Administration Journal (Themanummer Bestuurskunde, 2011, No. 2).

¹⁸ The ReNEUAL Model Rules 2014 are designed to reinforce general principles of EU law and identify – on the basis of comparative research – best practices in different specific policies of the EU; <http://reneual.eu/>, last consulted 30-04-2015.

¹⁹ Principles of Good Administration in the Member States of the European Union, *Statskontoret* 2005, No. 2005, p. 4.

1. *What interpretations and applications of good governance exist in the member states, taking into account different functions of the governmental bodies?*
2. *What differences exist among the member states and how are conflicts between principles of good governance dealt with?*
3. *How do the differences influence the agenda and attitude of member states as to European politics? What are the threats and opportunities of it for the European Union?*

These three distinct questions are divided into six sub questions. These are elaborated and explained hereafter.

What interpretations of good governance exist in the member states and what are underlying values (suitability, integrity, and transparency)? This sub-question is strongly related to the following question: How are the principles of good governance applied in the member states? Both questions will be treated in section 2.2. What differences exist as to the interpretation and application of good governance as to the different functions of government (policy-development, implementation, supervision)? The findings are linked up to the institutions involved in these activities. How are conflicting values balanced? It can often be the case that two principles of good governance conflict with each other. Section 2.3 deals with these questions. We expect that, when it comes to choices in situations of conflicting principles, member states do not always follow the same approach, because countries place different emphasis on different values. What is the influence of interpretations and applications of good governance in member states on its attitude at European level? This sub-question is treated in section 2.4, which will also deal with other questions: What are the main differences in interpretation and application of the principles of good governance? How could these be explained and what are the benefits and threats with regard to European politics?

The research questions are approached from an interdisciplinary perspective, looking at law, social sciences and economics.²⁰ For the reason of interdisciplinarity the aforementioned reading committee was created in which these subjects are represented and with whom the research questions and concept-chapters are discussed. The sub-questions suit the definition of a problem as explained above. The opportunity to elaborate upon the sub-questions allows giving sufficient account of diverse aspects of good governance from the outset, as well as its meaning and underlying values and the multiple perspectives on good governance.

2.2 *Interpretations and practices of good governance and underlying values*

The subject of this sub-question is the interpretation of the concept of good governance and its concretization in the principles of good governance, also in the context of underlying values (like suitability, integrity and openness) which have been specified. With regard to the meaning that the literature confers upon good governance, three dimensions are discerned:

1. good governance as reasonable governance, proper administration and protection of human rights (*the dimension of the rule of law*);
2. good governance as governmental bodies that promote transparency and active participation of citizens (*the democratic dimension*);
3. good governance as government institutions focusing on effectiveness and accountability (*the administrative institutional and instrumental dimension*).

These three dimensions capture many underlying values and are practicable elements of the concept of good governance. The dimensions developed differently, though often in accordance with each other. Good governance aims at structuring all dimensions and underlying values. The values and dimensions addressed could be regarded as a source of inspiration for the

²⁰ K. van Kersbergen and F. van Waarden, ‘Governance as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy’ (2004) *European Journal of Political Research*, Vol. 43, pp. 143-171; G.H. Addink, ‘Governance and norms: An interdisciplinary approach of good governance’, in: A.L.B. Colombi Ciacchi, M.A. Heldeweg, B.M.J. van der Meulen and A.R. Neerhof, *Law and Governance. Beyond the Public-Private Law Divide*, The Hague: BJU Publishers 2013.

concept of good governance, its principles, and its application. In 2004, a conference was organized in Utrecht, which addressed the diverse aspects of good governance in the realm of the European Union.²¹ The contributions discussed show that good governance is relevant as to the institutional and the formal and substantive aspects of the legal regimes at national, regional and international level.

The general concept of good governance seems shared by most of the member states. The 2005 Swedish report “Principles of Good Administration in the Member States of the European Union” analysed only existing legislation on good governance in the member states of the European Union.²² The intention of the Swedish government to start working on a European code applicable to the institutions of the Union formed the background of this research. This code was to be based on article III-398 of the then intended constitution of Europe. This article was originally suggested by a Swedish delegate with the aim of securing an independent basis for the right to good governance as a legal principle of the Union. Later, this right was included in the Charter of Fundamental Rights of the European Union and incorporated in the (Lisbon) Treaty of the European Union.²³ The background of this can be traced back to several resolutions of the Council of Europe and case-law of the European Court of Justice. Also, good governance was codified in two more documents already: the previously mentioned Charter and the Code of good administration of the European Ombudsman. Afterwards, so many documents followed that new inventories are needed. On the basis of the Charter and the Code, the Swedish research institute discerned a set of rights and obligations deemed essential to the concept of good governance.²⁴ These rights and obligations were put in a questionnaire of twelve questions that was circulated among the Swedish Embassies in the European countries.²⁵ The twelve questions correspond partly to the principles of good governance as understood today.

The Swedish research aimed to record if and to what extent the principles of good governance were made concrete in legislation in the member states of the European Union. The following resulted from this enquiry: 1. That a set of principles of good governance was shared among the member states of the Union; 2. That most of these principles were to a certain extent codified in legislation; 3. That the principles differ to a great extent as to their substance; 4. The interpretations of the principles vary among at least four traditions of administrative law; and 5. That it is a challenge to create European-wide legislation on good governance.

Good governance needs, as the introduction argued, an interdisciplinary approach, which includes differing expertise within the disciplines involved. For example, within the legal viewpoint, a distinction could be made between approaches from international, European, and national law. As to national law, administrative law is usually central. Also, good governance may have various functions in different fields like health care, education, financial services, the economic markets, development issues, and environment. Within the social sciences, distinctions are made between policy, politics, and public organization. Also there are specific areas in which good governance plays a role. The economic approach is marked by a strong emphasis on efficiency and effectiveness.

²¹ The central theme of the conference was: ‘Good governance and the European Union. Reflections on concepts, institutions, and substance’; see: D.M. Curtin and R.A. Wessel (eds.), *Good governance and the European Union. Reflections on concepts, institutions and substance*, Antwerp: Intersentia 2005.

²² Principles of Good Administration in the Member States of the European Union, *Statskontoret* 2005, No. 2005.4.

²³ Article 6-1 Treaty of the European Union.

²⁴ Principles of Good Administration in the Member States of the European Union, *Statskontoret* 2005, No. 2005.4.

²⁵ The twelve elements were: 1. The principles of legality, legitimacy, non-discrimination, and proportionality; 2. The right to impartial and fair trial; 3. The right to timely adjudication; 4. The right to be heard before any measure is taken against a private person or private entity; 5. The right to access one’s own file as to any measure aimed at him; 6. The general right to access to information and documents; 7. The obligation to include written motivations for decisions; 8. The obligation to inform all parties involved about a decision; 9. The obligation to name the legal remedies possible against a decision; 10. The obligation to document administrative procedures; 11. The obligation to keep up archives and registers; and 12. The obligation to be courteous to citizens.

This research investigates the question of how good governance is interpreted and applied by the member states and what the underlying values entail.²⁶ The different approaches presented above form the basic structure. The values are the ideals and motives that nourish the development of good governance. These values can be recognized in literature and by analysing and interpreting governmental acts. The literature, which is followed here, distinguishes six principles of good governance. We recall: properness, transparency, participation, effectiveness, accountability, and human rights. In governmental practice, two other principles can be found: integrity and soundness. We will explain that integrity is strongly related to three principles of good governance: properness, transparency, and accountability; soundness is similar to the principle of properness. In the following parts of the report these aspects are touched upon. As for the underlying values, a further distinction is made between instrumental and intrinsic values. The first refers to the meaning people ascribe to factual acts. The latter refers to the pursuit of the ‘good’ in general, even if this good is in fact hampered.

In the special good governance edition of the Netherlands Journal of Public Administration²⁷ it was noticed that good governance entails, in addition to identifying principles or values, the search for principles and including situations where principles or values are in fundamental conflict with each other. These conflicts need to be solved on a case by case basis, yet without arbitrariness or sole pragmatism. Furthermore, different approaches from the subjects mentioned may give rise to deeper reflections. This interrelation between principles and the relationship between principles and values are treated in greater detail somewhat later.

The concept of public values has become more visible in research and academic debates in various disciplines.²⁸ These values entail questions about good and evil, about ethics and morality, about principles and guidelines. Honesty, transparency, efficiency, profit and sustainability are examples of a great variety of values. These values need to be understood in dependence of the circumstances in which they have become manifest, and in relation to other values involved. Within the discipline of governance, it remains unclear how some values are positioned in relation to other values, such as private, political, and religious values. There are also values of public law, such as the value of public order, procedural order, morality and proper administration. In the balancing exercise, three approaches can be discerned: 1) a universal approach, which means that certain values are absolute. The disadvantage of this approach is the lack of flexibility; 2) A stakeholder approach, in which values are not static and absolute, and the balancing process is dependent on the relation between political actors; 3) An institutional approach, which means that the stability of certain institutions and sets of values must be guaranteed.²⁹

The term integrity often comes with good governance. Some countries give priority to integrity, maybe in part because of popular attention. In some countries integrity is closely related to the general quality of public governance. In other countries integrity standards are enhanced in order to reduce corruption. The term integrity is used in all such circumstances, though the exact meaning of the term integrity is not always made clear. Originally, integrity entailed certain ethical or moral standards referring to individuals. Now, integrity is also often used in institutional settings where individuals are employed. Many institutions have voiced their integrity values in mission statements, internal rules or guidelines, and codes of conduct. That being so, the scope of integrity values has become much larger in comparison with its original meaning. There is yet something else, which is that principles and values are more often valued in their own right in law and in legal systems. Thus, integrity is increasingly being

²⁶ G.H. Addink, Protection of public values: proper or good governance? ('Borgen van publieke waarden: behoorlijk of goed bestuur?') *Bestuurskunde*, 20 (2), 2011, pp. 12-22.

²⁷ Special edition of *Bestuurskunde*, 2011, nr. 2.

²⁸ G. de Graaf, A. Reijnders, Z. van der Wal, V. van Doevert, Good Governance as a management of tensions between different public values ('Goed bestuur als Management van spanningen tussen verschillende publieke waarden'), *Bestuurskunde*, 20 (2), 2011, p. 8.

²⁹ Special edition of *Bestuurskunde*, 2011, nr. 2.

discussed among legal scholars, which adds a clear legal and administrative legal dimension to integrity.³⁰

This leads to new questions concerning the relation between a legal approach of integrity and the many other approaches already in place; also to questions on how governmental and extra-governmental bodies should deal with the legal dimensions of integrity. As from a moral and ethical perspective, it is eventually the collective institutional integrity that counts far beyond formal codes, legislation, and other regulations. This is especially true for those representative institutions with officials that need to act exemplarily. If there is an issue with integrity, this causes a loss of confidence in the government. Unfortunately, there are already a significant number of reports on integrity issues at governmental institutions.³¹ These reports furthermore show that there is a need for clarity with regards to the principle of integrity so that both officials and citizens know what they are to expect.

In the textbook Integrity it is explained how integrity, legitimacy, and good governance relate to each other.³² Integrity as an integral element of (principles of) good governance and the government institutions with their constant search for legitimacy over time. It is however still difficult to provide for clear definitions of the separate terms. Societal changes demand flexibility of the terminology. There might also be certain differences, like a ‘thick’ and a ‘thin’ conception of these terms, potentially creating substantial differences. For example, integrity might fit in the thin conception, by meaning the absence of corruption and fraud; it might fit in the thick conception, by referring more to ‘good’ behaviour in general. The term legitimacy might refer to that which is written in laws or to what goes beyond, such as principles or unwritten or customary law. Good governance might refer to certain standards that institutions and officials must abide by, but it might also serve as an assessment framework for ‘checking’ authorities, such as Chambers of Audit, Ombudsman institutions, and the judiciary. The common element in integrity, legitimacy, and good governance is that these entail certain norms and standards. Although these concepts are differently used throughout academic disciplines, and must be to a certain extent, there is a need to develop a more comprehensive understanding of the concepts. Such a comprehensive understanding would enhance an interdisciplinary discussion. The main issue is to define how integrity and good governance correspond and overlap. Two other often mentioned values – suitability and openness – are directly related to good governance, specifically to the principles of effectiveness and transparency.

This research does not need extensive reflections about the rule of law and democracy in general. These are already dealt with in existing literature. It is relevant to explore and explain the interpretation and application of good governance as a set of values of public law, to address its interdisciplinary angles with regard to the following questions:

- How is good governance as a concept interpreted in the member states?
- How are the concept and the separate principles understood against the background of domestic values?
- How are integrity, effectiveness and openness understood from the perspective of domestic values?

Now we will discuss the research questions related to the applications and practices of the principles and values of good governance in the member states. This subject requires distinguishing between applications and practices of good governance as separate objects of

³⁰ J.H.J. van den Heuvel, L.W.J.C. Huberts, E.R. Muller (eds.), *Integrity. Integrity and integrity policy in the Netherlands (Integriteit. Integriteit en integriteitsbeleid in Nederland)*, Deventer: Kluwer 2012, The Chapters of the first part – *Integriteit in context* – in particular the chapters written by Huberts and Van Montfort.

³¹ See the letter of the Minister of the Interior and Kingdom Relations of 8 November 2013 with the research report of Tilburg University, and the discussions on the articles written for the Annual Conference of the Association of Constitutional Lawyers, Amsterdam, 13 December 2013, *Integriteit in politiek en bestuur*.

³² G.H. Addink, ‘Integriteit, rechtmatigheid en goed bestuur’ in: J.H.J. van den Heuvel, L.W.J.C. Huberts, E.R. Muller (eds.), *Integriteit. Integriteit en integriteitsbeleid in Nederland*, Deventer: Kluwer 2012, pp. 102-124.

study. It should also be studied what means are employed to pursue good governance and how these means are understood against the background of the whole national legal system. Underlying domestic values come into play here. This is why the countries have been studied separately first. Regional experts are invaluable sources of information, and some experts were recruited through the following networks.

The first European network is ReNEUAL which includes academics and lawyers from almost all countries of the Union. The network published the ReNEUAL Model Rules.³³ The second and largely European network is EGPA, a network of public administration experts from academia and government. Working group VII is of special importance as their work concerns the quality and integrity of public governance. During the annual EGPA conference in Speyer, 10-12 September 2014, papers were presented on subjects closely related to good governance and perspectives to integrity. In addition, there is a list of good governance experts resulting from earlier research for the Council of Europe on ‘Participation in Europe’. To finish the list, relevant contacts were suggested like ANTOCORRP. The European Ombudsman has provided the contact information of its country reporters throughout the European Union. So there was quite an extensive network involved, with experts from various disciplines involved.

The countries have been investigated individually and, for cultural, social, economic and comparative law reasons, were grouped into five regions. There is a certain cultural coherence also partly based on the history between the countries in each of the groups. Also from a social perspective the countries in each of the groups are related looking to the different parts of the society. Also from an economic perspective we see that most of the countries of each group have strong economic relations with each other. And finally it is from a comparative law perspective attractive to compare countries which are legally rather strong interrelated. The five regions are: *Northern Europe (NE)*: Denmark, Finland, Sweden; *Western Europe (WE)*: Belgium, Germany, France, the Netherlands, Austria, and Luxembourg; *Southern Europe (SE)*: Greece, Italy, Portugal, Spain, Cyprus, and Malta; *Central Europe (CE)*³⁴: Estonia, Latvia, Lithuania, Poland, Hungary, Slovenia, Croatia, Slovakia, The Czech Republic, Bulgaria, and Romania; *Anglo-Saxon Europe (AE)*: Ireland, the United Kingdom.

Then we come to the second, more substantial question to the meaning of application and practices of good governance, in which the understanding of the concept of good governance is in the end most essential. Therefore, it is necessary to emphasize the bond between values and principles. Good governance is operationalized through the principles of good governance. These principles represent certain elements of good governance, but may differ as to character. The latter – for instance the binding effect – refers to the different ways in which the principles are put into practice, with respect to different means of legislation and judicial interpretation.

Principles of good governance are usually laid down in policy documents, which are not generally binding, but can have a binding effect when such documents bear a sufficiently formal character. However, policy documents that have no direct legal effect may still be to a certain extent binding through the principles of proper administration. A different situation exists when a Code is meant to be exemplary to other governmental institutions. One example is the Netherlands Code “*Goed Openbaar Bestuur*”.³⁵ This Code entails certain starting points and aims all institutions should abide by. However, this Code invites further elaboration by the individual institutions concerned. The Code is explicit on the underlying and overarching values of public governance. The Code demands individual institutions to promote these values and be exemplary to other institutions.

³³ The ReNEUAL Model Rules are designed to reinforce general principles of EU law and identify – on the basis of comparative research – best practices in different specific policies of the EU; <http://reneual.eu/>.

³⁴ In the EU the abbreviation is: CEE (Central and Eastern Europe).

³⁵ Code Goed Openbaar Bestuur (Code Good Public Governance), Ministry of the Interior, The Hague 2009.

We have seen that good governance entails values for public governance, as general principles interpretable and applicable in public and private context. This concept manifests itself in several principles in different fields of study: legal principles, policy principles, and economic principles. Legal principles are divided into general principles and other principles. General principles refer to fundamental ideas concerning the order in society. Therefore, they are ought to be normative of a national legal system. But principles can be rather abstract. This led several national legal systems to require specific laws reinforcing those principles. But when principles are not made too explicit, they can still act as underlying values of the national legal system. As a consequence, these can be taken into account when interpreting the law. Some other principles are not really fundamental, but yet invaluable and therefore normative to the legal system.

Yet one other distinction is important: that between principles of administration and of policy development. The first refers to the institutional organization, while the latter is related to the whole process of developing policy. Policy principles need to be interpreted against the background of policy that has been made explicit. An example is article 191 TFEU. This article addresses the Union's goals with regard to the environment: maintenance, protection, and quality enhancement; the protection of the wellbeing of humans, careful use of natural resources, stimulating the development of international measures to enhance environmental protection, and fighting climate change. The same article mentions the principles fundamental to the Union's environmental policy: the principle of prevention, the principle that problems must be countered at their very source, the principle that those who caused specific problems pay. In general, the Union pursues a high level of protection, provided the different situations in the many regions of the Union. Principles of comparable character are found in other fields as well. Principles like this do not constitute legal principles.

With regard to this section, these questions are put in place:

- How are principles and values of good governance applied in the Union's member states?
- How might studying clusters of regions provide for a more complete understanding of how the principles and values are applied throughout the Union?
- What conclusions can be derived with regard to the practice of applying principles and values in the clusters of regions?

2.3 Application by different functional governmental institutions

The next subject is the interpretation and application of principles and values by different governmental functions and policy sectors. For this third part as well intensive contact with country experts is needed. Usually these experts work in specific functions and sectors. The international students – in the course *Principles of good governance* at Utrecht University were required to write a paper about applications and practices in the countries of the European Union. Most of the students came from or had strong relations with the country which was investigated. With use of a specific set of questions, each student wrote a country report.³⁶

With regard to different functions of government, the usual distinction between the legislator, the administration, and the judiciary is the starting point. In addition, attention should be given to the Ombudsman. Within those functions and institutions, there may be separate sectors to prepare, develop, stipulate, execute, and control policy. The aspect of policy control might be entrusted even to separate institutions. However, in this research, primary attention is given to the first three: the legislator, the administration, and the judiciary. When several principles and values refer to specific areas or fields of government, these should be explicitly mentioned. These areas know a classical division: Interior Affairs, Exterior Affairs, Defence, Economic Affairs, Financing, Environment, Education, Social Affairs, Justice, and Public

³⁶ See in the annexes a summary of the good governance cases in the country reports and the names of the students.

Health. In the Netherlands the Ministry of the Interior, the Exterior, Education, and Justice turned out to be the most frequent users of good governance terminology between 1974 and 2008.³⁷

Apart from executing law and policy, there is the phase of enforcing legal standards. This enforcement entails both supervision and sanctioning. These tasks are usually entrusted to departments of the administration. However, the judiciary can also be decisive when conflicts of enforcement occur. As Parliament – also a legislative body – must control the administration, it is also relevant to know how Parliament understands good governance and employs the written and unwritten principles in its controlling mandate. So many institutions are involved in this part of the research.

The starting questions are:

- Which functions/institutions are discerned in this research?
- How do these functions/institutions interpret and apply the principles and values of good governance differently or similarly?
- What differences and similarities occur in the specific policy fields with regard to the principles and values of good governance?
- Which choices are made in case of conflicting principles and values of good governance?

There might be several sorts of conflicts. Principles and values might be interpreted differently in each of the policy fields. Then there can be a conflict of interpretation of a single principle or value. Conflicts may also arise between principles, so they need to be balanced. In both cases, choices are made and that is the very subject of this part of the research.

The next part of the research can be properly conducted only when sufficient information has been gathered about the development of good governance in the countries of the Union. The country reports serve as the building blocks for this part of the research. Because good governance and its principles and values are applied in different governmental branches and in different fields of policy, interpretative divergence is conceivable. The question is how to deal with such divergences? The literature developed certain theories on how to deal with conflicts of principles. This is usually referred to as coping strategy. Principles are then used like guidelines and depending on the situation one or the other principle would prevail. Within an institution it might be needed that the board decides on choices. We previously distinguished between the application of principles as fundamental norms, the application of principles as norms for policy making and the application of principles in controlling the administration.³⁸

So the question is: how should apparent conflicts of principles be dealt with? Given the fact that there is no hierarchy whatsoever, other factors are decisive in balancing the principles. According to the Dutch legal system, principles could be more important – on a case to case basis – depending on their legal status. For example, principles that are laid down in international treaties or formal law need to be applied in several countries. Also, principles can be laid down in policy documents and may therefore be more important than principles that have no formal status. The rule is: the more a principle has a legal basis, the more likely it is that this principle outweighs other principles. Thereby, two other rules stem from case law. The first is that of specialty. In case law often a special rule has priority to a general rule but that can be regulated differently in the law. The second is less explicit, but not less important. When a court voids a decision on the basis of so-called principles of procedure, a governmental body may come to the same decision, as long as it follows the correct procedure. This is not the fact if the decision was made void on the basis of a principle affecting the merits. Therefore, it may be that the latter may prevail over procedural principles. But this balance is made on a case to case basis. Apart from these rules, might certain principles be more successful in certain

³⁷ G.H. Addink, *Goed bestuur*, inaugural lecture Utrecht University, Deventer: Kluwer 2010, p. 9.

³⁸ G.H. Addink, 'Borgen van publieke waarden: behoorlijk of goed bestuur?', *Bestuurskunde*, 20 (2), 2011, pp. 12-22.

situations? It should be assessed whether a certain conflict is general or particular in nature and if these conflicts can be solved according to the previously mentioned rules of the legal system. When the conflict remains, which principle proves to be most successful? Is there any order of urgency, outside hierarchy? What criteria are relevant? How do these interact with the character of the conflict? These questions are discussed with the country experts.

These are the questions regarding **principle-conflicts**:

- How could conflicts be distinguished between different interpretations of the principles by governmental actors and conflicts that are inherent to the principles of good governance?
- What choices are made with regard to the interpretation of good governance when conflicts appear?
- What choices are made in conflicts that relate to the scope of the different principles and values of good governance?

2.4 Differences in interpretation and application influencing countries' EU-attitudes

The previous sections concerned questions about the interpretation and application of good governance on a national level. Central to that were the six principles of good governance and how different governmental actors used these principles.

The question is: how do different interpretations and applications of good governance influence the countries' attitudes in European politics? There are several options. The first is that the interpretation of a principle is similar at national and European level. It is likely that the country's attitude regarding good governance is not significantly different. In the second situation, the interpretation can be a bit broader at the national level. There are, in this latter case, two options. The first is that European standards are considered as rules of minimum harmonization and that good governance is further developed at the national level. The second option is that a country encourages the further elaboration of the principles of good governance at the European level. However, it might also be the case that the interpretation of good governance is narrower at the national level. A country may then argue that the European interpretation limits itself to the interpretations given at the national scale. It might also serve as a motor for further elaboration of good governance at the national level.

These options are of course very basic. They need to be nuanced and differentiated. Indeed, when within a country very different interpretations exist, how might a national perspective on good governance even be defined? Also, several governmental actors may so far have been silent about interpretations of good governance. Counting with these possibilities, the following questions regarding **national interpretation reflecting European attitude**, are raised:

- How is a national interpretation and application of good governance reflected in the attitudes of countries when developing European standards of good governance?
- When these are reflected, is the interpretation broader or narrower on the national level?
- Which attitude did countries in the discussion on the interpretation and application of good governance at the European level choose? Is there an argument to change the interpretation at the European or at the national level?

What important differences exist as to the interpretation and application of good governance among the member states and what threats and opportunities do these causes for European politics? When the most important differences are found, how can these differences be explained and clarified and what do these differences mean for European politics?

Two of the principles of good governance are strongly related to the Rule of Law: properness and human rights. Participation and transparency are strongly linked with

Democracy. Two other principles are relatively new and related to the tasks and functioning of Institutions: effectiveness and accountability.

Four keywords are assigned to these principles in order to measure the differences among the countries. These keywords facilitate a quantitative analysis. A country gathers a point for each keyword: which keywords are present or absent given the country reports? It should become clear where certain keywords are absent. These are indicators of important differences among the European countries. Explanations are sought for these important differences. On the basis of these results we analyse what threats and opportunities are there for the further development of good governance in the European Union.

The following questions regarding **important differences between member states** are raised:

- What important differences exist in the interpretation and application of good governance among the member states or regions?
- How can these differences be explained?
- What threats and opportunities are there for the further development of good governance at the European level?

3. Importance of good governance in the practice of the EU member states

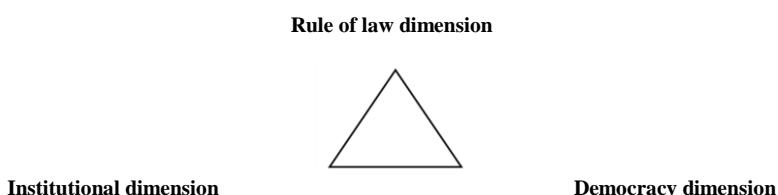
Good governance is of growing importance for the prosperity of countries. To understand this relation we first explain in more detail the three dimensions of good governance: the rule of law, the democracy, and the institutional dimension. The next step is to look at the principles of good governance, as parts of the motor of good governance. Some examples illustrate the application and practices of the principles and values of good governance in the member states. Finally, special attention is given to the relation between good governance and integrity.

3.1 Three dimensions, values and principles, and integrity

Good governance is increasingly seen as a key factor in ensuring national prosperity, as it creates reliability, predictability and accountability. The relationship between good governance and national prosperity is not always clear and opinions vary across countries. But it is seen that good governance is important for the economic and social development of countries and promotion of good governance also creates more open and democratic societies. Therefore it is important to learn lessons about the importance of good governance, the potential weakness of governance exposed by the financial crisis and how to respond to these weaknesses. What are the key aspects of good governance and are these universal or characteristic of individual countries? What is the role of factors such as the rule of law, transparency and accountability?

Good governance and good administration are theoretically not the same. Governance can be seen as the work of the government, which consists of all the powers in the state: the legislative, the executive (administrative) power, the judicial power and the fourth power such as the ombudsman and courts of audits.³⁹ But all the powers in the state have a function in relation to the work of the administration – the classic administration but also other sometimes independent institutions fulfilling a public task.⁴⁰ Therefore, we can say in this research that when we speak about good governance it is especially good governance related to the administration and therefore we do not distinguish here between good governance and good administration.

Good governance is a general concept in which we can distinguish three groups of values: The first group is the rule of law related values, the second group is the democracy related values and the third group is the group of modern institutional and constitutional values. These values can be seen as sources in the further development of the concept of Good Governance. In that development we distinguish here three main lines or dimensions: 1. Rule of law; 2. Democracy; 3. Institution.

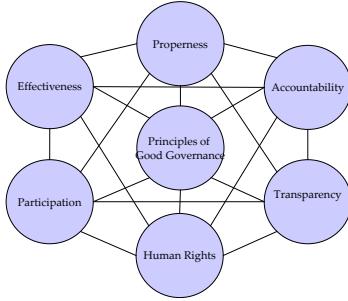


For each of these dimensions we are interested in the operationalisation like what are the steering elements of the rule of law? how can democracy be realized? And, what are conditions for institutional functioning.

³⁹ G.H. Addink, 'The Ombudsman as the fourth power. On the foundations of Ombudsman law from a comparative perspective', in: E.C.H.J. van der Linden & F.A.M. Stroink (eds.) *Judicial Lawmaking and Administrative Law*, Ius Commune Europaeum Vol. 52 (Intersentia 2005). Sometimes the civil servants or the media are qualified as the fourth power: R. Crinice Le Roy, *De vierde macht: de ambtelijke bureaucratie als machtsfactor in de staat* (VUGA 1969); R. Crinice Le Roy, *De vierde macht. Een hernieuwde kennismaking* (VUGA 1976); M.A.P. Bovens, *De vierde macht revisited* (Utrecht University 2000).

⁴⁰ Examples are independent administrative authorities, private entities fulfilling public tasks, and different forms of public private partnership.

The three groups of values have been developed further into six principles. The rule of law related principles are properness and human rights, the democracy related principles are transparency and participation and the modern value related principles are effectiveness and accountability. These principles are interlinked in theory in many different ways; here we focus on the most remarkable links.



It is also important to ask attention for the situation that the principles of good governance have been developed by different institutions and from different perspectives. In a more instrumental way these principles are instrumental norms for the administration, but good governance principles are also used in a controlling way by the controlling institutions, as norms for review. The legislation and the administrative regulation (including the policy rules in which principles have been implemented) are more related to the instrumental dimension of good governance; the controlling function of the judiciary and the ombudsman, and in a certain way also the court of audit, are using good governance principles as controlling norms. Put more simply, the first and the second powers are more focused on the instrumental dimension of good governance and the third and the fourth powers are more focused on the controlling dimension of good governance.

3.2 Functions and structure state in relation to shifts in development good governance

In a state we distinguish different powers and, in essence, each power of the state is working on the development of good governance norms. The development of the principles of good governance is strongly related to the function and structure of these institutions. The legislator mostly works on the development of good governance principles by writing general binding regulations containing norms with an *instrumental character and norms protecting citizens*. The administration tries to do so by *instrumental norms* in regulations including the codification of principles in policy rules or in internal directives which sometimes take the form of regulations or codes. But also in individual cases these principles are applied by the administration in other ways, for instance by requesting participation of the public in the decision-making process. The judiciary in particular is applying the principles of good governance in concrete cases by using them as *norms for review*. That is similar to how the ombudsman mostly works, which results in informal solutions or reports. The court of audit is applying these principles as *review norms* in relation to more general budget questions.

These principles are partly unwritten principles but more and more we find these principles in a written form in the constitutions, in the law, regulations, policy rules, directives, codes, case decisions, ombudsman reports and reports of the courts of audit. They are produced by institutions belonging to the first power in the state (legislator), the second power (the executive or administration), the third power (the judiciary) and the fourth power (the ombudsman, court of audit and the council of state). The legislator and the administration have a more instrumental character and the third and fourth powers are more related to the position of citizens. But they all produce good governance norms and they interact with each other. The good governance developments on decentralized level are also very relevant in this context and

– of course – the developments in the frame of the European Union and the international organisations.

3.3 Practices principles good governance in the member states

This subject requires distinguishing between applications and practices of good governance as separate objects of study. We must also look at what means are employed to pursue good governance and how these means are understood against the background of the whole national legal system. It is exactly at this point where underlying domestic values come into play. This is why each country should be studied separately first.

In the country reports based on desk-studies and some email communication with experts in the countries, all EU-countries were object of research. In the introduction of each country report, attention was given to the geographical and historical development of the country and the structure and the powers of the state. This information was relevant to find out if and where the concept of good governance and the specification can be found in the country. The products of the government were studied to find out how the principles of good governance are specified and how the instrumental and the controlling approach of good governance interact. Not only these more general lines of the specification of principles but also concrete cases were described to understand more clearly how these principles were operationalized in practices. These cases were related to each of the following combination of policy fields: 1. health and/or social policy; 2. Economic and/or financial policy; 3. Environmental and infrastructure policy; and 4. Education policy and/or policy on justice. An indication of good governance is formulated based on this information.

Then we come to the second, more substantial question of the meaning of application and practices of good governance, in which the understanding of the concept of good governance is in the end most essential. Therefore, it is necessary to emphasize the bond between values and principles. Good governance is operationalized through the principles of good governance. These principles represent certain elements of good governance, but may also differ as to character. The latter refers to the different ways in which the principles are realized as to different modes of legislation and judicial interpretation. Principles of good governance are usually laid down in policy documents, which are not generally binding, but can have a binding effect when such documents bear a sufficiently formal character. However, policy documents that have no direct legal effect may still be to a certain extent binding through the principles of proper administration. A different situation exists when a Code is meant to be exemplary to other governmental institutions.

We have seen that good governance entails values for public governance especially related to institutions fulfilling a public task. This concept manifests itself in several principles in different fields of study: legal principles, policy principles, and economic principles. Legal principles are divided into general principles and other principles. General principles refer to fundamental ideas concerning the order in society. Yet even when principles are vague, they represent underlying values of the national legal system. As a consequence, these can be looked at when interpreting the law. Some other principles are not really fundamental, but yet invaluable and therefore normative to the legal system. Can we find some indication of these principles? Van den Brink spoke about freedom, fairness, equality, independence, participation and dignity. In the public administration context about the quality of the administration the following norms are often used integrity, honesty, objectivity and impartiality. These principles and norms should be linked to the three dimensions of good governance.

3.4 Relationship between good governance and integrity

We have already noticed that the application of the principle of integrity expanded from the individual domain to the institutional domain. But there is something else going on. We see that these values have been increasingly frequent in the field of law. In international and European law, but also on national level, and in the general fields of constitutional, administrative and criminal law, but also in specific fields like municipality and civil servant law. The principle of integrity is found in the law, and this point to the link between law and good governance. There is not only a question of philosophical, ethical or historical perspective, but also of an administrative and legal perspective on integrity. This leads to interesting questions about the content of ethical and moral values of integrity, the question of the legal dimension of integrity, the relationship between these aspects and their evaluation by the classical administration itself and by independent external governmental agencies.

From an ethical perspective Huberts⁴¹ has classified – based on the literature and research – the various definitions of integrity into the following eight visions of integrity: 1. *Integriteit als heelheid* (integrity as wholeness); 2. *Integriteit als passendheid* (integrity as appropriateness); 3. *Integriteit als professionele verantwoordelijkheid* (integrity as professional responsibility); 4. *Integriteit als bewust moreel reflecteren en handelen* (integrity as a conscious moral reflection and action); 5. *Integriteit als waarde(n) incl. onkruikbaarheid* (integrity and value(s) including integrity); 6. *Integriteit als overeenstemming met (waarden in) wet en regelgeving* (integrity and compliance with (values of) law and regulations); 7. *Integriteit als overeenstemming met geldende morele waarden en normen* (Integrity and compliance with applicable standards and moral values); 8. *Integriteit als exemplarisch ideaal gedrag* (exemplary ideal behaviour).

These views are interesting because they show that the concept of integrity in the public sector can be seen from different angles. In his contribution Huberts essentially goes to the following four distinct concepts of integrity: (a) integrity as ethical understanding, (b) integrity as a social concept, (c) integrity as a moral concept, and (d) integrity as a legal concept. These concepts could be applied either in the individual or organizational context of public sector.

From a legal perspective the different normative frameworks for different parts of the government are relevant here.⁴² When it comes to norms of integrity, because of their different constitutional position, we have to distinguish between the political heads who have an election mandate, like ministers, deputies and councillors, the representatives of the citizens – parliamentarians – on local, provincial and national level, and the civil servants working on the three levels. But we also have to look to the outcome of the work done by those who are controlling these public institutions, like the court, the ombudsman and the court of audit, by their work done for the protection of citizens.

Some remarks about the terminology of integrity, ethics and values. What is the reason that so often the term integrity is used? It seems that the use of this word pictures behaviour that is appreciated. And indeed, the word integrity is linked to honesty, wholeness, and impartiality. But is it possible to be completely unbiased? In other words, when is a person prejudiced? It seems rather unlikely that there is anyone without a bias. Does the concept of integrity draw the correct picture or might it have a different content?

⁴¹ Leo Huberts, *The Integrity of Governance, What is, What we know, What is done and Where to go*, Palgrave Macmillan Ltd, 2014; L.W.J.C. Huberts, *Visies op integriteit*, in: *Integriteit: Integriteitsbeleid in Nederland*. (J.H.J. van den Heuvel, L.W.J.C. Huberts & E.R. Muller), Deventer: Kluwer 2012, p. 22.

⁴² G.H. Addink, *De toetsing van integriteitsschendingen getoetst*, in: S.C. Loeffen e.a. (eds.), *Integriteit in politiek en bestuur. De (on)mogelijkheden van het recht* (Staatsrechtconferentie 2013), Oisterwijk: Wolf Legal Publishers, 2014.

The following explanation is intended to clarify the relationship between integrity and ethics and values, and also integrity in relation to legal rules and legal principles. Ethics and morality are both related to norms and values. Norms and values are often mentioned as one entity while certain characteristics of the two concepts differ materially and therefore should be distinguished. Values are moral principles that have weight when making choices; they have experiences or characteristics which we seek to attain. Values are often formulated abstractly and positively. Standards keep more concrete rules for behaviour and are often formulated negatively. There is a distinction between moral norms, social norms and legal standards. Values are limitless, while standards necessarily draw a line. Standards force more people to conform. Standards would have a greater objectivity because their extent is determined, while values are subjective in nature. Values are "open" moral categories and may refer to multiple standards, and standards cannot always be traced to a specific value. Are standards indeed concrete and are values merely abstract? Are values positive and norms usually negative in nature? Are values more subjective in nature and are standards more objective? Clear answers may not be available, but an example could provide for some clarity.

An example of objectification can be found in a report of the Netherlands Academy of Science. First some generally accepted standards for academic practice can be found and then some violations of those standards are described in the paragraph with the title "Forms of violations of academic integrity". Scientific integrity consists of compliance with the general principles that must be adhered to in all branches of science. Some of these are: the careful execution of research and the publishing of relevant information, scientific research results should be published in literature accessible for the public, the scientific statements should be based on objective observation and logical reasoning, and in this sense value-free, the application of the results are not value-free and possible conflicts of interest should be made known timely. In mid-June 2012 the Netherlands Association of Universities has published comprehensive policies for academic integrity on its website. This includes a code with a national model for complaints on violation of scientific integrity and one national definition of violations of academic integrity. The Code provides details on the following five principles: precision, reliability, verifiability, impartiality and independence.

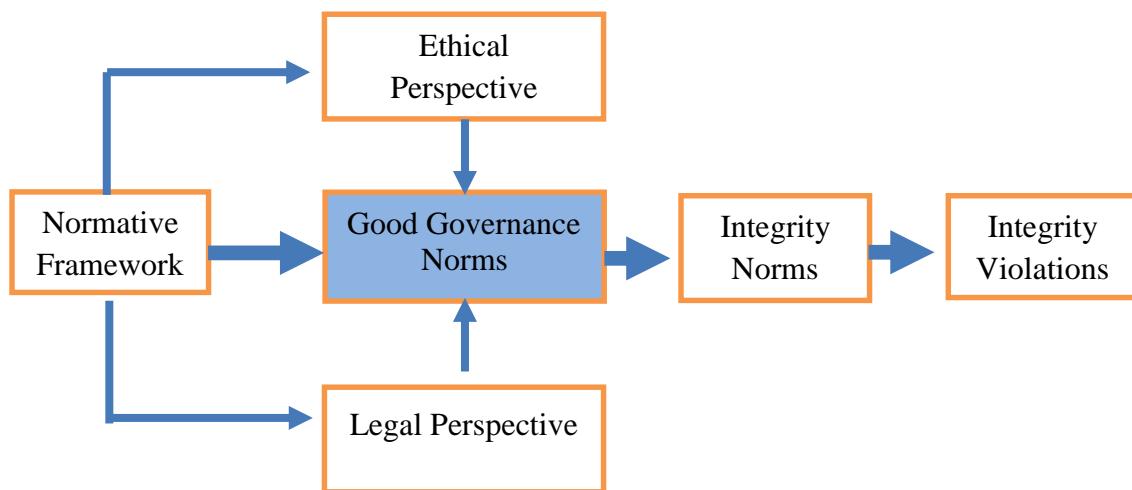
Based on this example we get some indication for answering the questions related to the principles of integrity and good governance and law. Integrity means in this context compliance with general principles that are endorsed. In the sector of social life it involves compliance with objective standards of integrity. And this brings us to the question about the relationship between law and integrity. Law consists not only of legal regulation but also legal principles. A question that arises is: are principles in the context of integrity consistent with the principles that we know in law? Moreover, it raises the question: are the norms and values related to integrity absorbed by the principles developed in the framework of the law or should these (partly) be distinguished? Do those requirements thus get a different content? What about the scope of the absorbed principles?

The expansion of the number of contexts in which integrity plays a role is remarkable. We find the concept in business and in government, in public but also in private life and see a process of broadening the integrity context. The result is that the concept is less clear. Perhaps the meanings given to this term in a very abstract level from its various applications still come together, but at the application level, within individual contexts, that will certainly not be the case. This is partly due to the difference in scope to be given. The concept of integrity is sometimes based on a narrow interpretation, and other times it has a much broader meaning. Besides the aspects in the narrow perspective we find also other aspects like collegiality, reliability, responsiveness, objectivity, decency, effectiveness, and efficiency. This varying

scope of the concept indicates the great importance of a precise definition in connection with the discussion between different disciplines. If we do not provide such a definition, then the concept of integrity becomes an amorphous and rather meaningless umbrella term, and there is great risk of not undertaking or misunderstanding it. Moreover, there is also from a legal standpoint a need for a clear definition so that clear legal standards can be put in place.

There is a difference between good governance and integrity. Integrity has both a legal and a moral component and is focused on (but not only) the actions and behaviour of the civil servants or public sector employees. As such, it includes some principles of good governance: properness, accountability, transparency or sometimes human rights. But good governance is much wider, as it includes the principles of citizen participation and scrutiny and also focuses on the human rights aspects of the conduct of state bodies and employees. In most of the country reports attention has been given to the implementation of fighting and preventing corruption, also in relation to promoting integrity and good governance.

The relationship between the ethical, legal and good governance perspectives in the public sector integrity.(Dadan Anwar, 2015)



So we see that integrity norms can be part of the good governance principles. But which principles are relevant in this context? To find out, we have to start with the right side of the picture: the violation of integrity norms. There we find two approaches. In the first, more classical approach integrity violation has especially to do with corruption and fraud in the context of the public and private sector. These notions have a specific content in criminal law. National Penal Codes often criminalise the active and passive bribery of domestic public officials, active and passive bribery in the private sector and active bribery during elections.⁴³ Definitions of corruption and fraud are very important. In practise, the following definition of corruption in the public context has been provided: ‘offering, giving, asking or receiving private gain because of the position or (non-)action of a public functionary’. Public functionaries are, in the context of penal law, civil servants as well as politicians, including governors and ministers. Elsewhere in the literature there are many other definitions of corruption.⁴⁴ The

⁴³ Provisions on active and passive bribery sometimes also apply to national judges, former civil servants, foreign civil servants, international civil servants, foreign judges and judges of international organisations, as well as future civil servants .

⁴⁴ Amsterdam Report 2005, Definitions, p. 4 report; the following authors gave their own definition of corruption: B.J.S. Hoetjes, *Corruptie bij de overheid. Een bestuurlijk en politiek probleem, sociaal wetenschappelijk beschouwd*, ‘s Gravenhage 1982; M. Johnston, The search for definitions: The validity of politics and the issue of corruption, *International social science journal* 1996, 149, p.321-335; L.W.J.C. Huberts, Bestuurlijke criminaliteit: Een inleiding, in: *Bestuurlijke corruptie en fraude in Nederland*, L.W.J.C. Huberts (ed.) 1992; A. Heywood, *Politics*, McMillan 1997; Gerald E. Caiden, O. P. Dwivedi, Joseph G. Jabra, *Where corruption lives*, Kumarian Press 2001; A. J. Heidenheimer, Michael Johnston, *Political Corruption, Concept & Context*, Transaction Publishers 2011.

following aspects are relevant in relation to the definition of corruption:⁴⁵ first, it is important to mention that the only relevant activities are those which are carried out in relation to the function of the person. So, purely private activities are not relevant for the discussion about the content of public corruption. Second, the interpretation of persons means that functionaries are civil servants, and so are politicians;⁴⁶ it concerns corruption in the public service. The third element of corruption is that there is a third party who will profit from the (non-)action of the civil servant and the civil servant will receive something in return for this (non-)action. This party will be mostly somebody outside the public organisation. The fourth aspect is that we can speak about corruption in situations where there is not only a situation of receiving gifts, but also the prospect of receiving such gifts.⁴⁷

Often in a report a difference has been made between corruption and fraud; however, the two terms are related because both terms concern personal favours or promises. With regard to fraud there are two parties involved: the fraudster and the harmed person or institution. Corruption takes place between three parties: the civil servant who profits, the public organisation and the person who induces the civil servant to benefit from his (non)actions.⁴⁸ This difference can also be found in the administrative case law⁴⁹ and administrative policy⁵⁰ of the Netherlands.

There is in general an important difference in the Netherlands between the Penal Code and Administrative Legislation. In the Administrative Legislation a distinction is made between a legal fact, a legal norm, a legal consequence, and a legal act. In the Penal Code attention is given to the punishable act and the punishment. From our point of view a fundamental point is lacking in the Amsterdam report: specifying the norm. We found only general reflections concerning integrity. In another report good governance principles were mentioned, but there was also no specification in relation to corruption.⁵¹ There is a need for a positive administrative law norm which can be found in the principles of good governance.

There is a second much broader approach of integrity violations which have been developed by van den Heuvel and Huberts⁵² and which have also been used by other authors.

The following types are distinguished:

1. **Corruption**, including bribing, 'kickbacks', nepotism, cronyism and patronage (with gain for oneself, family, friends or party).
2. **Fraud and theft** of resources, including manipulation of information to cover-up fraud.

⁴⁵ See Amsterdam Report 2005, p. 4 et seq.

⁴⁶ The notion of a civil servant has a broad interpretation in the case law (see HR 30 January 1914, W 9149; HR 1 December, NJ 1993, 354; HR 30 May 1995, NJ 1995, 620) and according to the law (Art. 84 Penal Code in which it is explained that also members of parliament and members of city Councils are civil servants in this context). In the law special attention has been given to situations before and the situation after the fulfilling of the function of civil servant.

⁴⁷ The definition provided here is more or less in line with the Dutch Penal Code, especially Articles 362 and 363. To explain this definition we have to study, first, these articles concerning gifts, promises or services and also the articles on bribery (Arts. 177 and 177a).⁴⁷ Then we have to highlight the difference between corruption and fraud and what the limitations of these factual illegal activities exactly are. We will see that not only the negative qualifications (corruption and fraud) are relevant, but that for an administrative (preventive and repressive) approach we have to look at the standards which are relevant for the administration. These standards are especially integrity and the principles of good governance and these norms complete the national and international legal framework. But in administrative law we have a more narrow definition of a civil servant and, as a consequence, also a more restrictive content of corruption in which there is only discussion about civil servants, politicians thereby being excluded.

⁴⁸ See Amsterdam Report 2005, p. 5; See Amsterdam Report 2005, para. 1.2.1.;

⁴⁹ Corruption: Central Appeals Tribunal 7 November 2002, 00/5791 AW, LJN AF3553; Fraud: Central Appeals Tribunal 13 November 2003, 02/1004 AW, 03/1535, LJN AN8809.

⁵⁰ See about Fraud-policy: *Kamerstukken (Parliamentary documents) II 2004/05*, 17 050-29 810, nr. 295.

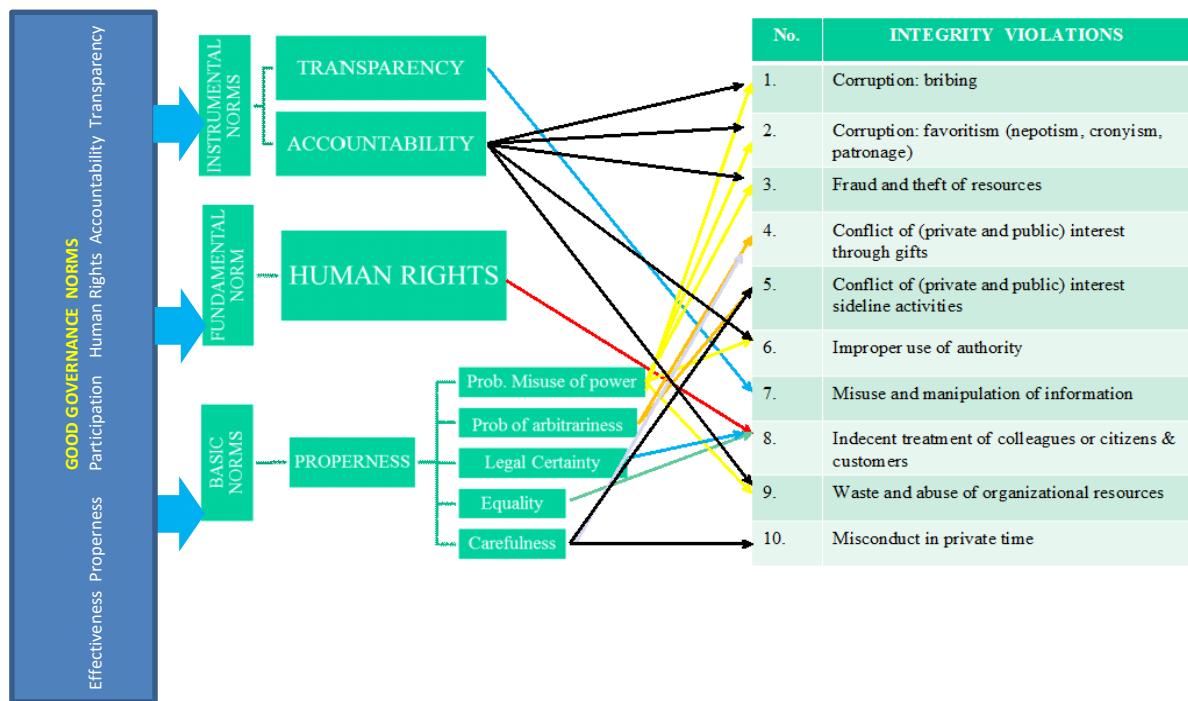
⁵¹ L.W.J.C. Huberts The Netherlands, *Corruption and Anti-Corruption policies in the Netherlands, an evaluation*, Transparency International, Berlin, 2001, p. 4.

⁵² Huberts' classification has subsequently been used in research into the occurrence of integrity breaches in local government (J.H.J. van den Heuvel, L.W.J.C. Huberts and S. Verberk, *Het morele gezicht van de Overheid: Waarden, normen en beleid*, Utrecht 2002) and into the implementation of integrity policies in local government (J.H.J. van den Heuvel and L.W.J.C. Huberts, *Integriteitsbeleid van gemeenten*, Lemma 2003); L.W.J.C. Huberts What can be done against public corruption and fraud. Expert views on strategies to protect public integrity *Law & Social Change* 29: 209–224, 1998.

3. **Questionable promises, gifts or discounts.**
4. **Conflict of interest** through jobs and activities, outside the organization (e.g. ‘moonlighting’).
5. **Improper use of violence** towards citizens, suspects.
6. **Other improper (investigative) methods of policing** (including improper means for achieving noble causes).
7. **Abuse and manipulation of information** (unauthorized and improper use of police files; leaking confidential information).
8. **Discrimination and (sexual) harassment;** indecent treatment of colleagues/citizens.
9. **The waste and abuse of organizational resources**, including time.
10. **Misconduct at leisure** (domestic violence, drunken driving, use of drugs etc.).

This list of violations of integrity norms has been linked to some principles of good governance by Dadan Anwar (2015). The following principles of good governance are relevant in this context: properness, human rights, transparency and accountability.

The applicability of good governance norms in situation of integrity violations (Dadan Anwar, 2015)



4. Good governance and the member states in theory: concepts and sources

In this chapter two concepts will be explained: the concept of good governance and the concept of the state. There is a close relation between these two concepts which can be found between government and governance. The good governance norms can be found in different legal documents which each have their own binding effect which can be different for each of the forms. These forms will be illustrated by concrete examples.

4.1 Concept of good governance

The concept of good governance is not a purely legal concept. Several academic disciplines are involved, whether interdisciplinary or not, in the study of good governance. There are publications on interdisciplinarity between social science, economics, and law.⁵³ For example, some social science researchers are preoccupied with a value charged approach to good governance. As for economics, mainly social economics are involved in the development of good governance. In the following, the role of the legal discipline is first elaborated. As all three disciplines overlap considerably, an integral interdisciplinary approach is needed to pursue further development of good governance and after that the non-legal disciplines. As to the legal discipline, three approaches are distinguished: the classical, the instrumental and the conceptual approach. The conceptual approach is especially interesting for good governance. This piece is to elaborate upon this, explaining three legal dimensions of good governance. These dimensions refer to the degree of abstractness of legal norms. The three dimensions are the meta conceptual, the macro regulation, and the micro review.⁵⁴

The meta conceptual dimension of good governance

The meta conceptual dimension is the most abstract, the typical academic dimension which can be seen as a basic and fundamental normative framework also for the legal work in practice. This dimension includes the abstract relation between good governance, the rule of law, and democracy. This relation concerns concepts and some specific aspects. Legality and legitimacy, and respect for human rights illustrate the relation between the rule of law, democracy, and good governance. On both topics important discussions are going on in France.⁵⁵

The *first* conceptual topic in the discussion is: what should be the consequences of the concept of good governance for the national legal system in general and the application of the principle of legality in particular from one side, and the development of a subjectification of the French case law from the other side.⁵⁶ R. Bousta has written in her PhD-study ‘*Essai sur la notion de bonne administration en droit public*’⁵⁷ about the enrichment of the concept of legality based on the notion of ‘la bonne administration’. One of the elements in this context is the enhancement of effectiveness. The *second* topic is concerned with good governance in the (administrative) review context, where the question is: should the focus be on the protection of subjective rights of the citizens or on the promotion of the objective norms?⁵⁸ To date, the focus

⁵³ G.H. Addink, Governance and Norms: An Interdisciplinary Approach of Good Governance, in: A.L.B. Colombo Ciacchi, M.A. Heldeweg, B.M.J. van der Meulen, A.R. Neerhof (eds.), *Law & Governance – Beyond the public-private law divide?*), The Hague 2013, pp. 241-272; G.H. Addink, *Goed Bestuur*, inaugural lecture Utrecht University, chapter 5, p.19 ff.

⁵⁴ G.H. Addink, Overview of Good Governance: overview and principles of properness (chapter 2, par. 2.3), in: *Human Rights and Good Governance*, SIM special 34, Utrecht 2010, p. 10; http://www.uu.nl/faculty/leg/NL/organisatie/departementen/departementrechtsgedeelde/organisatie/onderdelen/studieeninformatiecentrum/menschenrechten/publicaties/simspecials/Documents/SIM_Special_34.pdf.

⁵⁵ J.M. Sauvé, *L'avenir du modèle français de droit public en Europe*, Conseil d'Etat 2011, <http://chairemadp.sciences-po.fr/pdf/COLLOQUE/Intervention%20l-avenir%20du%20mod-le%20franais%20VD%20-2-.pdf>, last consulted 30-04-2015.

⁵⁶ L'arrêt Perreux du 30 octobre 2009. In France three PhD-studies on Good Governance have been published: N. Marty, *La notion de la bonne administration. A la confluence des droits européens et du droit administratif français*, Montpellier 2007; J. Lassalle, *Le principe de bonne administration en droit communautaire*, Paris-2 2008; R. Bousta, *Essai sur la notion de bonne administration en droit public*, Paris 2010.

⁵⁷ R. Bousta, *Essai sur la notion de bonne administration en droit public*, L'Harmattan Paris 2010, seconde partie, titre 2.

⁵⁸ M. Runavot, ‘La bonne administration: consolidation d'un droit sous influence Européenne’, RFDA, mars-avril 2010, pp. 395-404.

has been on the general interest as an objective norm and including the rigid legality approach.⁵⁹ Good governance is according to some authors a general principle of law and article 41 of the EU Charter on fundamental rights should be seen as the final step in the completion of fundamental rights and obligations of human beings. Sometimes this is qualified as the process of subjectification of administrative litigation. Important in this discussion is to understand the legal autonomous character of good governance in the state, which will be operated by the instrument of administrative citizenship. The formalisation of a right to good governance assures the modernisation of administrative law and the administration by legal means.

The macro regulations dimension of good governance

The macro regulations dimension concerns the codification of good governance in, for example, a Constitution, or a framework law of the central legislator. They mostly refer to the principles of properness, transparency, and accountability.

In France we have seen the interrelation between the national and European law on the role of good governance as a fundamental right. This is especially interesting as the right to good administration and good governance is embraced in the European context. As to the relation between good governance and democracy, both have an interest in the principles of transparency and participation. Four types of participation illustrate this interrelationship, which are the citizen's initiative, the citizen's panel, community level participation, and the referendum. Different countries, regions, and municipalities use different types, but all types are related to a good performance of democracy.⁶⁰ Still, some parliamentarians do not recognize the value of such additional aspects of direct democracy. Participation works best at the decentralized regional and local levels.

The micro review dimension of good governance

The micro review dimension concerns specific cases dealt with by the judiciary and ombudsmen in controlling the performance of the state's institutions. The Netherlands General Administrative Law Act (GALA) includes standards for micro-review by the court (art. 8:77) and the Ombudsman (art. 9:27):

'If the district court rules the appeal well-found, the judgment shall state what written or unwritten rule of law of general principles of law is considered infringed' (art. 8:77 GALA),

and

'If it is the opinion of the ombudsman that the conduct was improper, he shall state in the report what standard of conduct was violated.' (art. 9:27 GALA).

Good governance can develop through the norms articulated.⁶¹ The judge's focus is on (un)written law and principles, and the ombudsman's on the norm of propriety.

⁵⁹ B. Seiller, 'La renouvellement dans l'application du principe du légalité', in: *La subjectivisation du contentieux administrative*, Université Panthéon – Assas Paris II, par. II, 14 March 2011; B. Seiller, *Droits publics subjectifs des administrés et transformations contemporaines du contentieux*, in *Les droits publics subjectifs des administrés*, colloque de l'AFDA, Bordeaux, 2010, Litec, Colloques et débats, 2011, p.191.

⁶⁰ G.H. Addink, *Local and regional level participation in Europe*, Utrecht University 2009;

http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/provincie_utrecht_1_en.pdf. See the country reports in the annex 1-5.

⁶¹ See publication of J.E.M. Polak, chair of the highest administrative court in the Netherlands, in the liber amicorum of Van Dijk. The development of general principles of good governance in Dutch administrative case law, in: *Fundamental rights and principles; liber amicorum Pieter van Dijk; P. van Dijk, Marjolein van Roosmalen, G.J.H. van Hoof, M. Oosting*, Cambridge UK: Intersentia, 2013

We see not only on national but also on European level⁶² and the international level⁶³ these developments on the conceptual aspects of good governance but also on the controlling aspects which can be illustrated by a recent case of the European Court of Human Rights.⁶⁴ The case was about the grant and revocation of a pension by the Polish government which was alleged violation of article 1 of protocol no.1 to the European Convention. The Court's assessment of the case was in two steps: according to the first step, such a public authority should act lawfully and pursue a legitimate aim by using means in reasonable proportion to the aims. In the second step, of application of the principles of lawfulness and in relation to the proportionality of the means the Court states:

"In examining the conformity of these events with the Convention, the Court reiterates the particular importance of the principle of good governance. It requires that where an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities must act promptly and in an appropriate and above all consistent manner (...). It is desirable that public authorities act with the utmost care, in particular when dealing with matters of vital importance to individuals, such as welfare benefits and other such rights. In the present case, the Court considers that having discovered their mistake, the authorities failed in their duty to act speedily and in an appropriate and consistent manner (...)".

A crucial element in this decision is that the Court reiterates the particular importance of the principle of good governance. It requires that when an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities have to act promptly, appropriately and above all consistently. It is the first time that the Court has reached a decision that is explicit about the fundamental character of the principle of good governance. But the Court did more, as it specified the norms for the Polish government and for public authorities in general. It is desirable that public authorities act with the utmost care, in particular when dealing with matters of vital importance to individuals, such as welfare benefits. In the present case, the Court considers that the authorities, after discovering their mistake, have failed in their duty to act timely and adequately. The third element of relevance here is the proportionality analysis as presented by the Court. Now, we must explain the concept of the state and the link to the government and the activities of the different parts of the government in the context of good governance.

4.2 *Concept of the state and the link to government*

The state is sometimes defined as an organized community under one government and most often sovereign. But the state can also be used to refer to the branches of government within a state and the different types of states which can be distinguished. The two main types of states are the unitary and the federal states. Both types of states may be classified as sovereign states if they are not dependent on, or subject to, any other power or state. Other states are subject to external sovereignty or hegemony where ultimate sovereignty lies in another state.

In an unitary state, often decentralized units are created and abolished, and their powers may be broadened and narrowed, by the central government. Although political power in unitary

⁶² For those who are not that familiar with the European legal systems: European countries work together in the European Union which aims mainly concern the internal market and safety. The European Union is based on the treaty of Lisbon. Its Court is the European Court of Justice. Another institution is the Council of Europe, which aims mainly cover human rights and socio-cultural development. Its Court is the European Court of Human Rights which deals with claims based on the European Convention of Human Rights and its accompanying protocols.

⁶³ G.H. Addink, Good Governance A Principle of International Law, in: *What's Wrong with International Law* (Cedric Ryngaert, Erik J. Molenaar, Sarah M.H.Nouwen, eds.) Leiden 2015, pp. 288-303.

⁶⁴ ECHR October 2, 2012, nr. 5744/05, Czaja v. Poland.

states may be delegated through devolution to local government by statute, the central government remains supreme; it may abrogate the acts of devolved governments or curtail their powers. In federal states, by contrast, states or other sub national units share sovereignty with the central government, and the states constituting the federation have an existence and power functions that cannot be unilaterally changed by the central government. In some cases, it is the federal government that has only those powers expressly delegated to it. Many states are federated states which participate in a federal union. A federated state is a territorial and constitutional community forming part of a federation. Such states differ from sovereign states, in that they have transferred a portion of their sovereign powers to a federal government.

A state can be distinguished from a government. The government is the particular group of people, the administrative bureaucracy, which controls the state apparatus at a given time. That is, governments are the means through which state power is employed. States are served by a continuous succession of different governments. States are immaterial and nonphysical social objects, whereas governments are institutionalized groups of people with certain coercive powers. Each successive government is composed of a specialized and privileged body of individuals, who monopolize political decision-making, and are separated by status and organization from the population as a whole. Their function is to enforce existing laws, legislate new ones, and arbitrate conflicts. In some societies, this group is often a self-perpetuating or hereditary class. In other societies, such as democracies, the political roles remain, but there is frequent turnover of the people actually filling the positions.

4.3 Different sources of good governance

The good governance concept and the principles of good governance can be found in different sources of law. It is important to realize the legal character including the different legal binding effects of these sources can be different. Generally speaking, we find these aspects of good governance in constitutions, international treaties and law, in regulations explicitly based on the law and regulations implicitly or not at all based on the law, in individual administrative acts of the administrative authorities, the character of which can vary for each of them different. We find these norms of good governance also in decisions of the judiciary and in reports of the ombudsman and the court of audit. For each of the forms an example will be mentioned.

An example of good governance norms in the constitution can be found in Finland. Section 21 reads as follows:

'everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act'.

The guarantee of good governance is mentioned in the context of protection under the law and the right to a fair trial. The section states that the guarantees of good governance shall be laid down by an act. From this provision, the guarantees of good governance and good administration are elaborated in further legislation. Thereby, the requirements of good governance are also protected by section 124, which states that by delegating administrative powers to others than public authorities, *the guarantees of good governance* should not be endangered.

An example of a good governance norm in a treaty is Article 41 of Charter of Fundamental Rights in the European Union in which *the Right to Good Administration* has been specified:

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. 2. This right includes: the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of

professional and business secrecy; the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Several principles of good governance can be found in policy papers. An example is the principles which have been specified in the Netherlands Code for Good Public Governance:

1. *Openness and integrity.* The executive body is open and honest, and makes clear what it takes those qualities to mean. The executive body conducts itself in such a way as to set a good example, both within the organisation and beyond it.
2. *Participation.* The executive body knows the public's concerns and interests, and makes clear how it is responding.
3. *Appropriate contact with the public.* The executive body ensures that it and the rest of the organisation act in an appropriate manner in their contacts with the public.
4. *Effectiveness and efficiency.* The executive body announces the objectives of the organisation and takes the decisions and measures necessary to achieve those objectives.
5. *Legitimacy.* The executive body takes the decisions and measures that it is empowered to take and that are in accordance with the applicable legislation and regulations. Those decisions can be accounted for.
6. *Capacity for learning and self-improvement.* The executive body improves its performance and that of the organisation, and structures the organisation in a way that ensures this.
7. *Accountability.* The executive body is prepared to render an account of itself to stakeholders, regularly and willingly.

An example of a decision of an international court, the International Court of Human Rights: in examining the conformity of events with the Convention, *the Court reiterates the particular importance of the principle of good governance.*

"It requires that where an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities must act promptly and in an appropriate and above all consistent manner." "It is desirable that public authorities act with the utmost care, in particular when dealing with matters of vital importance to individuals, such as welfare benefits and other such rights. In the present case, the Court considers that having discovered their mistake, the authorities failed in their duty to act speedily and in an appropriate and consistent manner".

In the Netherlands Court of Audit Strategy 2010-2015 we find how good governance is interwoven with the work of this institution.⁶⁵

The institution focuses on *good governance* to improve the learning ability of public administration. They aim to strike a balance between anticipating requests from those around the Court and investigating issues the Court feels are important in the light of their statutory task. As for good governance from the United Nations perspective, there are eight characteristics. These are arranged in clusters of two by the Netherlands Court of Audit: 1. Democracy and rule of law; 2. Government performance and government operation. The particular *focus is on the performance and operation of central government and its associated institutions.* The four characteristics of good governance are: responsive, effective and efficient performance, and transparency and public accountability of operations. The Court uses these four characteristics to contribute to improvements in line with the Constitutional and statutory task and mission. In practice, the Court sees that performance and operation are closely interwoven. Whether or not an organisation is able to perform well depends in part on how well it operates.⁶⁶

⁶⁵ http://www.courtofaudit.nl/english/Organisation/The_Netherlands_Court_of_Audit_Strategy_2010_2015.

⁶⁶ Report Netherlands Court of Audit "Between Policy and Implementation. Lessons from recent research by the Netherlands Court of Audit (House of Representatives)", session II 2002-2003, 28 831, nos. 1-2.

5. Definitions: government, governance, good governance and principles of good governance

In chapter 2 we spoke about the concepts of “governance” and of “state” and the relations between these two concepts and illustrated good governance norms in legally relevant documents from different governmental institutions acting in different capacities. In this chapter the focus is on the definitions of the terms which are used in the context of this research: government, governance, good governance and principles of good governance.

5.1 Government and governance

Two aspects of governance have to be distinguished. The first is governance as an *act* of governing by persons or institutions. This relates to both decisions (public or private) that define expectations, grant power, or verify performance - which have legal consequences - and factual acts. So governance concerns acts with both legal and non-legal effects.

The second aspect of governance is the *process* of bringing about each of these acts. This process consists of different phases in a procedure. These phases have sometimes been described in detail in the legal context, and other times they have been developed in case law. And as a consequence we see differences in the description of phases in the respective policy fields. These procedural norms about each of the phases are binding.

Governance can be found inside a business or a non-profit organisation: governance then relates to consistent management, cohesive policies, guidance, processes, and decision-rights for a given area of responsibility. For example, managing at a corporate level might involve evolving policies on privacy, on internal investment, and on the use of data. But one should distinguish between the activities that are done by the public institutions and the activities in the public interest pursued as part of a public task. The last category of activities, for which the governments have and keep a special responsibility in relation to the civil society, can be executed by private firms or non-profit organisations. Starting from the classical defending of the country and the public order, this public responsibility can nowadays also be discharged by governmental activities from non-governmental institutions (like private companies or NGOs) in the different policy fields such as public health, education, and the environment.

One should further distinguish between *governance* and *government*: as explained, governance is an integral concept of all the acts. The government is the competent institution to carry out these acts. These institutions are mainly public, but may also be business entities or private socio-political institutions, such as families or tribes, and also NGO's. The term government is sometimes used abstractly as a synonym for governance, as in the Canadian motto, ‘Peace, Order, and Good Government’.

Origin of the word governance

The word governance is derived from the Greek verb κυβερνάω [kubernáō], which means “to steer”. This word was used by Plato for the first time as a metaphor. It passed on to Latin (gubernare) and was subsequently borrowed by many other languages. As a process, governance may operate in an organization of any size, from a single human being to all of humanity; and it may function for any purpose, whether good or evil, for profit or not. A reasonable or rational purpose of governance might aim to assure that an organization produces a worthwhile pattern of good results while avoiding an undesirable pattern of bad circumstances.

Perhaps the moral and natural purpose of governance consists of assuring, on behalf of those governed, a worthy design of good while avoiding undesirable consequences. The ideal purpose, obviously, would be to assure a perfect template of good without any negatively

perceived consequences. A government comprises a set of interrelated positions which govern and exercise power, which can include coercive power. A good government, following this line of thought, could consist of a set of interrelated positions exercising coercive power that assures, on behalf of those governed, a worthwhile design of good results. But the government should also avoid an undesirable pattern of unwanted circumstances, by making decisions that define expectations, grant power, and verify their performance. Politics provides for means by which the governance process operates. For example, people may choose expectations by way of political activity. They may grant power through political action and they may judge performance through political behaviour. Interpreting governance in this way, one can apply the concept to states, to corporations, to NGOs, to partnerships and other associations, to project teams, and to any number of humans engaged in some purposeful activity.

Different definitions of governance

The World Bank defines governance as the manner in which power is exercised in the management of a country's economic and social resources for development.⁶⁷ The World Bank Government Indicators define governance as the traditions and institutions by which authority in a country is exercised.⁶⁸ This considers the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies, the respect of citizens and the state of the institutions that govern economic and social interactions among them. An alternative definition explains governance as the use of institutions, structures of authority and even collaboration to allocate resources and to coordinate or control activity in society or the economy.⁶⁹

According to the United Nations Development Programmes Regional Project on Local Governance for Latin America, governance has been defined as the rules of a political system to solve conflicts between actors and adopt decisions, which refers to legality. It has also been used to describe the 'proper functioning of institutions and their acceptance by the public',⁷⁰ which is about legitimacy. And it has been used to invoke the efficacy of government and the achievement of consensus by democratic means. This corresponds to the principle of participation.

The state and politics; corporate organizations; three ways of governance

Some suggest making a clear distinction between the concepts of governance and of those of politics. Politics involves processes by which a group of people with initially divergent opinions or interests reach collective decisions generally regarded as binding on the group, and are enforced as common policy. Governance, on the other hand, conveys the administrative and process oriented elements of governing. Such an argument continues to assume the possibility of the traditional separation between politics and administration. Contemporary governance practice and theory sometimes question this distinction, premising that both governance and politics involve aspects of the exercise of power.

In general terms, governance appears in three broad ways. First, it appears through networks involving public-private partnerships or with the collaboration of community organizations. Second, by use of market mechanisms by which market principles of competition serve to allocate resources while operating under government regulation. Finally, through top-down methods that primarily involve governments and the state bureaucracy. These modes of governance – classical governance, market-oriented governance and partnership governance – often appear in terms of hierarchy, markets, and networks, but in democracies as well.

⁶⁷ http://info.worldbank.org/etools/docs/library/166856/UCMP/UCMP/session1-2_understanding.htm.

⁶⁸ D. Kaufmann, A. Kraay & M. Massimo, 'The Worldwide Governance Indicators: Methodology and Analytical Issues', *World Bank Policy Research Working Paper*, No. 5430, 2010 (September). Available at SSRN: <<http://ssrn.com/abstract=1682130>>.

⁶⁹ S. Bell, *Economic Governance and Institutional Dynamics*, Melbourne: Oxford University Press 2002.

⁷⁰ UNDP 2004; <<http://www.ejolt.org/2013/02/environmental-governance>>.

Corporate organizations also often use the word governance to describe both the laws and customs applied by the corporation and the manner in which boards direct a corporation. Fair governance implies that mechanisms function in a way that allows the executives to respect the rights and interests of the stakeholders. In the following sections, we make some distinctions between the terms governance and administration; good governance and principles of good governance; and principles of good governance and principles of proper administration.

5.2 Governance and administration

With regard to principles, less of a difference is made between governance⁷¹ and administration,⁷² although their content may slightly differ. Governance from a legal dimension means as explained before all the three powers: legislative, executive and judicial. Furthermore, the definitions of both may be somewhat diffused. For example, political science uses many different meanings of governance.⁷³ Of course, these meanings stem from specific approaches adhered to in political science. Who has the authority to determine a definition which can be generally applied? As to this point we find the critical remarks by the LSE Study Group on European Administrative Law.⁷⁴

Both governance and administration are used here in the specific context of administrative law in which a public dimension of a specific competence is from a public law perspective most relevant. This recognition is crucial.⁷⁵ In other contexts, governance may refer to non-public phenomena as well, for example the principles of corporate governance. We can still recognize comparable developments of the types of norms in these principles of corporate governance.

Public activities, however, are not only carried out by traditional administrative institutions, such as the province or a municipality, but also by independent administrative bodies and – under some conditions – by private institutions as long as their competence is derived from public law including tasks and they are not subordinated to other institutions in the exercise of their power. To all those actors, including the private institutions like companies and NGO's which are fulfilling public tasks, the principles of good governance are applicable. As far as administration is concerned, governance is here mainly linked with the principles of good governance.

Thus, governance is strongly connected with the methodology of the governmental activities in the postmodern minimal state, and covers the concept of good governance and the efficiency targets of new public management.⁷⁶ As governance lacks a normative connotation, it is preferable to employ the terminology of good governance in the normative legal discussion.

⁷¹ In dictionaries, the following definitions have been provided for Governance: exercise of authority; control; government; arrangement. Two other brief descriptions of Governance are the following: 1. the act, process, or power of governing; 2. the state of being governed. Two other descriptions: 1. the persons (institution) who make up a governing body and who administer something; 2. the act of governing, exercising authority.

⁷² In dictionaries we find the following definitions of administration in a governmental context: 1. the act or process of administering (management of a government); 2. the activity of a government in the exercise of its powers and duties; 3. the executive branch of a government; 4. office of an executive officer or body; 5. law management and disposal of a trust or estate; 6. dispensing, applying or tendering of something such as an oath.

⁷³ Robert Rhodes found at least six usages for the term governance: R. Rhodes, 'The New Governance: Governing Without Government', *Political Studies*, 44, 1996, p. 652. This political scientist primarily makes reference to the methodology of government in the post-modern, minimal state (= good governance); the other sets of meanings are concerned with systems analysis, socio-cybernetic systems and self-organising networks.

⁷⁴ LSE Study Group on European Administrative Law, *Taking Governance Seriously*, March 2002, para. 1.

⁷⁵ M.P. Chiti, 'Are there Universal principles of good governance?', *European Public Law*, Vol.1, Issue 2, 1995, pp.241-258;

H. P. Nehl, *Principles of Administrative Procedure in EC Law*, Oxford and Portland Oregon: Hart Publishing 1999, p. 17.

⁷⁶ LSE Study Group on European Administrative Law, *Taking Governance Seriously*, March 2002, para. 1.; R. Rhodes, 'The New Governance: Governing Without Government', *Political Studies*, No.44, 1996, p. 652.

5.3 Principles of good governance and of proper administration

An important difference exists between good governance and the principles of good governance. The principles of good governance have a strong normative connotation and may function instrumentally, whereas good governance is the underlying concept and the consequence of the observance of the principles. The literature varies in its terminology as to the principles of good governance. Sometimes the principles of proper or fair administration are used instead of the principles of good governance, which is not sufficiently precise. As the principles of good governance have a specific relevance to the administration, one may use the terminology of the principles of good administration in the specific context of the administration. The European Ombudsman also refers to principles of good administration in his assessment of deemed maladministration.⁷⁷ Principles of good administration include higher requirements⁷⁸ than principles of proper and fair administration⁷⁹ which constitute minimum standards. A violation of at least the latter would constitute illegality and unlawfulness.

Good governance at national, regional and international level

The concept of good governance is not only discussed in the context of European law, but also in the context of national and international law. The discussion is sometimes difficult to recognize as concerning good governance since the terminology and the applied set of principles differ. For this reason, it is important to have a common terminology and to apply a comparable set of principles, which of course may have a different relevance in each context. Nevertheless, there are some comparable tendencies in the discussions on good governance in fields of administrative, international and European law.

In relation to the international law debate, we would like to reiterate the different definitions of good governance which are provided by international institutions such as the UNDP,⁸⁰ UNCHR,⁸¹ OECD,⁸² IMF,⁸³ and the World Bank.⁸⁴ These institutions all work with the notion of good governance. Here, the principles of good governance have functioned as *an external field of normative reference*. In any case, the character of the discussions seems to go further than the legal field; therefore, the different academic disciplines had to cooperate to develop a consistent system of good governance, including the legal embedment.⁸⁵ In literature the idea of good governance as a principle of international law has been developed.⁸⁶

5.4. Good governance and the juridification of integrity

How should we evaluate the increasing attention from the field of law for those aspects which originated as ethical and moral standards? On a legal-theoretical level they were already always interested which can be seen in the discussion on the distinction between ethical and moral principles and the legal principles in the context of the discussion on fundamental legal principles.⁸⁷ But now we also increasingly see the interest of those who have a more positive

⁷⁷ Art. 195 EU Treaty.

⁷⁸ Properness, transparency, participation, effectiveness, accountability, and human rights; G.H. Addink, *Goed Bestuur*, Kluwer Deventer, 2010, p. 28; G.H. Addink, Good Governance, in G.H. Addink et al. (eds.), *Human Rights and Good Governance*, Utrecht, 2010, pp.11-134.

⁷⁹ Principles of fair administration are of the same level as proper administration.

⁸⁰ UNDP policy document, *Governance for Sustainable Human Development*, 1997.

⁸¹ UNCHR Resolution 1998/72.

⁸² OECD Development Assistance Committee, Part I and Part II, Paris 1997; OECD, *Governance in the 21st Century*, Paris 2001.

⁸³ IMF, *The IMF and Good Governance*, 2002.

⁸⁴ World Bank, *Good Governance and Fiscal Transparency*, 1994; World Bank, *Corruption and Good Governance*, 1997.

⁸⁵ Foqué who used the terms 'General Principles of Good Global Governance': see R. Foqué, 'Global Governance and the Rule of Law. Human Rights and General Principles of Good Global Governance', in L.K. Wellens (ed.), *International Law: Theory and Practice: Essays in Honour of Eric Suy*, The Hague: Martinus Nijhoff Publishers 1998, p. 39.

⁸⁶ G.H. Addink, Good Governance A Principle of International Law, in: *What's Wrong with International Law* (Cedric Ryngaert, Erik J. Molenaar, Sarah M.H. Nouwen, eds.) Leiden 2015, pp. 288-303.

⁸⁷ Key to Ronald Dworkin's Constructive Interpretation of legal practice is the conception of Law as Integrity. Law as integrity holds a vision for judges which states that as far as possible judges should identify legal rights and duties on the assumption that they were all created by the community as an entity, and that they express the community's conception of justice and fairness. According to law as integrity, proposition

legal approach.⁸⁸ That attention is mainly driven from an instrumental point of view in which there is also a need to anchor the ethical and moral standards and values in law with legal enforcement mechanisms. It then proceeds to monitor the compliance with those standards and to the sanctioning violations of these norms through administrative or criminal enforcement mechanisms. Then there is the development of another kind of legal instruments, namely a set of instruments aimed at the preventing the violation of the integrity requirements, including corruption.⁸⁹ Some of these instruments are the different codes in the area of integrity and good governance.

In relation to the integrity actors, in addition to the discussion on integrity and good governance in relation to civil servants and politicians, there is also a discussion going on about judicial integrity. That would be an important argument – instead of a limited understanding – to aim for a broader concept of good governance which includes all State actors. In short, besides administrative integrity, there is also the discussion on judicial integrity;⁹⁰ but legal questions also arise regarding integrity in businesses. This contribution focuses on the administrative-legal integrity, so integrity aspects which are related to those who work in the public administration.

External supervision of integrity and good governance

In addition to the interpretation and the development, by the administration itself (the internal perspective), of requirements of integrity and good governance in relation to each other, and their enforcement, we also see increasing attention from outside the public administration (the external perspective). Checking and assessing these requirements shall be carried out by independent bodies such as courts⁹¹, the Court of audit⁹² and the National Ombudsman⁹³. That development is not irrelevant because a judgment is given in an independent way; thus, what it has to say about the standards of integrity and good governance will be further developed.

The juridification of integrity also raises a more fundamental issue: How do the requirements from the legal perspective (written and unwritten law) link to the requirements coming from the ethical and philosophical perspective? To answer that question satisfactorily will depend on the perspective and the focus. Enlightening for the discussion is in any case a clear view of the contents of the terms to prevent misunderstandings about the conceptual frameworks which are used by the various disciplines. Relevant is a clear view on the relationship between integrity and good governance and through an integration of the legality of integrity with the legal aspects of good governance we obtain a more complete picture of the meaning of the concept of integrity through good governance.

of law are true if they figure in or follow from the principles of justice, fairness and procedural due process, which provide the best constructive interpretation of the community's legal practice.

⁸⁸ Originally the focus was restricted to art. 2:4 of the Netherlands General Administrative Law Act (GALA) - 1. An administrative authority shall perform its duties impartially. 2. An administrative authority shall ensure that persons associated with or working for it who have a personal interest in a decision have no influence on decision-making in the matter - later the focus was broader and related to all the good governance norms codified in the GALA.

⁸⁹ See the letter of the Minister of Interior of July 11, 2012 to the parliament about the GRECO evaluation which was focus on the prevention of corruption in the Netherlands.

⁹⁰ A.F.M. Brenninkmeijer, *De instrumentele rechter*, NJB 2011, p. 1056; A. van 't Laar, *De ongekrukte rechter?*, in: N.J.H. Huls (red.), *Ongedeeld integer*, Den Haag: BJU 2009; J.E. Soeharno, J.E., *The integrity of the judge: A philosophical inquiry*, diss. Utrecht University, Farnham 2009; J.E. Soeharno, J.E., *Blind vertrouwen: De norm van rechterlijke integriteit*, Rechtstreeks 2011, Den Haag.

⁹¹ See specific case law Central Appeals Tribunal about art.125ter Ambtenarenwet (Civil Servant Act) and the more general case law about principles of proper administration.

⁹² Report of the Court of Audit, March 25, 2010, Situation Integrity Central Government 2009, II, 2009-2010, 32341, nrs. 1-2.

⁹³ I. Mos, *Integrity according to the National Ombudsman*, Master thesis Utrecht University, February 2011.

6. Development of a normative framework

In this chapter we develop an interdisciplinary approach of good governance. The starting point is the notion that there is an interrelation between good governance as a fact and good governance as a norm. From that we develop three lines of reasoning – the legal, the sociological, and the economic (from here on termed “the three subjects”) – which come together in the interdisciplinary approach of good governance. In this approach as worked out here the starting point is the legal perspective, and from there the links are made with the disciplines of social science and economics. The results of the survey of these two disciplines are linked with and inspire the legal approach.⁹⁴

6.1 From different approaches to an interdisciplinary approach

There are some interesting institutional, instrumental, and policy developments related to the functioning of government which cover different aspects of the three subjects. In legal science, increasing attention has been given to the instrumental aspects; in social science we have witnessed the development from government to governance; and in economics there is a rising interest for the relation between the financial sector and the real economy on the one hand, and the role of the government in that context on the other hand.

Which new ideas have been developed during the last couple of years about the interconnection between these fields? Can we actually speak about an interdisciplinary approach of good governance? Some of the answers can already be shortly outlined. From a mono-disciplinary approach, the researcher in each discipline adheres to its own traditional perspective and methodology. The legal perspective draws attention to the strictly legal aspects of laws and regulations and their normative foundation. The social scientist researches phenomena of society and human behaviours in the context of law and regulation the focus is on the law in action, with special attention to the effectiveness of a pursued aim. The economist focuses on the balance of costs as to the pursued aims and the chosen instruments.

Although these three disciplines can be analysed separately, within the context of good governance they are complementary to each other. The topic of good governance lends itself well to such an approach, as in practice there is usually no distinction between the factual acts and the norms related to these acts. The word *effectiveness* is a step to the cohesion between fact and norm in the context of good governance.

Effectiveness has two sides to it: the concrete results of a certain activity (the factual side), and the link between the aim and its realization (the normative side - the principle of *effectiveness*). Not even the judiciary makes this distinction sharply, as noticed in the literature.⁹⁵ The interdisciplinarity makes it necessary to work on comparable aspects and terminologies. We recognize in each of the fields two types of distinctions: a) instrumental and fundamental, and b) qualitative and quantitative aspects. Both are elaborated on later in this part.

There are several research aspects of good governance common to the three disciplines: the choice of the type and distribution of administrative instruments, the application of the administrative instruments, and the monitoring, control and legal protection of this application. In this part we will first examine the legal nature of the concept of good governance and the

⁹⁴ G.H. Addink, Governance and Norms: An Interdisciplinary Approach of Good Governance, in: A.L.B. Colombo Ciacchi, M.A. Heldeweg, B.M.J. van der Meulen, A.R. Neerhof (eds.), *Law & Governance – Beyond the public-private law divide?*), The Hague 2013, pp. 241-272; G.H. Addink, *Goed Bestuur*, inaugural lecture Utrecht University, chapter 5, p.19 ff.

⁹⁵ J.E.M. Polak, *Effectieve bestuursrechtspraak*, inaugural lecture Leiden, Deventer: Kluwer 2000; R. Widdershoven, *Het beginsel van effectieve rechtsbescherming*, Vol. 1, Utrecht: Europa Instituut Utrecht 2011, pp. 103-114; Anoeska Buijze, *The Principle of Transparency in EU Law*, diss. Utrecht 2013; Melissa van den Broek, *Preventing Money Laundering, a legal study on the effectiveness of supervision*, diss. Utrecht 2015.

principles on which this concept is based. We address some questions which were left unanswered in other works, relevant in this context, as follows: 1) what is the relationship between good governance as a fact and a norm? 2) What does and what does not form part of the legal character of good administration? 3) Is it possible to answer legal questions in respect of good governance with just one or different answers? 4) What is the difference between justice and law in the context of good governance?⁹⁶

6.2 Good governance as a fact and as a norm - and the interrelation

Good governance as a general description of governments activities can be seen as the factual side⁹⁷, and the meaning of good governance as a normative standard for the government depends on the perspective from which the distinction of fact and norm in the context of governance is approached.⁹⁸ Again, in practice, government bodies do not make this distinction. This means that the legal instrument and the related legal norm are strongly intertwined, and that policy (the fact) and justice (the standard) are closely related.

The external position of the judiciary, the National Ombudsman and the Court of Auditors concerns not only what exactly happens in the law with respect to good governance but also with what the law should mean. So that perspective is slightly different: what does a law or a regulation tells us about good governance? This approach means that the fact and the standard are separated, which is undesired and can be avoided by using a principles-based approach to good governance. The legal aspects are associated with the policy and with what is called the pre-positive meaning of the law.⁹⁹

In the literature it is noted that the meaning of the term "law" exhibits a certain duality. On the one hand it depicts the idea of what law in true is (natural law); on the other hand there is the positive law in force in particular circumstances of place and time.¹⁰⁰ Despite this duality, both senses shape an analogue unit. Natural law is the pre-positive meaning of all positive law. Still, the two are strongly interrelated. The concept of good governance and its principles cannot exist in the absence of their embodiment in positive law.

6.3 Good governance, law, and justice

Which aspects of good governance are legal in nature¹⁰¹ and which are not? Both aspects are relevant in this research. We have already written about the specified principles of good governance.¹⁰² These principles are approached from a Dworkinian perspective, which means that there is an interpretative concept allowing clarity regarding what is considered to be right or not. Crucial in this approach is a discretionary interpretation of the principles. In his view, there is only one possible interpretation; in my opinion this view depends on the particular circumstances and the institutions involved. Thus these principles and their interpretation should be clarified consistently and constantly traced back to the content and scope of the principles of good governance.

Is it actually possible to always answer legal questions in relation to good governance consistently or do we have to answer them on a case-by-case basis? As the interpretation of the

⁹⁶ G.H. Addink, 'Principles of Good Governance: Lessons from Administrative Law', in: *Good Governance and the European Union* (Deirdre Curtin, Ramses Wessel, eds.), Antwerp: Intersentia 2005, p. 20.

⁹⁷ Some social scientists deny the additional value of "good" in the composition "good governance" and for them "good governance" is just "governance". See for example M.S. de Vries, *Was Ella Fitzgerald Right?: Good (enough) Governance and the Effectiveness of Government*, Aruba: University Aruba 2011.

⁹⁸ G.H. Addink, 'Het concept van 'goed bestuur' in het bestuursrecht en de praktische consequenties', *Ars Aequi*, April 2012, pp.266-275.

⁹⁹ E.M.H. Hirsch Ballin, *Publiekrecht en beleid*, diss. Amsterdam UvA, Alphen aan den Rijn: Samson 1979, p. 38.

¹⁰⁰ E.M.H. Hirsch Ballin, *Publiekrecht en beleid*, diss. Amsterdam UvA, Alphen aan den Rijn: Samson 1979, pp. 39-40.

¹⁰¹ Good governance as such comes from political science, but during the further development of this concept it comes in the sphere of (natural) law and there we see new aspects like the principles of law. The aspect of the principles of good governance as principles of law are legal in nature.

¹⁰² G.H. Addink, 'Principles of Good Governance: Lessons from Administrative Law', in: *Good Governance and the European Union* (Deirdre Curtin, Ramses Wessel, eds.), Antwerp: Intersentia 2005, pp. 28-31.

principles of good governance develops and thus the clarity regarding the principles grows, answering legal questions related to these principles becomes easier. Moreover, this consistency of interpretation is also determined by the general rules, including the policies, which have appeared over time with regards to good governance.

In what ways does justice differ from law in the context of good governance? Here, we touch upon the relationship between different academic disciplines and some approaches which are elaborated in the following chapters. From an ethical approach, there is a critical reflection on the legal acting and an attempt to establish criteria for qualifying an act as right or wrong. From a moral approach, the focus is on finding out what is perceived as correct and desirable in a social context. From a legal approach, it is to find out if the conduct is in accordance with the law. If that is not the case, there are, in general, legal means to enforce legal standards. Justice is not only a concept in ethics and political philosophy, but also in law. A difference between law and justice exists only insofar as the possibility of enforceability is concerned.

Legal discipline, law and justice; classical, conceptual, and instrumental approach

In relation to any academic problem we can distinguish between a specialized and an integrated academic approach.¹⁰³ A specialized approach is restricted to one academic discipline and an integrated approach includes two or more academic disciplines (interdisciplinary). Some would be suspicious if one or the other discipline were marginalized in a combined research. However, the observations and conclusions of other disciplines with which one is not acquainted may also be perceived as enrichment.

In the field of law we find two tendencies. The first is the growing interconnectivity of traditional fields of law. Public and private law are no longer strictly separated – as it is often seen from a classical approach – and also, administrative law and criminal law converge on an increasing number of issues. The second tendency is to study law from a functional perspective (e.g. banking law, environmental law, social law etc.). As these categories are highly specialized, they are often in need of further legal research. In the next section, we describe what interdisciplinarity means in the field of law and which types can be distinguished. Interdisciplinary research is about cooperation between different academic disciplines. Cooperation is not self-evident. In interdisciplinary research we start with one discipline to which we make links and add different perspectives or methods of other disciplines. Difference in terminology, as well as in approaches and methodologies may cause a lack of clarity and even inconsistent research results. So the disciplines involved should mutually inform each other of the significant features of their discipline in order to develop a clear and consistent research framework.

Legal discipline

The core business of legal science is systematization, theorization, and evaluation of positive law and its doctrinal foundations. Legal science should also be prescriptive in the sense that corrections and normative recommendations are included. Law is quite a broad notion that needs to be explained shortly. From an anthropological perspective, a social norm is perceived to be legal if its breach is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting.¹⁰⁴ From a sociological perspective, law consists of legal rules, and order exists if they are externally guaranteed by the probability of coercion – physical or psychological – to bring about conformity or avenge violation, and is applied by a staff of people holding themselves especially ready for that purpose.¹⁰⁵

¹⁰³ Ars Aequi special , Multidisciplinaire bestudering van de rechtswetenschap 2007.

¹⁰⁴ E. Adamson Hoebel, *The Law of Primitive Man, A study in Comparative Legal Dynamics*, Cambridge: Harvard University Press 2006, p. 28.

¹⁰⁵ M. Weber, *Max Weber on Law in Economy and Society*, Cambridge: Harvard University Press: 1954, p. 5.

All these characterizations point to several features of what law is. However, it is not easy to have one overall definition. But we can indicate approximately what the function of law is: the organization of society, the settlement of disputes and the maintenance of order and rules and achieving desirable goals. The underlying objective of law is to realize justice, which can be perceived as the higher aspiration of legal science.¹⁰⁶ That justice realization might be approached by a balance of all interests involved, in the light of general principles and sub principles. A general rule should of course be effective as well.¹⁰⁷ Thus, law has a normative dimension. Under the current law, many norms and standards are open and flexible; but this flexibility must meet the requirements of justice, legal certainty, and effectiveness.¹⁰⁸ The aim of a regulation is central, think of the ban of *détournement de pouvoir*.

Legal science examines if the rules meet the demands of a society and how they can be improved. Although a specific law is often the focus, general principles, jurisprudence and doctrines are involved as well. Law and practice are constantly interacting with each other. Law must often be interpreted. Four general methods of interpretation are dominant: the grammatical, systematic, historical and the teleological method. The scope of a specific regulation is also the object of study. Methodologies are a constant concern for the legal discipline, especially because of this discipline's very specific nature. In conclusion, the scope of the legal discipline extends far beyond the mere application of laws.

Three legal approaches: classical, conceptual, and instrumental

In the classical approach, distinctions are made between private and public law and between national and international law. However, we can see more attention being paid to the conceptual and instrumental approaches of law because of certain developments. Nowadays more attention is paid to the functional fields of law rather than to the classical dichotomy of public and private law. These functional fields often refer to the instrumental aspects of the law and the legal norms in the context of these fields. This new perspective on the law raises new questions about the differences and the relation between the functional fields of law. Furthermore, legal norms have increasingly become internationalized, both by regional and international dynamics.

In this report, a conceptual framework is used to explain possible courses of action or to present a preferred approach to an idea or thought. Conceptual or theoretical frameworks are a type of intermediate theories which attempt to connect all aspects of inquiry – e.g., problem definition, purpose, literature review, methodology, data collection, and analysis. Conceptual frameworks can provide the underlying coherence needed for empirical inquiry. The concept of good governance has been analysed by a description of the relevant elements – “governance”, “administration”, “good governance”, “principles of good governance” – and making links with the different functions of the government bodies in the state. We described the approaches of good governance in the most relevant academic fields of law, social science and economics and the interrelations between these fields and from there we developed a normative framework. The 28 EU countries were grouped in five regions in which the countries were interrelated, on each of the countries the framework will be applied in answering the different research questions and presenting the conclusions.

As to the instrumental approach, several aspects are important. There are, for example, legal and non-legal policy instruments that refer to the norm and its realization, but the focus is on the instruments which achieve policy goals by law. Then, several types of legal instruments exist. The first type is general rules, individual decisions, private contracts, factual acts, planning and programming. The second type of instruments is related to enforcement.

¹⁰⁶ E.M. Meijers, *De taak der rechtswetenschap ten aanzien der vrije rechtspraak*, rede Leiden 1910, Haarlem 1910; see also *Verzamelde Privaatrechtelijke Opstellen*, volume 1, Leiden 1954, p. 8.

¹⁰⁷ C. Stolker, ‘Ja, geléerd zijn jullie wel!: over de status van de rechtswetenschap’, (2003) *Nederlands Juristenblad*, Vol. 11, pp. 766-778.

¹⁰⁸ G. Radbruch, ‘Legal Philosophy’, in: K. Wilk (ed.), *The Legal Philosophy of Lask, Radbruch, and Dabin*, Cambridge: Harvard University Press 1950, pp. 43–224.

Therefore, the legal and non-legal effects of their use should be figured out and assessed. Further, the first type of instruments is related to primary and secondary norms and to the specific procedures applicable; the second type of (enforcement) instruments can also be used by the administration. The use of supervising instruments may differ, especially if supervision is assigned to an independent institution.

Concluding remarks

The function of law is the organization of society by using instruments from a conceptual perspective, the settlement of disputes, the maintenance of order and rules and achieving desirable goals. In the field of law are two tendencies: the first is the growing interconnectivity of traditional fields of law. Public and private law are no longer strictly separated and also administrative law and criminal law converge on an increasing number of issues. The second tendency draws more attention to the functional approach of law.

The core business of legal science is systematization, theorization, and evaluation of positive law and its doctrinal foundations. Legal science should also be prescriptive in the sense that corrections and normative recommendations are included. Three important legal approaches are the classical, the conceptual and the instrumental. In the classical approach, distinctions are made between private and public law and between national and international law. However, we can see more attention is paid towards the conceptual and instrumental approaches of law because of certain developments. Nowadays more attention is paid to the functional fields of law rather than to the classical dichotomy of public and private law. These functional fields of law often refer to the instrumental aspects of the law and the legal norms in the context of these fields. This new perspective on the law raises new questions about the differences and the relation between the functional fields of law. Furthermore, legal norms have increasingly become internationalized, both by regional and international dynamics. The sources of the norms have been extending the scope of these questions to the international discourse as well.

6.4 Good governance and the social sciences

Social science is an umbrella term that refers to a multitude of disciplines and sub disciplines including, *inter alia*, anthropology, criminology, economics and public administration. It also includes elements of other fields, such as law. There are two main types of social scientists: the positivist and the interpretivist social scientists.

The positivist social scientist uses methods resembling those of the natural sciences, especially empirical methods, as tools for understanding society. An interpretivist social scientist, by contrast, may use social critique or symbolic interpretation rather than constructing empirically falsifiable theories, and thus questions science in its broader sense. In modern academic practice, researchers are often eclectic, using multiple methodologies, for instance, by combining the quantitative and qualitative techniques. The combination is not set in stone but is fluid.

A qualitative approach: the value theory

The starting point for the qualitative social science approach is the value theory, a term used in different ways in philosophy. In its broadest sense, value theory is a catch-all label used to encompass all branches of philosophy deemed to encompass some evaluative aspects. In its narrowest sense, the value theory is used for a relatively narrow area of normative ethical theory. In this narrow sense, the value theory is roughly synonymous with axiology. Axiology can be considered to be primarily concerned with qualifying which things are good and what the degree of their goodness is. For instance, a traditional question of axiology concerns whether the objects of value are subjective psychological states, or objective states of the world.

But in a more useful sense, the value theory designates the area of moral philosophy that is concerned with theoretical questions about value and goodness of all varieties. Thus construed, the theory of value encompasses axiology, but also includes many other questions about the nature of value and its relation to other moral categories. This theory cross-cuts the traditional classification of moral theory into normative meta-ethical inquiry and discusses basic questions about goodness and traditional questions about intrinsic values; links have already been made in the literature on legal theory and philosophy.¹⁰⁹

Public administration and value theory

In the literature on public administration, the name of Christopher Hood is especially connected to the value theory, as he explained this theory in the context of public administration in 1991. He distinguished three overarching values, where different groups of administrative values in public administration were brought together.¹¹⁰ These three groups were identified as the sigma, theta and lambda values, to be elaborated in the next section. These values partly overlap. In the literature these values are used in the context of influences from the sphere of public administration.¹¹¹ These groups of values were described and the core concept of each of them was mentioned.

First, the sigma values: these keep the administration lean and purposeful, slim and targeted. This refers to economic efficiency, effectiveness, and decisiveness. The core of the sigma is responsiveness. Second, the theta values: these keep the administration honest and fair. This applies to the method of balancing interests, protection of minorities, and accountability for decision-making. The core of the theta is integrity. Finally, the lambda values: these keep it robust and resilient. This is about the reliability and stability of the administration. The core of the lambda is the assumed responsibility of the administration.

The value theory in the context of public administration in the Netherlands has been strongly developed by Van den Heuvel, Huberts and Van der Wal, who have focused on integrity in the beginning, and later more on the quality of public administration.¹¹² We see here already a mix of quantitative and qualitative research methodologies.

New public management and public value

Since the 1980s, New Public Management (NPM) denotes the government policies aimed at achieving modernization and effectiveness in the public sector. The idea is that market oriented management of the public sector improves the cost-efficiency for governments. But public organizations differ from the private sector and that is seen as the public value dimension in NPM. Other scientists define NPM as a combination of fractionating large bureaucracies, competition between different agencies and between public agencies and private firms, and incentivising based on economic lines.

In the literature some authors are of the opinion that NPM has peaked and is now in decline.¹¹³ Others argue that NPM has developed into the digital era governance, which is about reintegrating concerns into government control, holistic government, and digitalization. Some ideas associated with public value can be linked to this evolution. Some claim that increased NPM inspired reforms have often increased rather than reduced corruption as a result of more contacts with the private sector - thereby creating new opportunities for bribes.¹¹⁴

¹⁰⁹ J. Finnis, *Natural Law and Natural Rights*, Oxford: Oxford University Press 1980; J. Rawls, *A Theory of Justice*, Cambridge: Harvard University Press 1971; J. Raz, *Engaging Reason: On the Theory of Value and Action*, Oxford: Oxford University Press 1999.

¹¹⁰ C. Hood, 'A Public Management for all Seasons?', (1991), *Public Administration*, Vol. 69, No. 1, p. 11.

¹¹¹ J. Vries & M.J.E.M. van Dam, *Politiek-bestuurlijk management: Een blik achter de gouden muur*, Alphen a/d Rijn: Samson 1998, p. 79.

¹¹² Z. van der Wal *et al.* 'Central Values of Government and Business:

Differences, Similarities, and Conflicts', (2006), *Public Administration Quarterly*, Vol. 30, No. 3, pp. 314-364;

Z. van der Wal & L.W.J.C. Huberts, 'Value Solidity in Government and Business: Results of an Empirical Study on Public and Private Sector Organizational Values', (2008), *American Review of Public Administration*, Vol. 38, No. 3, pp. 264-285.

¹¹³ O. Hughes, *What is, or was, New Public Management?*, Melbourne: Monash University 2008.

¹¹⁴ Ha-Joon Chang, *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism*, New York: Bloomsbury 2008.

Public administration: qualitative and quantitative approaches in the Netherlands

As to the qualitative approach, in 1998 Toonen translated several key terms concerning public administration into three quality dimensions. These are: operational quality (which is related to the management aspects), administrative quality (which is about the values in the policy process) and institutional quality (which is about the quality of the constitutional aspects). These dimensions can be related to the quality of the municipality but also to other public institutions. In the context of municipalities, he distinguished four positions: a municipality as a governance community, as a public service, as part of the administrative system and as a management organization. These four positions multiplied with the three quality dimensions described above constitute twelve fields which are related to municipalities.¹¹⁵

In the literature six different domains are distinguished¹¹⁶. They are layered and influence each other and, when viewed together, constitute a kind of cube. These domains are: 1) challenges or real life problems; 2) values as to the creation of values, normative concepts, and good governance; 3) governance as to administrative processes in respect to value systems used in concrete cases and possible conflicts; 4) design as to converting values, concepts and functionalities into effective use; 5) power – as no power is exercised without accountability and no responsibility exists without competences; and 6) impact as to the social landscape, which changes drastically. It is important that the administration maintains close contact with the society. The six domains are dynamically intertwined; they relate to each other in various ways and in this context special attention must be given to the interaction between public administration, values and good governance.

On the basis of the above research of Toonen, the authors Korsten, Abma and Schutjens have written the book ‘Governability of the municipalities’.¹¹⁷ The main theme of this book is governability measurement as a form of feedback or reflection. In their work, they adhere to a mix of quantitative and qualitative approaches. After 2000, many municipalities have measured their governability. These measures have involved an assessment of the municipal administration on the basis of existing policy. The central question is whether the local administration does its work well. The study examined how these measurements are carried out, whether they catch on, and what their meaning and limitations are. The conclusion is that good governance is often lacking at local level. However, the municipal administration functions sufficiently (well). After analysing 291 investigations on the quality of 262 municipalities, he proposes that citizens do get their services. According to research, local politics perform less satisfactorily than other traditional state authorities.

Van de Walle has drawn attention to comparative research in the field of public administration as a rather new methodology in public administration.¹¹⁸ He has developed a quantitative public administration approach in relation to values including good governance. The values which a society embraces should be pursued by the administration rather than having the administration obsessed with its institutions and civil servants themselves. He works on a quantitative public administration study on the value-aspects in the – at that time - 27 EU-countries. Challenges to the current public administration are at the focus of his comparison, together with the importance of specific national contexts, and so the administrative systems themselves are compared only incidentally.

¹¹⁵ T. Toonen *et al*, *Gemeenten in ontwikkeling: Herindeling en kwaliteit*, Assen: Van Gorcum 1998, p. 25.

¹¹⁶ T. Toonen, *Biobased Governance, Onderhoudend Bestuur*, inaugural lecture , Technische Universiteit Delft, November 2011.

¹¹⁷ A.F.A. Korsten, K. Abma & J. Schutgens, *Bestuurskracht van gemeenten*, Delft: Eburon 2007.

¹¹⁸ S. van de Walle, *Naar een vergelijkende bestuurskunde van de 27*, inaugural lecture Erasmus University, Rotterdam, 28 juni 2012.

Concluding remarks

In the different disciplines within the social sciences, a distinction can be made between the positivist and the interpretivist social scientists. This distinction seems comparable to the distinction between quantitative and qualitative approaches. The value theory is strongly linked to the qualitative approach but could have a narrower ethical or a broader multi social scope. A strong focus on the value theory in public administration exists, albeit from a broader or a narrower perspective.

Since the 1980s, NPM has had an important influence on public administration: public institutions as enterprises which operate on, and adapt themselves to, the market. Over the last years, two aspects of the qualitative approach have been underlined. The first aspect concerns different quality dimensions of the public administration and the second aspect focuses on integrity. Two quantitative perspectives are addressed as well. These measure the governability of public administration and the hard core positive public administration based on quantitative information.

6.5 Good governance and economics

Economics is about the analysis of production, distribution, and consumption of goods and services. Hence, the term economics means rules of the household. Political economy has been the previous name of this subject; however, economists in the late nineteenth century suggested referring to it as economics, to avoid a narrow political-interest connotation.

Important is the distinction between microeconomics and macroeconomics. Microeconomics examines the behaviour of basic elements of the economy, such as the role of households or firms, as buyers or sellers, and different markets and their interactions. Macroeconomics analyses the entire economy and issues affecting it, such as unemployment, inflation, economic growth, and monetary and fiscal policy. Another distinction includes positive economics (which describes) and normative economics, which prescribes what ought to be. A distinction is also made between economic theories and applied economics, and between rational and behavioural economics. Finally, the distinction is made between mainstream economics – the more orthodox scientists who deal with the nexus of rationality, individualism, and equilibrium – and heterodox economics – the radicals who deal with the nexus between the institutions, history, and social structures.

Normative economic analysis: efficiency and law

A normative economic analysis of law is based on the assumption that it is recommended to provide individuals with more than they desire. The assumption which is central to both positive and normative economics, namely, that the individual is a rational utility maximizer, has been questioned. Economic analysis may be applied throughout society, as in business, finance, health care, and government, but also to such diverse fields as crime, education, the family, law, politics, religion, social institutions, war, and science. The expanding role of economics in social sciences over the last decade has sometimes been described as economic imperialism. An increasing number of economists have called for an increased emphasis on environmental sustainability – an area of research known as ecological economics.

In 1960, Coase wrote on the interaction of the market and the distribution of legal rights. He addressed the problem of social cost: the inefficiencies which result, when, for example, enterprises pollute without paying compensation to parties who bear the costs of pollution. In the conventional view, the fact that, by polluting, one person causes costs to another was seen as important. However, in Coase's opinion, pollution inevitably arises when two persons compete for the use of a natural resource. Thus, it is not a question of imposing costs on one party or the other, but a question of designing liability rules so that the shared use of resources becomes optimal and efficient. He provided a model by which the effectiveness of laws could

be analysed through economics. This idea has primarily been worked out in private law – in the context of property law, contracts, torts, company law, and competition and anti-trust law. Public law followed subsequently, especially in the context of criminal law. More recently, environmental law joined too. Some have tried to develop an economic model by game theory.¹¹⁹ An economic analysis of constitutional law was subsequently published.¹²⁰ Later we see publications which can be seen as an economic specification of administrative law. At present, more attention is drawn to administrative compensation and financial capacity¹²¹ and administrative fines in the Dutch Competition Act from the perspective of law and economics.¹²²

Since the works of Coleman¹²³ and Putnam¹²⁴ the literature on social trust has virtually exploded. The concept came from sociology and political science but economists quickly joined the research agenda because there were indications from research that such features could work as factors explaining economic growth. An important line is the impact of social trust on total productivity. This was a central question in the early literature on trust brought up by Fukuyama¹²⁵ and Knack and Keefer.¹²⁶ In the literature several theoretical indications on factor productivity and innovation suggested a number of potential channels through which trust could directly influence total factor productivity (TFP). Using both development and growth accounting in the literature strong evidence was found of a causal effect of trust on the level and growth of TFP. Also was observed that the effect of trust on TFP runs entirely through property-rights institutions and not political institutions.¹²⁷ Earlier, research on trust in the context of economics and law was published which led to similar conclusions.¹²⁸

Good governance and economics

The economic dimension of good governance can be related to the economic analysis of law, or more broadly, of governance. Governance in this context refers to governing in the public interest, and then it seems logical to look at developments in the context of law and economics. In relation to good governance, we conclude that the focus of this approach has developed in two ways. First, the theoretical analysis which is concerned with the efficiency of good governance activities: a good governance activity is efficient if a good governance task – the right to fulfil this task – is given to the party who is prepared to pay the most for it. The second is an emphasis on incentives and people's responses to these incentives. If penalties for an action increase, people are discouraged; increasing subsidies stimulate people. Also tools of economics such as the game theory are applied to purely legal questions such as parties' litigation strategies.¹²⁹ Richard Posner has started the first positive theory on efficiency in the first edition of *Economic Analysis of Law*.¹³⁰ Relevant aspects in these publications have been the attempts to reduce transaction costs so that misallocation can be corrected through the market. Rights will be assigned to those who are prepared to pay the most, and so good governance as a right is assigned to those who pay most in combination with low transaction

¹¹⁹ H.O. Kerkmeester & O. Heico, *Recht en Speltheorie* (Law and Game Theory), diss. Erasmus University, Rotterdam, 1989.

¹²⁰ J.B.J.M. Ten Berge, 'Rechtseconomie en Staatsrecht/bestuursrecht', in: E.H. Hondius, J.J. Schippers, & J.J. Siegers (eds), *Rechtseconomie en Recht*, Zwolle: Tjeenk Willink 1991, pp. 149-162.

¹²¹ F.J. Van Ommeren, 'Bestuurscompensatie, Draagkracht en Rechtseconomie', (1990), *Ars Aequi*, Vol. 39, No. 10, pp. 682-691.

¹²² O.J.D.M.L Jansen, 'De Bestuurlijke Boete in het Wetsvoorstel Mededingingswet', (1996), *Nederlands Juristen Blad*, Vol. 71, No. 31, pp. 1250-1254.

¹²³ J. Coleman, Social Capital in the Creation of Human Capital, *American Journal of Sociology*, 1988, 94, pp. S95-S120.

¹²⁴ R. Putnam, *Making Democracy work. Civic Traditions in Modern Italy*, Princeton University Press, 1993.

¹²⁵ F. Fukuyama, *Trust: The Civil Virtues and the Creation of Prosperity*, Free Press, New York 1995.

¹²⁶ S. Knack, P. Keefer, Does Social Capital have an Economic Pay-Off? A Cross-Country Investigation, *Quarterly Journal of Economics*, 1997, 112, pp.1251-1288.

¹²⁷ C. Bjornskov, P. Meon, *The productivity of trust*, CEB Working Paper no. 10/042, 2010 Brussels.

¹²⁸ P.G.T. Hagg, The Economics of Trust, Trust-Sensitive Contracts, and Regulation, *International Review of Law and Economics*, 1994, 14, pp. 437-451.

¹²⁹ R. Coase, The problem of social cost, 1960; Friedrich Hayek, *The Constitution of Liberty*. Chicago: University of Chicago Press, 1960 and especially Gary Becker, "Crime and Punishment: An Economic Approach." *Journal of Political Economy* 76 (1968): 169-217.

¹³⁰ R. Posner, *Economic Analysis of Law*, Deventer, Kluwer, 2002.

costs. The importance of a good collective decision-making process and its relevance for the national economy has been highlighted by Teulings and Hartog.¹³¹

In relation to corruption, which is also relevant in a study on good governance, there are also economic publications about the question: Is corruption an efficient grease?¹³² In the study the researchers analyse the interaction between aggregate efficiency, corruption, and other dimensions of governance for a panel of 54 developed and developing countries. Using three measures of corruption and five measures of other aspects of governance, they observe that corruption is consistently detrimental in countries where institutions are effective, but that it may be positively associated with efficiency in countries where institutions are ineffective. They found thus evidence of the "grease the wheels" hypothesis.

Good governance and economics: mean or aim?

From the perspective of the World Bank, good governance is a mean to economic growth and will subsequently increase the income of the poor. Dollar and Kraay have approached good governance from an economic perspective. Good governance is, in their report, especially qualified as financial public management. The enormous emphasis on macro-institutions and free world trade is a characteristic of the policy that the World Bank has deployed over the last few years.¹³³

According to the UNDP, general development is the objective, and therefore, a broader perspective on good governance is employed. Economic growth is only part of development. This different approach dates back to the 1990s. The UN believes that democratic, transparent, and accountable governance in all sectors of the community is a precondition for the realization of social, human sustainable development.¹³⁴ Good governance also plays a role in their aim to prevent or reduce corruption in developing economies.

Concluding remarks

In economics we distinguish between qualitative and quantitative methods. The quantitative method is more related to mathematics and the qualitative method to normative aspects. In this context, the development of economic models also has to be mentioned, as it is relevant in the context of good governance. A development of a normative economic analysis links economics, society, business, finance, health care, and government to each other.

In line with this we see the development of the economic dimension of law. This evolution expanded from private law to constitutional and administrative law. The economic approach of good governance is addressed in the literature. Good governance is to be assigned to those who are prepared to bear the highest costs for it. Finally we brought up the actual discussion on good governance and economics: a mean or an aim? Although opinion may be divided, it might be that good governance can serve as both.

6.6 Good governance: the development of an interdisciplinary approach

In this part of the report we looked for an interdisciplinary approach to good governance by making bridges between perspectives from law, social science, and economics. Good

¹³¹ C. Teulings, J. Hartog, *Corporatism or Competition?: Labour Contracts, Institutions and Wage Structures in International Comparison*, Cambridge University Press, 2007.

¹³² P. Meon, L. Weil, *Is corruption an efficient grease?*, Bank of Finland, 2008.

¹³³ N. Hermes & R. Lensink, *Does aid work? New Evidence from Recent Empirical Studies*, University of Groningen, *International Development Governance*, Chapter 9, New York, Taylor & Francis Group, 2006; V. Collingwood (eds.) *Good governance and the World Bank*, Nuffield college, Oxford; University of Oxford 2002; Ngaire Woods, *The Challenge of Good Governance for the IMF and the World Bank Themselves*, Assessing Aid: What Works, What Doesn't, and Why, A World Bank Policy Research Report, Published for the World Bank, Oxford University Press, Oxford 2000, p. 21.

¹³⁴ UNDP website: <<http://mirror.undp.org/magnet/policy/chapter1.htm>>; WRR report, *Ontwikkelingsbeleid en goed bestuur*, Den Haag 2001; M. Ndulo, 'The democratic State in Africa: the Challenges for Institution Building', (1999), *Zambia Law Journal*, University of Zambia, Vol. 31.

governance is about properness, transparency, participation, effectiveness, accountability, and human rights. In legal literature we term these "the principles of good governance", but to get an adequate view on the concept of good governance we need a deeper knowledge of these aspects. This knowledge is not only about the normative aspects of good governance but also about the factual aspects.

We started with the explanation of relevant differences in terminology: 1) Governance and administration; 2) Governance and good governance; 3) Good governance and the principles of good governance. Based on these definitions we studied its legal, social, and economic dimensions. This is important because in practice a strict distinction is not always made between the normative and factual aspects of good governance. But academically speaking, we not only strive to analyse the positive actual situation on good governance; we need to develop and elaborate ideas and concepts to improve on good governance from both aspects. We found in each of the dimensions elements for a positive and a non-positive, conceptual approach of good governance.

In discussions about the position of the government within society we observe an increasing focus on the trend from government to governance, paying attention not only to institutions separately, but also to government activities in and by the society. Governance appears in three broad ways: hierarchy (public sector activities), markets (private sector activities in public interest), and networks (public-private partnership activities). But in each of the three we find norms (of good governance) meant to improve the quality of these activities. In relation to governance we have to distinguish between corporate governance and good governance because the institutions, instruments and norms are different between these two. Also, the focus is different: corporate governance activities are in the private interest (of individual citizens or companies) and good governance activities are in the public interest.

In the literature, attention is paid to research topics that are related to good governance and are to be studied from the three dimensions. These topics, again, are: the choice of the instrument, application of the instrument, controlling the application and its enforcement. Here we elaborated upon the relation between the factual and normative aspects of good governance. Attention was drawn to the relation between good governance and law and justice, which is illustrated with several examples. In the legal discipline there is a shift from the classical to the conceptual and instrumental approach of law. Increasing attention is given to the relation between law and justice, which can already be seen as a growing interdisciplinary approach. This approach can additionally be found in the process of internationalization and Europeanization of law, but also in the more functional fields of law. Congruently, we see a growing awareness of good governance and principles of good governance in national law, but especially in European and international law, and some functional fields of law like economic law, education law, public health law, and law on sustainable development. A rather weak point in the legal discipline is the lack of quantitative understanding of good governance and therefore a connection with the social science and economics is necessary.

In social science we recognize two approaches, those of the positivist and the interpretivist social scientists. The first strongly adheres to empirical, quantitative methods; an important vision of the second category is the use of the value theory. In the Netherlands we find in public administration research a combination of both. The value approach also has a close relation with topics like good governance and integrity in the public administration. Within the social science discipline a remarkable amount of sub-disciplines have been developing, but there is still little interaction between them. In economics we observe a combination of qualitative and quantitative research in relation to the development of models. Especially the normative analysis of law can be recognized as a strong bridge between law and economics. As part of that bridge, good governance is relevant, especially the aspects of efficiency and effectiveness of governance, which will be discussed in future.

Hemerijck¹³⁵ has framed four central questions for policy evaluation: ‘is it applicable’, ‘does it work’, ‘is it appropriate’ and ‘is it allowed’?. The first two questions concern the effectiveness of policy instruments, the second pair of questions refer to their legitimacy. These four questions can also serve as criteria for framing the in this report developed interdisciplinary approach of good governance where the effectiveness dimension is more the social science and the legitimacy aspects the legal dimension of good governance. In this report, a conceptual framework is used to explain possible courses of action or to present a preferred approach to an idea or thought. We attempt to connect all aspects of inquiry – e.g., problem definition, purpose, literature review, methodology, data collection, and analysis. The concept of good governance has been analysed by a description of the relevant elements – “governance”, “administration”, “good governance”, “principles of good governance” – and making links with the different functions of the government bodies in the state. We described the approaches of good governance in the most relevant academic fields of law, social science (governance, value theory and new public management) and economics (normative economic analysis, efficiency and law and financial public management) and the interrelations between these fields and from there we developed a normative framework. We connect the factual and normative aspects of good governance in the normative framework and in the context of the rule of law, democracy and institutional development. The 28 EU countries were grouped in five regions in which the countries were interrelated, on each of the countries the framework has been applied in answering the different research questions and presenting the conclusions.

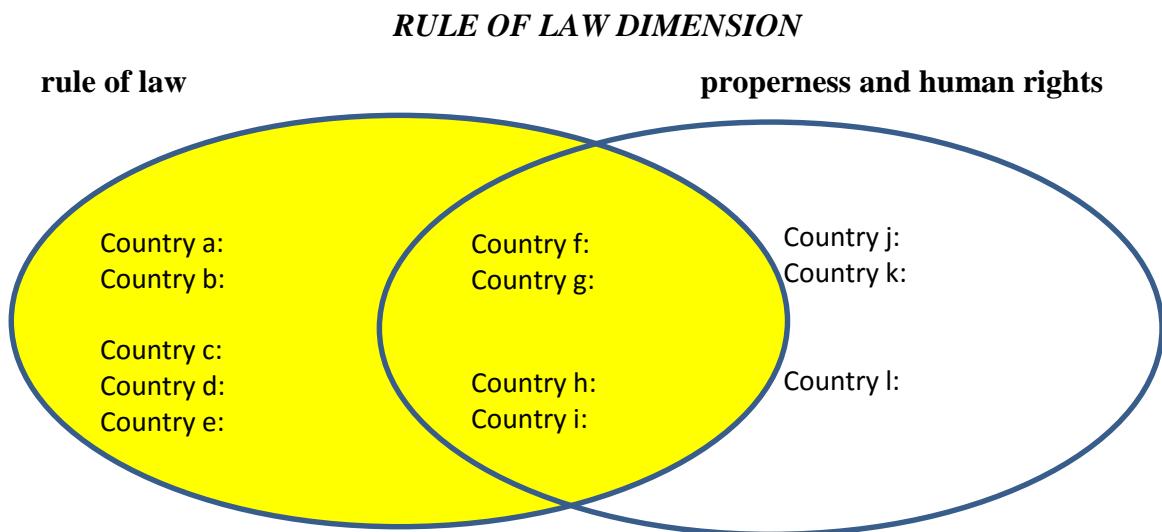
¹³⁵ A.C. Hemerijck, C.A. Hazeu, “Werkt het, past het, mag het en hoort het? De kernvragen van beleidsvorming toegepast op milieubeleid, Bestuurskunde 2005, pp. 55 - 65; G.H. Addink, *Goed bestuur*, inaugural lecture Utrecht University, Deventer: Kluwer 2010, p. 9.

7. Applying the normative framework on the research results

7.1 Introduction

In this chapter the results of applying the normative framework on the country reports will be presented. This means that here the main focus is on the developments of the principles of good governance in relation to three dimensions of good governance in the European countries . We will describe the findings in a qualitative way, which enables a substantial discussion about the described developments in good governance. The aim is to indicate directions within the developments of good governance.

For each of the three dimensions – rule of law / democratic / institutional – we have made a design of two partly overlapping ovals or ellipses. As a result of the overlap we have three zones: the left, the middle and the right zone. In the left zone we have the original and more general concept of the dimension, in the right zone we created the specification by principles and in the middle zone there is a mix of general concept and specified principles. The specifications for the rule of law concept are the principles of properness and human rights, for the concept of democracy we have the transparency and participation principles, and for the institutional concept the specifications are effectiveness and accountability.



The next step is to find out based on the country reports and the remarks from the ombudsman coordinators in each country what could be the position of the country: 1:left-(countries a – e); 2:middle (countries f – i); and 3:right (countries j – l). For each of the group we start with the first country in the group, so for the left-group is *country a* the first, for the middle-group countries is *country f* the first one and for the right-group is *country j* the first. This positioning will be done based on the information we received in the frame of this research and it is a theoretical position which may be subject to discussion. The idea of presenting the results in this way makes it possible to have a discussion within and between the member states on the developments and the shifts of the principles of good governance.

The theoretical positioning of countries is repeated for each of the five groups of countries. That was done because we saw within these groups of countries some level of cultural and social coherence and based on that idea we think that such a comparison will stimulate the discussion in and between countries.

The discussion in practise will be centred around the following points: the institutions which are applying good governance norms in relation to their functions, the developments of the concept by specification of principles of good governance, the form and binding effect of

the specified principles (including the integrity principle), and the prevention of malgovernance (including corruption) by promoting good governance.

7.2 *Shifts of good governance dimensions in Group 1 countries – Northern Europe*

The group of European Union countries in the Northern part of Europe consists of Denmark, Finland and Sweden. In making the country reports similar we used the following structure in these reports: 1. Introduction; 2. Context of the country; 3. Good governance, general aspects; 4. Good governance, six specific aspects; 5. Conclusions including answer research question(s). Based on these country-reports we make in this chapter a summary of the main elements in which we focused on the paragraphs 3 - 6 of the reports.

At the end of each country's summary we will conclude on each of the three dimensions of good governance and the specification by the principles. Then at the end of each group of EU member countries – northern / western / southern / central / anglo-saxon Europe – we made an overview of the conclusions of the member countries of that group and gave for each of the three dimensions by the two ellipses design the theoretical position of – in this paragraph - each of the Northern Europe countries. In some keywords under these designs we make a short clarification.

7.2.1 *Denmark*

Important governmental institutions involved in the interpretation and application of the principles of good governance are the Parliament (Folketing), the Danish government, the Danish courts and the Parliamentary Ombudsman. Other public authorities are also active, such as the Agency for Modernisation, the Ministry of Justice, the National Audit Office, and the Institute for Human Rights. Some of the principles derive straight from the Acts of Parliament and thus have been unilaterally imposed by the legislature, but most principles have been developed by team-work of the governmental institutions. The collaboration between institutions shows that the legislature and the executive share joint responsibility to work for the society. Their work on good governance is not in a vacuum. They consult citizen and expert panels, in which the policy makers engage directly in discussions with the private sector and with those who would be most affected by certain policies. The government respects and takes advantage of the knowledge, creativity and expertise of the public.

The government voluntarily and on its own initiative subjects itself to the scrutiny of public and private institutions and is willing to listen to public criticism and take into consideration public concerns. This trust relationship encourages the public to take the initiative and show social engagement and responsibility. There is special attention for integrity. New surveys rank Denmark in top places in terms of honest government and low corruption. It finds that the Danes regard corruption as rare in their society. Denmark also stands out as the world's least-corrupt country, based on a recent survey by Transparency International.¹³⁶ The law-enforcement institutions (police, prosecutors and courts) enjoy high public confidence and are independent of the legislature and the executive. The National Audit Office and the Parliamentary Ombudsman have also been assessed to be functioning effectively. The important role of the media is underlined, where often times cases of suspected fraud start. Bribes and speed payments for accessing public benefits and services are almost non-existent and the Danes generally perceive the Danish institutions and officials as not corrupt. Weak points have been identified as: access to documents, officials afraid to use their right to inform, lack of clarity regarding complementary entertainment gifts as well as lack of transparency in the financial interests of MP's and financing of political parties.¹³⁷ Denmark has a strong culture

¹³⁶ 'A taste of Danish integrity' *The Christian Science Monitor*, 3 February 2014, <http://www.csmonitor.com/Commentary/the-monitors-view/2014/0203/A-taste-of-Danish-integrity>.

¹³⁷ M.B. Kristensen 'National Integrity System Assessment Denmark', 2012, http://issuu.com/transparencyinternational/docs/2011_nis_denmarkexecsummary_en?e=2496456/2287176 (accessed 02.11.2014)

of public administration, relatively few anti-corruption rules, and a strong practice of integrity. The Danish society has a high degree of social cohesion and a comprehensive political culture. This is enhanced by the high rate of volunteerism reflecting the civic sense of responsibility.¹³⁸

The government has also shown great discipline with respect to carrying out its obligations under international and EU law, which has also been a source of good governance principles that have been followed by the courts and the government. A great emphasis has also been placed on the transparency of governmental work and the quality and accuracy of information about the government's work that has been delivered to the public.¹³⁹ In order to do that, the institutions have adopted new technology and policies for facilitating public access to information. Openness around the problems and deliberations of public authorities is seen as necessary for the promotion of public involvement and social debate.¹⁴⁰ All these measures and principles show us that this can be achieved by lessening the gap between the public and the government.

We conclude in relation to the rule of law dimension that some elements of the principle of properness were codified not in the law but in policy paper. There are many human rights worked out in the law. In relation to the concept of democracy we found a general administrative law act in which the democracy principles are specified, there is access to public administration files and a National Action Plan in which the democracy values are underlined. About the institutional values we can conclude that hard work has been done for the realization of the tasks of the government, and there is a multilevel application of the effectiveness principle. Finally the country is seen to be world leader on accountability.

7.2.2 Finland

Finland is miles ahead in its development of principles of good governance and good administration. In 1995¹⁴¹ the Finnish Constitution was changed because of reforming fundamental rights.¹⁴² The provision, now section 21, reads as follows: 'everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act'.¹⁴³ Specification can be found in chapter 2 of the Finnish Administrative Procedure Act.¹⁴⁴ The guarantee of good governance in the Constitution is mentioned in the context of protection under the law and the right to a fair trial. Thereby, the requirements of good governance are also protected by section 124: when delegating administrative powers to bodies other than the authorities, the guarantees of good governance should not be endangered.

All principles are incorporated in the legislation. Concerning the principle of transparency, giving advice and the exchange of information gained a lot of discussion in the literature. There is a well-developed communication between citizens and the government. Regarding the principle of human rights, good governance and the right to a fair trial are mentioned together in the Constitution. There is a strong connection between these values. Many human rights are laid down in the Constitution, often mentioned in combination with

¹³⁸ 'A taste of Danish integrity'.

¹³⁹ The common right of access to public files is codified in article 7 of the new Access to Public Administration Files Act from 2013.

¹⁴⁰ Jens Olsen, '*Good Administrative Practice*'

http://www.ombudsmanden.dk/om/formidling_og_viden/publikationer/artikler/administrative_practice/ (accessed 02.11.2014).

¹⁴¹ Also included and unchanged in the 2000 Constitution.

¹⁴² K. Kuusikko, 'Advice, good administration and legitimate expectations: some comparative aspects', *European Public Law* 2001, Volume 7, Issue 3, p. 459.

¹⁴³ The Constitution of Finland, section 21.

¹⁴⁴ Qualified as fundamental principles of good administration which regulates: legal principles of administration (6), service principle and appropriateness of service (7), advice (8), requirement of proper language (9) and inter-authority co-operation (10)

good governance. The principle of accountability was less recurring. It is an important subject among politicians and legislators, perhaps more under the denominator of responsibility. In the Administrative Procedure Act we can find an element of accountability in the context of the duty of clarification.¹⁴⁵ A matter should be adequately and appropriately clarified by an authority, by obtaining the information and accounts necessary for the decision of the matter. A research¹⁴⁶ on accountability among Finnish members of Parliament described accountability as the relationships between civil servants and politicians, executive and legislative bodies and politicians and the electorate. Some suggest accountability and responsibility are interchangeable. The Finnish legislators, however, indicate that these principles are not the same, but that they are actually complementally. The principle of properness is strongly present. Every act of a public authority has to be proper and executed in a civil manner. Also, most of the sub-principles of properness were very often mentioned and laid down in the Administrative Procedure Act. The fact that the principle of effectiveness emerged in the context of state finances is very important, since it is of great importance for society to achieve the goals of the national finances. The literature and reports show that effectiveness has developed to a great extend already, but Finland is still looking for an even higher level of this principle. Also the principle of participation is of great importance in Finland. This principle is still developing and authorities are focused on the implementation of participation on all levels.

The role of the Parliamentary Ombudsman is of great influence in many different fields and for the development of good governance and good administration practice including human rights. One can observe a shift of the work of the Ombudsman from focussing on acting in conformity with the law to the promotion of human rights.¹⁴⁷

We conclude that impartiality and legitimate expectations are seen as part of the principle of properness. In relation to the human rights principles there is not only focus on the classical rights but also more on the social rights. Relevant for the democracy dimension is that there is an Administrative Procedure Act in which several aspects of transparency can be found. There is in the Constitution a regulation on participation. Finally for the implementation of the governmental functions it is relevant that accountability is worked out in the Constitution and the Court of Audit is working on the effectiveness of the government.

7.2.3 Sweden

It is possible to confirm that Sweden is possibly (at a European level) one of the best examples to prove the effectiveness of making the norms of good governance and good administration part of its domestic law. The reform of the Instrument of the Government (the Constitution) in 1974 saw the inclusion of aspects of good governance, and therefore these also applied for the functioning of the public institutions. Sweden is one of the most active countries in the promotion of the concept of good governance and good administration at a European level¹⁴⁸, and through the emphasis placed on the project of the Treaty of the European Constitution, which was meant to give more legal strength and certainty to this concept of good administration with article 41 of the CFR.¹⁴⁹ The European Ombudsman Code for Good Administrative Behaviour also plays an important role in Sweden, mainly because of the vital importance of the Parliamentary Ombudsman in the Swedish system. It is clear that Swedish institutions operate under the umbrella of good governance, mainly due to Sweden's low level of corruption in its system. This is because of their developed transparency policy, placing the country high on the list of the most efficient governments in Europe.

¹⁴⁵ Administrative Procedure Act, section 31.

¹⁴⁶ A. Salminen, 'Accountability, values and the ethical principles of public service: the views of Finnish legislators', *International Review of Administrative Sciences* 2006, 72, p. 171.

¹⁴⁷ Annual report Ombudsman 2013, p. 55.

¹⁴⁸ An idea that it is mainly represented through the report on good administration of the European Union member states, published in 2005

¹⁴⁹ Charter of Fundamental Rights of the EU.

Of importance is the change of focus in the work of the ombudsman. Initially, the post of Parliamentary Ombudsman was greatly influenced by the powers vested in it to prosecute. Cases of malfeasance by judges or officers of state arising out of complaints, inspections, or in some other way, resulted either in no action or in prosecution. The proportion of prosecutions was much higher than it is now. Under later incumbents there has been a development towards a more discriminate use of prosecution as a sanction. Today measures adopted by the Ombudsmen when they have established negligence in the discharge of official duties can consist of: 1. finding that there is no reason to intervene against a specific official, 2. a caution for the official responsible, or 3. finding that legal proceedings must be initiated. In today's society, the Ombudsman's principal task is no longer primarily to institute prosecutions concerning the offences of public officials but to encourage sound application of the law, by for instance helping authorities to learn from mistakes, either their own or others'. The development described here has led to what is often called the practice of cautioning. Good governance is achieved by improving the quality of the administration. This practice was approved by the Riksdag and was included in the law in 1967.¹⁵⁰ But many public institutions in Sweden are active in the field of good governance.¹⁵¹

The question now is, "how has Sweden achieved this?" Answering directly, the explanation focuses on the structure and organization of the administration as a whole. The independence granted by the Constitution and specific acts, such as the Swedish Local Government Act, gives more space for the undertaking of policies at local level, which tend to be more effective. This also helps at a national level, as it leaves the central administration with less pressure and therefore allows for smaller staff units to work in coordination, under single bodies such as the Government Chancery, which makes procedures more effective. Also by promoting figures that involve citizen participation, such as lay judges, further involvement of the citizenry in policy fields is incentivised, which further enhances democracy as a whole, as the more involved citizens are in the processes which will impact them, the higher the chance that it would be more democratic.

We conclude that the principle of properness has been codified and the Constitution contains a broad group and diversity of human rights. For the democracy dimension, what is also relevant are the norms in the Freedom of Press Act and the specification of the different forms of participation in regulations. Effectiveness is worked out in the context of the effective legal protection and there is a broad percept of accountability.

7.2.4 Conclusions Region 1: Northern Europe.

1. The good governance concept has been implemented in these three Northern European countries which are all unitary states.
2. In Finland we find the concept of good governance in the context of legal protection in the Constitution.
3. In general, some of the six principles of good governance have been explicitly codified in the Constitution or in a General Administrative Procedure Act, but most of the principles are developed in coordination, between two or more public institutions and probably by way of policy rules or case law.
4. There is also a strong influence related to these principles of good governance from the European to the national level.

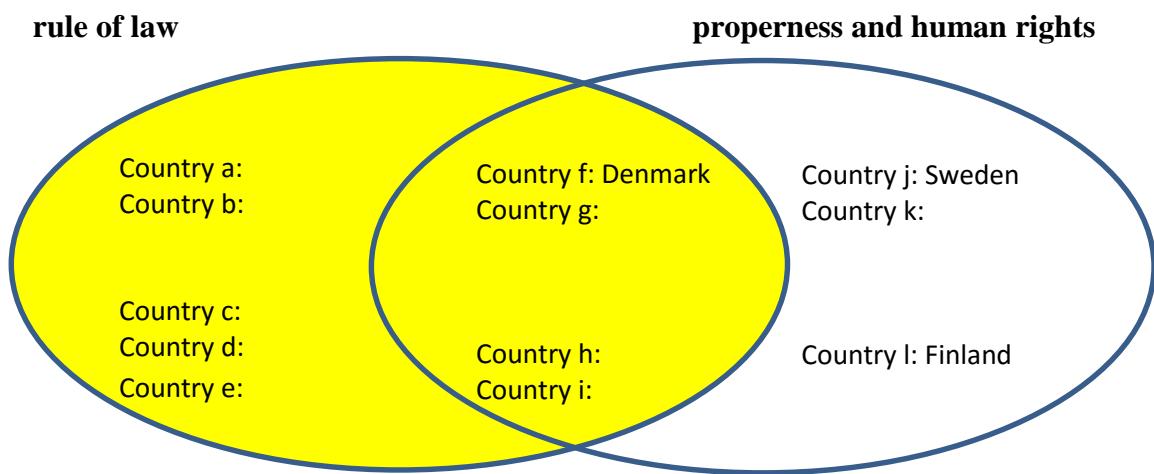
¹⁵⁰ Art. 12: "If the error committed is not of a serious nature, and there are no particular reasons for other action, the Ombudsmen should, instead of instituting legal proceedings or making a report to the authority which has the right to administer disciplinary sanctions, let things rest with a caution, the provision of remedy, the presentation of an explanation or what may otherwise have arisen".

¹⁵¹ Statskontoret <http://www.statskontoret.se/in-english/>; Riksdagens ombudsmän, JO <http://www.jo.se/en/>; Justitiekanslern <http://www.jk.se/sv-SE/Languages/English.aspx>; Riksrevisionen <http://www.riksrevisionen.se/en/Start/>; Sveriges kommuner och landsting, SKL <http://skl.se/tjanster/englishpages.411.html>; Datainspektionen <http://www.datainspektionen.se/in-english/>; Förvaltningsdomstolarna <http://www.domstol.se/Funktioner/English/>

5. There is a strong development of the principle of transparency, but the principle of participation seems to be less developed. However, both principles are relevant in creating trust for the citizens in their relation to the government.
6. Human rights also have a strong influence on the implementation of the good governance norms.
7. The effectiveness principle is especially developed by the financial institutions, including the Court of Audit.
8. The principle of accountability has been the least developed and implemented in the Northern European countries.
9. For Denmark it is remarkable how trust has been created by an active government taking the initiative and listening to public concerns
10. For Finland it is remarkable that all the principles are implemented in national regulations.
11. For Sweden it is remarkable to see this country prove the effectiveness of the principles of good governance.

GROUP 1 COUNTRIES – NORTHERN EUROPE

RULE OF LAW DIMENSION

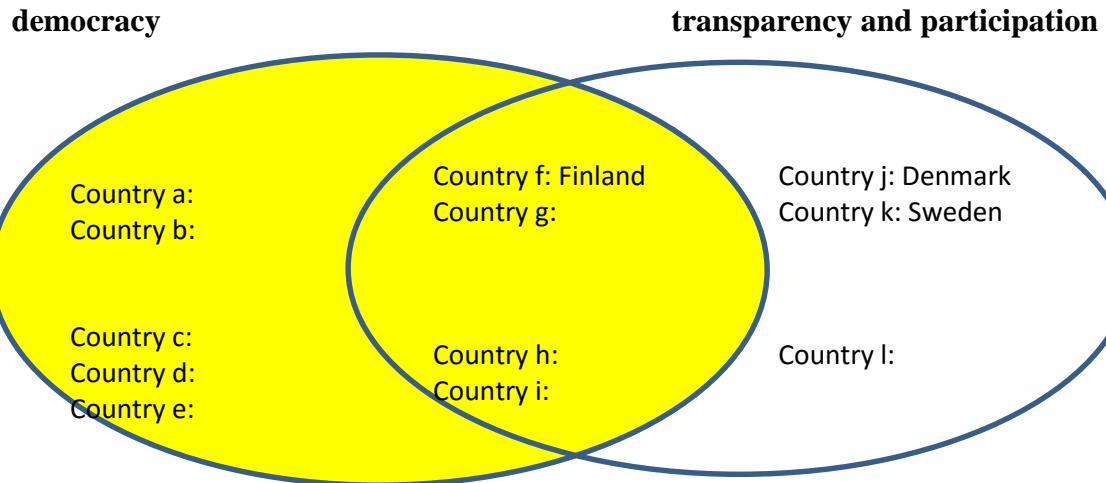


Sweden: properness codified, broad group and diversity of human rights in Constitution;

Denmark: some elements of properness in policy papers, many human rights;

Finland: impartiality and legitimate expectations part of properness, more focus on social rights.

DEMOCRACY DIMENSION

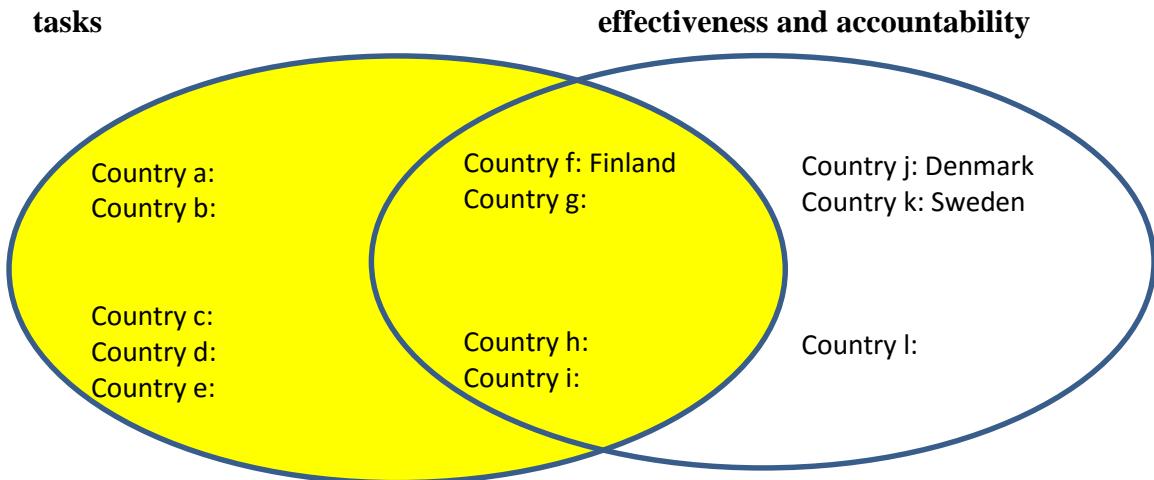


Sweden: Freedom of Press Act, sub principles of participation in regulations;

Denmark: GALA, Access to Public Administration Files, National Action Plan;

Finland: Administrative Procedure Act, regulation on participation in Constitution.

INSTITUTIONAL DIMENSION



Sweden: effective legal protection, broad perception of accountability;

Denmark: multilevel application of effectiveness, world leader accountability;

Finland: effectiveness by Court of Audit, accountability in the Constitution.

7.3 Shifts of good governance dimensions in Group 2 countries – Western Europe

The group of countries that are also part of the European Union consist of France, Austria, Luxemburg, Belgium, Germany, and Netherlands. In making the country reports in relation to these countries the same aforementioned structure was followed: 1. Introduction; 2. Context of the country; 3. Good governance, general aspects; 4. Good governance, six specific aspects; 5. Conclusions including answer research question(s).

Also in this paragraph we made a summary of the reports with a special focus on the three dimensions of good governance which was concluded at the end of each country summary. At the end of this paragraph you will find an overview of the whole group of Western Europe countries for each dimension of good governance in the two ellipses design in which each country is theoretically positioned. In some keywords under these designs we gave a short clarification.

7.3.1 Belgium

Belgium presents different characteristics which make peculiar the implementation of the different principles of good governance. Indeed, Belgium used to be a unitary country which turned into a federalist one. As Belgium needs to conduct coherent actions as a country, communication between the different entities is necessary, and because of the disagreements between the two language communities, it is sometimes hard to reach such cohesion.

In order to develop a democratic model, Belgium tries to improve the principles related to the democracy dimension. We saw it in the principle of participation, involving citizens in the decision-making process. In 2004, the proposal for a law establishing a popular consultation on the topic of the establishment of a Constitution for Europe has been submitted to the Council of State. The answer was negative, because Art. 33 of the Constitution settled that all the powers emanate from the constitution and these powers are exercised the way the Constitution establish it. It means that other ways, such as the referendum, are excluded, at least at the federal level. Things are different on the decentralized level. Indeed, Art. 41 of the Constitution sets out the possibility of establishing a popular consultation concerning communal and provincial matters. The law¹⁵² provides since 1995 new provisions concerning the possibility to organize a popular consultation at the communal level.¹⁵³ This possibility is related to the communal matters, but some specific fields are excluded, like the budget and the account's matter. It has to be noted that the value of this consultation is only a consultative one: the local council is not bound by the outcome of the consultation. Another technique has been implemented to collect the citizens' opinions about political issues: the citizen's panel, which is mostly found in the field of urbanisation and the environment.¹⁵⁴ This experience is a good example of the wish of increasing democracy and the willingness to involve citizens in real political choices. With regards to the involvement of the citizens in the administrative task, we can mention the "Kafka point"¹⁵⁵ created by the Minister of the Administrative simplification, Olivier Chastel. This "point of contact" has been called Kafka in memory of the author who spent his whole life denouncing the indifference of State toward the citizens. This website aims at collecting citizens' ideas or complaints relating to administrative work. Resting upon these examples, we can draw the conclusion that, because of the federalist model, these principles can be properly

¹⁵² April 10, 1995.

¹⁵³ The initiative belongs to the municipal council or to the citizens. In the latter case, at least 10% of the whole population must sign and send a letter to the municipal council, providing some specific information and documents so that the council is advised of the precise desire of the population.

¹⁵⁴ The citizen's panel aims at improving the participatory democracy and involving as many citizens as possible in the decision-making process. That was first experienced in 2001: sixty two people have been chosen in the basis of parity –different sex, age, social-professional category. They were asked about the different questions related to the topic – territory matters and their votes were then collected, as well as the best propositions of the citizens. The final text, revised by the citizens, was then sent to the Minister in charge.

¹⁵⁵ www.Kafka.be.

implemented at a local level, as cohesion will exist especially at a lower level. So the constitutional structure has a real impact on the implementation of the principles.

The administration is making a strong effort to increase and develop the principles of transparency and participation. Increasing the level of legislation should also create legal certainty in general, but in practise transparency decisions are made on a case-by-case basis, which can create confusion in citizens' minds because the outcome of the law is not always foreseeable anymore.

Human rights get increasing protection, as the Constitutional Court's role evolved throughout the years: this is now a fully-fledged constitutional court whose mission is to protect citizens from the potential attempts by the State to constrain their rights. Moreover, and this is the final conclusion, these human rights find a greater protection via the increasing influence of European law, whose impact is visible in each of the policies field. Is this a loss of sovereignty? The question has never been solved, as it has such a political connotation: is the European Union turning states into entities belonging to a kind of federal state, or does it correspond more to a confederal model? However, as some provisions of the constitution attest, the European Union institutions now play a great role in the national policy.¹⁵⁶

Finally we can conclude that the properness principle has been developed in the case law and that there is a strong influence from the international level in what concerns human rights. Transparency is related to the administration, but not for the judiciary. The referendum as a form of the participation principle is not possible because of the Constitution, so other forms have been developed. The principle of effectiveness is promoted by less and simpler regulations; as for the accountability principle, the focus is on the political and financial accountability.

7.3.2 *Germany*

In a 2009 strategy report of the Federal Ministry of Economic Cooperation and Development, the German government explained its view on good governance principles. This report stated that the government has 'an understanding of good governance based on human rights, meaning the threefold obligation of state, i.e. respecting, protecting and fulfilling human rights'.¹⁵⁷ It promotes good governance, both internally and with regard to its foreign development policy, because the government sees good governance as an aid to achieve full observance of human rights.¹⁵⁸ Its good governance policy focuses on norms, institutions and procedures that regulate the actions of (non-)governmental players. It states that on the one hand, good governance is about the values that underlie governance, and on the other it is about the institutional framework in which governance takes place.¹⁵⁹ The following points of integration and application of good governance principles in public institutions can be noted.

Firstly, throughout the German state good governance is recognized and applied. The executive power on the federal level has adopted good governance as a means to uphold human rights, both within Germany and – in the context of development policy – outside Germany. Its actions and decisions are subject to various procedural and material norms, which show a high degree of awareness of good governance principles and good administration. The legislative power has been adopting the principles of good governance in its norms for the executive power; and despite the lack of evidence that the Parliament (Bundestag) has consistently applied the generally accepted norms of good governance in its legislation, a variety of these elements of good governance are included in different laws. The judicial power has also recognized the importance of good governance, by applying its principles throughout the judiciary's courts.

¹⁵⁶ Towards good administration: the Belgian experience, in: *IN PURSUIT OF GOOD ADMINISTRATION*, conference Council of Europe, Warsaw 2007, D. Reinders.

¹⁵⁷ Federal Ministry of Economic Cooperation and Development Strategy Report 178/2009, p. 3.

¹⁵⁸ Federal Ministry of Economic Cooperation and Development Strategy Report 178/2009, p. 5.

¹⁵⁹ Federal Ministry of Economic Cooperation and Development Strategy Report 178/2009, p. 7.

Secondly, German citizens have a useful way of appealing to the government when they feel that their rights have been violated or when they think the government has not acted in accordance with good governance norms. The federal court system is a means to achieve this, because of its variety in subjects and general accessibility for the citizens. Participation is considered an important aspect of politics in Germany, and there are various ways for citizens to participate in local administration, for example by joining citizens' councils on various matters.¹⁶⁰ Other efforts to include citizens in government include citizens' initiatives and referendums on a local level¹⁶¹, and on a federal level.¹⁶²

Thirdly, however, the lack of a federal ombudsman may have a negative influence on the development of the principles of good governance in Germany. An ombudsman has the ability to appeal to the government, thus addressing problems on a broader scale than the individual cases brought to the judiciary. The fact that the “Länder” (the federal states) in some cases do have such an ombudsman and the fact that in those “Länder” it seems to be functioning well shows that, on a federal level, the creation of such an institution may prove to be useful.

Fourthly, it may be beneficial for the development and application of the principles of good governance to raise more awareness on the issue. Currently, there is very little evidence that the institutions of the German government are aware of the existence and importance of the principles of good governance. They do act accordingly to these principles, but in a decentralized manner. When awareness is raised and a general policy on good governance is formed within Germany, this may improve.

Finally we can conclude that the principle of proportionality as one of the sub-principles of properness has been strongly developed. Relevant is also the government's opinion that good governance has to be seen as a means of upholding human rights through the threefold obligation of the State: respecting, protecting and fulfilling human rights. The Administrative Procedure Act contains transparency norms, and we find on both federal and local level forms of participation. There is not a strong focus on effectiveness and accountability of the government. It can be said that the development and application of the principles of good governance in Germany is well developed, but still needs further improvement.

7.3.3 France

All the institutions in France play a role in the implementation of good governance principles, but not in the same way and with the same importance. The legislative body set up the most binding rules (legally speaking) without having an impact on the enforcement of those rules. The judiciary in the strict French tradition creates the most extended field of principles sanctioning it via the judges. The judiciary is closely related to the sub branch of the executive power that also represents the independent administrative authorities (i.a.a.) – supposedly independent – the judiciary can be seen as fulfilling the role of the cornerstone for the implementation of the good governance principles.

The three kinds of rules “discovered” by the judges are: a. the general principles of law (“Principes généraux du droit”);¹⁶³ b. the principles which have constitutional value;¹⁶⁴ c. the “fundamental principles recognized by the laws of the Republic”.¹⁶⁵ These norms are

¹⁶⁰ S. Royo, A. Yetano & B. Acerete, Citizen Participation in German and Spanish Local Governments: A Comparative Study, in: *International Journal of Public Administration*, Volume 34, Issue 3 (2011).

¹⁶¹ O. Gabriel, S. Keil & E. Kerrouche, *Political Participation in France and Germany*, ECPR Colchester 2012, pg. 161.

¹⁶² Art. 29 GG.

¹⁶³ Which find their roots in non-written texts, discovered by the jurisprudence (especially the Council of State that is both the advisor and the controller of the good process of the administration) and that are over the decrees and under the law in the norm's Pyramid of Kelsen. Examples are: the principle of equality for the users of public services (Council of State 25 Jun 1948, Société du Journal l'Aurore), the equality of the citizens before the taxes (Council of State 22 February 1974, Association des maires de France).

¹⁶⁴ General principles of law that have been recognized as constitutional by the Constitutional Council. An example is the principle of the respect for human dignity in 1994.

¹⁶⁵ Council of State and Constitutional Council (that is out of the judiciary and to a certain extent over all the other institutions) are concurrently the only creators of a kind of norms Council of State, 3 July 1996, Koné.

considered to be of the same value as the constitutional principles.¹⁶⁶ The last category of general rules is the objectives with constitutional value (OVC = “Objectifs de valeur constitutionnelle”).¹⁶⁷ These principles are directly related to the principles of good governance. The OVC don’t address individual citizens’ rights which can be directly invoked before the courts; they concern the legislative body, for which they are only an obligation in relation to means and not results. These principles discovered by the judges are compulsorily taken into account when the legislative body creates a law in this field, and they guide normative action.

Some authors agreed to assimilate the notion of good administration and good governance,¹⁶⁸ while for others there is a radical difference. In order to understand this, knowledge is relevant about the idea of good administration in its historical context. In France the start of the good governance idea is around 1980, mostly in the field of urbanism and was a portmanteau concept centred around principles of consultation, negotiation and transparency in the context of decentralization.¹⁶⁹ However, the notion of good administration was – since the middle of the 19th century – mostly defined by the negative perspective of «bad administration». The idea of a «good administration» was developed in complementarity with the idea of a deontological administration with a strong sense of public ethic.¹⁷⁰ For Hauriou good administration enlarged the scope of the review - Recours pour excès de pouvoir (REP) - an equivalent of an “abuse of power” directly linked with the idea of an administrative morality: a «way of introspecting the administration in order to evaluate its administrative morality»¹⁷¹. For Hauriou, the administrative judge was “in charge of enforcing the good administration”.¹⁷²

According to the conception of the doctrine about the subject of good administration and good governance, for Madame Lassalle the question of the “good governance” is about ideology while the “good administration is about tangible action”: the enforcement of the principle in the field of the legality. Rhita Bousta underlines that the point of critic which disapproves of the use of the word “good” - denying it a legal implication - isn’t relevant for France. Good administration has a direct impact on legality. Soft law is mainly materialized in France by the enactment of charter service, codes of good governance, and codes of good administrative lines.¹⁷³ So there is already a legal effect and Bousta developed the idea of an « enrichissement de la légalité » meaning that the good administration, by the definition that she ascribed to it (« the **adequation** of means ») is used by the judge when controlling the internal (misuse of power, direct violation of the law) and external (formal vision, incompetence) legality of an administrative act. This conception is a much narrower conception of the principle of good governance and it prevents to a certain extent a comparison of this principle to the European principle with the same name, but on the other hand the main interest of this idea is to increase the effectiveness of the use of the principle without closing the door to an evolution of this principle as emancipated from the traditional control of legality.

¹⁶⁶ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2013679DCdoc.pdf>.

¹⁶⁷ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-20/les-objectifs-de-valeur-constitutionnelle.50643.html>; some OVR examples here are: the maintaining of public order, pluralism of opinions and thoughts (for audio-visual communication, press, political parties), the ability for anyone to have decent housing, accessibility and intelligibility of the law, the fight against tax evasion, the proper use of public funds, the proper administration of justice.

¹⁶⁸ Jacqueline Dutheil de la Rochere, “Charte des droits fondamentaux de l’Union Européenne; Denys Simon, “Article II-101”, in Laurence Burgorgue-Larsen, Anne Levade, Fabrice Picod (dir.), *Traité établissant une constitution pour l’Europe*. Commentaire article par article. t.2, Bruxelles, Bruylant 2005, p.528.

¹⁶⁹ Gérard Marcou, La Gouvernance : innovation conceptuelle ou artifice de présentation ?. In: Annuaire des collectivités locales. Tome 26, 2006. La gouvernance territoriale. pp. 5-18.

¹⁷⁰ <http://www.reds.msh-paris.fr/publications/revue/html/ds030031/ds030031-09.htm> for the analyses of this theory.

¹⁷¹ Maurice Hauriou, *Précis de droit administrative et de droit public*, réimp., 12ed Paris, Dalloz, coll.Bibliothèque Dalloz, 2002 (1^{ère} ed. : 1933).

¹⁷² Maurice Hauriou, *La théorie de l’Institution et de la fondation*. (Essai de vitalisme social), Cahiers de la Nouvelle Journée, 1925, n°=4 La Cité moderne et les transformations du droit p.2-45).

¹⁷³ C.E., 9eme-10eme sous-sect., 10 novembre 2000, Milhau, rec.512, req n°204805; *Revue de Jurisprudence fiscal*, février 2001, n°194 ; for example : the “French charter of the ratepayer” which must, during a litigation, figure in the pretention of the parties and the judge is obliged to take it in account. http://www2.impots.gouv.fr/documentation/charter_contrib/index.htm.

All institutions in France play a role in the implementation of principles of good governance, but not in the same way and with the same importance. The legislative body set up the most binding rules legally speaking without having an impact on the enforcement of those rules. The judiciary in the strict French tradition creates the most extended field of principles sanctioning it via the judges and can be seen as the cornerstones, of the implementation of the principles of good governance.

Concerning the principles themselves, we can briefly summarize the topic stating that in France the most important principles of good governance are the transparency, the proper administration, the participation and the accountability principle, about which the doctrine is very extended and contrary to the principle of human rights.

For practical reasons, most of the principles are implemented in the same way: for each issue, an i.a.a. is set up in order to try to prevent a conflict and the referral to this authority is a prerequisite before the intervention of the judge, allowing the conflict to be handled in a softer and more pragmatic way. The “soft law” in a large meaning is the first step of implementation in France of the principles of good governance, and then the strict formality prevails via the key enforcer of the system: the administrative judge. The good governance principles are well implemented in France via the soft law and the i.a.a., supplemented when needed by the rules of strict law when good administration needs to be gathered and enforced as a fully-fledged legal notion to have a fully implemented impact.

Finally we can conclude in relation to the three dimensions of good governance as follows. The properness principle has been especially developed by case law, while the human rights have been specified in the Constitution. The issue of integrity is strongly related to the principle of transparency which is in line with the view developed in their membership of Open Government. Participation has been strongly developed on local level by urban participation. There is not so much focus on effectiveness; on the contrary, we found a strong focus on financial accountability on all levels.

7.3.4 The Netherlands

Nowadays in the Netherlands we see a certain shift of powers within the state, towards a new balance. Therefore transparency is increasingly needed and every task of every state power has to be clear, so as to avoid misunderstandings in relation to this shift. The powers are working closer together and could count on more support from citizens. In a representative democracy, the representatives are also accountable to citizens. The democratic rule of law provided some principles like participation, transparency and properness.

The principle of properness can be seen as the most codified and specified principle in the General Administrative Law Act (GALA) and is mostly applied at the municipality level in cases of granting licenses. The principle of participation is maybe the most fundamental principle for a representative democracy. In the Model Rules of the ReNEUAL it does have a much broader scope with many more possibilities for participation than in the GALA where it only has the public preparation procedure. The executive power in the Netherlands does attach a lot of value to the principle of openness. Openness is mainly about integrity and trust and is relevant for legitimacy. There is a trend of decreasing of trust in the government because of the frequent changing of the political parties of the executive power over the last ten years. Also the citizens are more emancipated and have a more critical view. Openness is important to let the citizens know what the government is dealing with and creates trust.

In a society such as the Dutch one, openness and legitimacy are important. There are lots of open terms in the law which can be filled in also by decentralized and other semi-private administrative authorities. Therefore it is very important to be open and to stay in contact with stakeholders. Participation could be a way of improving legitimacy and to create increasing trust from the citizens. Legitimacy is not mentioned as one of the principles of good governance

but can be found as a principle in the Dutch Code of Public Governance Code. Legitimacy is relevant for the principles of good governance. It is created by the principle of participation, which ensures that citizens are concerned with the execution of policy. The principle of transparency is also relevant, because it guarantees that citizens can easily get information about government activities. These two principles promote legitimacy.

Integrity does not belong to one principle of good governance, but is part of several principles like properness, transparency and accountability. Integrity is an important issue for the Dutch public (and private) sector. There are several codes promoting integrity and there is one extra general Dutch Code of Good Public Governance. The enforcement of integrity norms seems to be rather weak. A lack of integrity decreases trust of citizens in the government so it is very important to work on compliance and enforcement.

Good governance means, in the view of the Dutch National Ombudsman, that public authorities take a citizen's perspective as their starting-point. This does not necessarily mean that they should give in to whatever citizens ask for, but that they remain respectful to them in every interaction¹⁷⁴ and is not restricted to the correct application of juridical, codified norms. More importantly, it consists of norms which also have an ethical character: norms of proper conduct.¹⁷⁵ Whereas juridical norms represent the rule of law dimension, norms of proper conduct stand for the democratic dimension. Any public authority that only obeys juridical codified norms, may be successful as a lawful, bureaucratic system, but is at risk of failing as a democratic institution. Public authorities need to move beyond legality: they need to show proper conduct.¹⁷⁶

A similarity between the executive power and the Ombudsman is that they both attach a lot of value to the principle of properness. Propriety is the testing model of the Ombudsman and mostly all of these norms are codified in the GALA. In the Code of Good Public Governance properness is not very clearly mentioned, but you can see it under the principle of legitimacy. In the testing model of the Ombudsman, the subjects of the testing are the complaints of citizens with regards to principles of proper administration which most of them have been codified in the GALA. There is also a difference in review (norms) between the Ombudsman and the judiciary, because the judiciary is only concerned with lawfulness, while the Ombudsman has a broader view of propriety. Propriety does have a certain level of morality in it. Otherwise the decision of the Ombudsman is not legally binding and the decision of the judiciary is. The Court of Audit has a totally different role and tests other principles than the Ombudsman. The Court of Audit is more concerned with accountability and effectiveness. A very important question for the Court of Audit is whether money is spent to achieve the goals for which they are reserved and whether the policy is effective in reaching said goals.

The National Ombudsman has signalled several tendencies which are relevant in the context of good governance. The first is the increasing complexity and 'regulation reflex': the tendency to 'solve' societal problems by introducing new regulations. The second is E-government.¹⁷⁷ Public authorities should always keep other channels for communication open to those citizens that do not use, or have trouble with, the digital interface.¹⁷⁸ The third tendency is public authorities' governments which are distrustful about their citizens.¹⁷⁹ It can be

¹⁷⁴ A. Brenninkmeijer, 'Democratie en de burger'. Contribution for the Constitutional Law Conference: The powers that be: op zoek naar nieuwe checks and balances in de verhouding tussen wetgever, bestuur, rechter en media in de veillagige rechtsorde. 2012, University of Leiden.

¹⁷⁵ A. Brenninkmeijer, 'Fair Governance: a question of lawfulness and proper conduct' in: *Rethinking good administration in the European Union*, Sixth seminar of the National Ombudsmen of EU Member States and Candidate Countries. Strasbourg, 14-16 October 2007, p. 27-32.

¹⁷⁶ Also see P. Nikiforos Diamandouros, 'Legality and good administration: is there a difference?' Speech at the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries in: *Rethinking Good Administration in the European Union*. Strasbourg, France, 15 October 2007.

¹⁷⁷ A. Brenninkmeijer, 'Betrouwbare ICT' in: *PM (Public Mission)*, 2011, nr. 9 (October), p. 11.

¹⁷⁸ National ombudsman's report 2011/204 and report 2013/170. Also see Brenninkmeijer (2011a). (2011a). 'De digitale burger' in: *Nederlands Juristenblad*, nr. 19, pp. 1251-1255.

¹⁷⁹ Roëll, Emilie and Alex Brenninkmeijer (2012). 'Is de ambtenaar wantrouwend?' in: *Openbaar Bestuur*, nr. 7, pp. 2-6.

witnessed in the application of a series of laws and regulations to combat fraud with tax returns and benefits.¹⁸⁰ The National ombudsman is critical of how these laws and regulations have limited the discretion of officials in judging when fraud has occurred.¹⁸¹ The fourth tendency is the informal approach. In recent years several public authorities have shown an interest in a different approach to citizens, which is less systemic and starts from the citizens' perspective: the informal approach. The Ministry of the Interior and Kingdom Relations has set up the project Pleasant Contact with the Government.¹⁸² The informal approach has many of the ingredients that provide the key to a better relation between citizens and government institutions: personal contact, good manners and participation. Research shows that even citizens, who receive a negative decision, become more trustful about their contacts with public authorities if they are listened to and are treated in a respectful way.¹⁸³

The conclusion for the Netherlands is that there is a strong codification of the properness (sub) principles in the General Administrative Law Act. The human rights have been specified in a special chapter of the Constitution and there is a strong influence especially from the international human rights case law. For the transparency principle there is a lot of discussion about the specification in the Information Act and the consequences in practice; the other elements of this principle can be found mostly in the GALA. That is also true for the participation principle related to specific fields, with a special procedure and a general procedure for hearing interested persons; the other forms of the participation principle have been developed in practise but not in the law. There is a strong focus on the principle of effectiveness also from a legal perspective, and the principle of accountability has been applied in a broader sense.

7.3.5 Austria

Since the establishment of the second Republic of Austria in 1955, the state has developed towards a classical model of a modern Rechtsstaat built on the basis of three cornerstones: the rule of law, democracy and good governance. To guarantee the parliamentary democracy, a practical system of administration is required in order to guarantee quality and integrity. To pursue this, the principles of good governance are of crucial importance.

The oldest good governance principle is properness, consisting of many subprinciples: misuse of power, legal certainty, lawfulness, equality, proportionality, and motivation.¹⁸⁴ All except for one of these subprinciples are incorporated in the Federal Constitution or the Administrative Procedure Act, creating a secure properness of administrative actions by government authorities (as they are legally bound). Moreover, the Austrian institutional system has a top-down framework, as executing institutions follow the interpretations and decisions taken by the higher instances of administrative power. The same structure is applied in the judiciary and it works through from the federal level to the municipalities, thereby including all layers of the Austrian government. The principle of properness is very solid in Austria and will not likely cause conflicts or difficulties as long as the current system remains.

When considering good governance (responsibilities) on a European level it is noteworthy that Austria has a monistic system. International and European laws and (human rights) treaties have supremacy and direct effect in the domestic legal order and can be invoked

¹⁸⁰ A. Brenninkmeijer, 'De sanctiestaat doet onrecht aan zijn burgers' in: *Staatscourant*, 17 december 2013.

¹⁸¹ National ombudsman's report 2014/147 and report 2014/159.

¹⁸² For more information: <http://prettigcontactmetdeoverheid.nl>. Also see: M. Euwema; L. van der Velden & C. Koetsenruijter (eds.), *Prettig contact met de overheid. Praktische handreiking voor het inzetten van mediationvaardigheden*, 2010 Publication by the Ministry of the Interior and Kingdom Relations.

¹⁸³ M. Euwema et al. (eds.). *Prettig contact met de overheid 2. Eindrapportage pioniertraject mediationvaardigheden: resultaten, analyses & aanbevelingen*, 2010, Publication by the Ministry of the Interior and Kingdom Relations; A. Brenninkmeijer and B. Marseille, 'Meer succes met de informele aanpak van bezwaarschriften' in: *Nederlands Juristenblad (NJB)*, 2010, nr. 30, pp. 2010-2016; A. Brenninkmeijer, N. van der Bijl and Y. van der Vlugt, 'Schadevergoeding en excuses vanuit het perspectief van de behoorlijkheid. Een schadeclaim als motie van wantrouwen' in: *Coulant compenseren*, 2012, T. Barkhuysen et al. (red.). Deventer: Kluwer, pp. 97-107.

¹⁸⁴ <https://www.bka.gv.at/DocView.axd?CobId=41629>; Austrian Administrative Procedure Act 1991; B-VG.

by the people before national courts. Overall the presence of properness and human rights has a very solid performance in the Austrian governance system.

The principles of participation and transparency, essential to an effectively functioning democracy, are also considerably well structured. Another target is to increase transparency of federal financial management and accounting by annually reforming the Report on the Federal Financial Statements with the purpose of creating public understanding and awareness of the finances in Austria's public sector on several levels.¹⁸⁵ Three of its most important values are transparency, integrity and accountability.¹⁸⁶ Also important are the "Standards of Public Participation" issued by the Austrian Council of Ministers in 2008. Part of it is making governmental information available to the public and the fostering of an open decision-making process.¹⁸⁷ However, there is some critique about the opportunities afforded to people to participate in governing the state because of the fact that the opportunity to lodge citizen's initiatives is generally with the Federal Council and consequently often set aside or considered in a minimalized manner by the National Council. This leaves close to no chances for citizens to influence or to initiate and is thus a gap in Austria's good governance system that leads to a not fully effective democracy.

The final two principles, effectiveness and accountability, are closely connected to the developing fourth power which is the duty of the Supreme Offices of State in Austria: the Federal Ombudsman (FO) and the Austrian Court of Audit (ACA). The FO essentially focuses on the behaviour of administrative authorities and investigates in essence the properness of their actions. The activities of the ACA are focused on the principle of unity of financial accountability, with a focus on examining the finances of state auditors and assessing whether the expenditures are carried out in accordance with the principles of economics, efficiency, effectiveness and legality. The focus is on the substantive elements of accountability, meaning that we distinguish between finance, procedure and product, with specific consideration for the dominant aspect that is relevant to the nature of the work of each actor. Together, the principles of good governance represent a considerably strong system of state powers and good administration.

Concluding, we can say that the properness principle has been developed along the three lines of illegality, irrationality and impropriety. The human rights protection is strongly influenced by international law. Transparency can be found especially on the decentralized level. For the participation principle different forms have been developed. Effectiveness and accountability are approached from a classical perspective but there are certain influences from new and innovative views on these principles.

7.3.6 Luxembourg

An investigation into the strengths and weaknesses of governance in the Grand Duchy of Luxembourg embodies the functioning of political institutions and governmental bodies, the functioning of the system of checks and balances, the effective and efficient implementation of policies and reforms, and the regulation of economic activity. Within Luxembourg, the Constitution lays down the legal framework necessary for the separation of the legislative, executive and judicial branches of the government, as well as additional controlling institutions that have a specific duty of checking up on the government and its responsibilities. The rule of law is very important.¹⁸⁸ For instance, the Ombudsman and the Court of Audit apply the principles of accountability and effectiveness to scrutinize the government by holding the

¹⁸⁵ <http://www.rechnungshof.gv.at/en/aca/mission-statement-strategy-code-of-ethics.html>.

¹⁸⁶ Austrian Court of Audit, Annual Report 2012/2013, p. 5-7.

¹⁸⁷ Austrian Council of Ministers, *Standards of Public Participation – Recommendations for Good Practice, July 2008*, <http://www.oecd.org/governance/ministerial/46342001.pdf>.

¹⁸⁸ Rusen Ergec, Deux concepts constitutionnels nouveaux: l'Etat de droit et la dignité humaine, *Journal des tribunaux* – Luxembourg, 2009 p.181, referring to Philippe Lauvaux, *Les Grandes démocraties contemporaines*, Paris, PUF 2004, p.37

government accountable and measuring the effectiveness of the implementation and execution of policies and laws. A process of updating the Constitution is currently under way.

The rights of equality are also important for all residents including foreigners, since foreigners make up a significant portion of the population. The Luxembourg civil code also provides for extensive equality between nationals and foreign citizens.¹⁸⁹ Also, the definition of “droits civils” is extensive. Human rights play an important role when it comes to the environment and the social and health fields. This makes sense given the way they have been included in the Constitution. The government is very transparent and maintains an open image to the citizens as well to the different institutions that make up the government. While there are some regulations¹⁹⁰, Luxembourg should nevertheless incorporate a general Information Act. Luxembourg has a lot of foreigners, and 80% of the private sector is run by foreigners. Therefore, participation is a very relevant subject and relevant to elections. Luxembourg is however creating more rights for residents, and this will also have a positive effect on the value of democracy. Luxembourg has an effective government and a good system, except for the effectiveness of its legal protection: this problem might be removed by hiring more state employees in the hope of shortening the length of legal procedures, as advised by the Court of Human Rights. Luxembourg is upholding the different principles, but it seems there is a need for some modernization which can also be found in the work on a new Constitution. There will be a referendum on a first draft of the new Constitution in 2015 and a second referendum for its final text is planned for 2016.

Concluding, the properness principle has been developed by its sub-principles in case law. The human rights can be found in the Constitution and there are strong international influences. The more democratic principles of transparency and participation are rather well developed. For effectiveness and accountability important steps have been made, also as a result of the influence of international organisations.

7.3.7 *Conclusions Region 2: Central Europe.*

1. The central European countries are different not only when we look at the language (3 groups: Dutch (Netherlands, Belgium I), French (Belgium II, Luxembourg and France), German (Germany and Austria). From the perspective of the structure of the state three countries have a unitary system (Netherlands, Luxembourg and France), and the other three countries have a federal system.
2. Looking at the legal basis of the principles of good governance, in some countries we find a rather broad codification: Netherlands, Germany and Austria; in Belgium Luxembourg and France and these are codified in the Constitution or in the Administrative Procedure Acts. There is less codification of the principles because in these countries the judiciaries (and ombudsman-institutions) are more active in the developing of the principles of good governance. In all the countries the Court of Audit is active in the development of the principles of accountability and effectiveness.
3. We see in countries with a federal system a stronger development of the principles of good governance on local level and which is more independent from the central level.

¹⁸⁹ Art. 7. *L'exercice de droits civils est indépendant de la qualité de citoyen, laquelle ne s'acquiert et ne se conserve que conformément à la loi constitutionnelle.* Art. 11. *L'étranger jouira dans le Luxembourg des mêmes droits civils que ceux qui sont ou seront accordés aux luxembourgeois par les traités de la nation à laquelle cet étranger appartiendra.* Art.13. *L'étranger qui aura été admis par autorisation du Grand-duc à établir son domicile dans le Luxembourg y jouira de tous les droits, tant qu'il continuera d'y résider.*

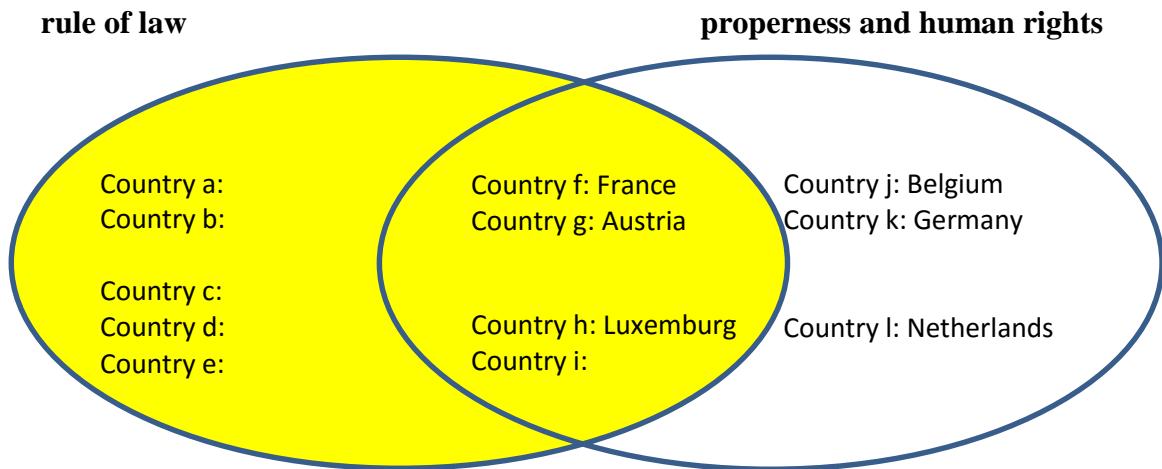
¹⁹⁰ On the administrative level the “règlement grand-ducal” of 8 June 1979 provides for access to documents insofar as they are part of or are relating to the personal file of the citizen : Art. 11. *Tout administré a droit à la communication intégrale du dossier relative à sa situation administrative ... ; Art. 12. Toute personne concernée par une décision administrative qui est susceptible de porter atteinte à ses droits et intérêts est également en droit d'obtenir communication des éléments d'informations sur lesquels l'Administration s'est basée ou entend se baser.*

It seems that in smaller unitary states the central level is more active than in bigger states.

4. In all these countries the principles of human rights are very strong developed, and especially in countries with more than one language like Belgium we see a strong development of these principles.
5. In most of the countries there seems to be not too much attention paid to the integrity aspects and their links to good governance; on the contrary, in the Netherlands there is a rather broad legal treatment of integrity aspects and the principle of integrity.
6. In France, the principle of good administration is used as an umbrella term, containing several sub-principles; interesting in this country is the special role of the principles of good governance in relation to independent administrative authorities.
7. In Austria we find the classical principles like properness and human rights in the Constitution, the democratic principles being still in development, while the principles of effectiveness and accountability are especially used by the Federal Ombudsman and the Court of Audit.
8. In Luxembourg the principles of good governance are also used but not so strongly. Special attention is paid to the principles of equality (as part of properness), participation and effectiveness.
9. In Belgium human rights, also because of the Constitutional Court, have a special position in the development of good governance principles. A problem is that there are so many bodies within the government that it creates confusion for the citizens.
10. In Germany, on the state level, we see in some states an ombudsman; it seems that the work of the ombudsman had an inspiring influence on the work of the administration.

GROUP 2 COUNTRIES – WESTERN EUROPE

RULE OF LAW DIMENSION



France: properness in case law developed, human rights especially from the constitution;

Austria: properness developed around illegality, irrationality and impropriety, human rights protection influenced by international level;

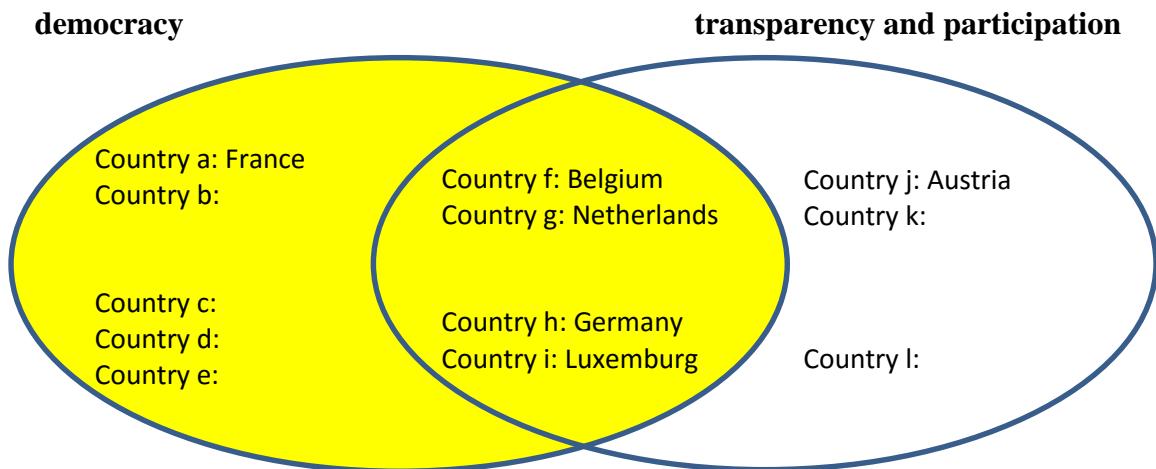
Luxemburg: properness developed by sub-principles in case law, human rights in constitution and strong international influence;

Belgium: properness in case law, strong influence from international level on human rights;

Germany: principle of proportionality strongly developed; the good governance principles are seen as upholding human rights;

Netherlands: codification of properness in GALA, human rights in Constitution, with international influence.

DEMOCRACY DIMENSION



France: transparency strongly linked to integrity, member of Open Government, especially urban participation;

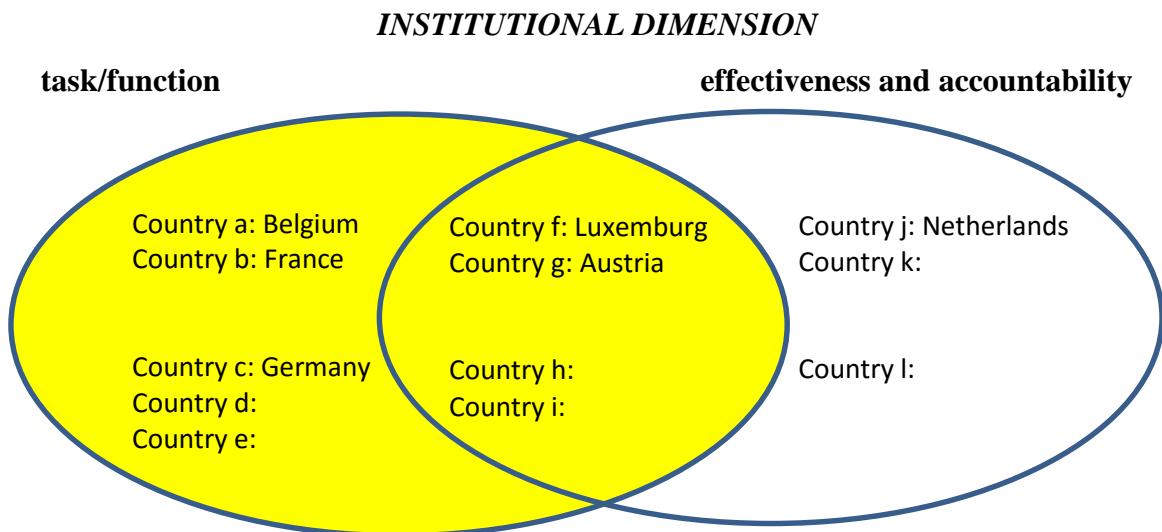
Luxemburg: transparency and participation rather developed;

Germany: Administrative Procedure Act contains transparency norms; also federal and local level participation;

Belgium: transparency not in judiciary context; no referendum but there are other forms of participation;

Netherlands: transparency in discussion, participation for specific policy fields;

Austria: transparency on decentralized level, several participation forms developed.



Belgium: effectiveness by less/simple regulation, political and financial accountability;

France: not much attention on effectiveness, strong focus on financial accountability on all levels;

Germany: not a strong focus on effectiveness and accountability;

Austria: classical approach which is influenced by new views on these aspects;

Luxemburg: influenced by international organisations; important steps are made;

Netherlands: strong focus on several aspects of effectiveness (also legally), accountability applied in a broader sense.

7.4 Shifts of good governance dimensions in Group 3 countries – Southern Europe

The group of countries part of the European Union is Greece, Italy, Malta, Portugal, Spain, and Cyprus. In making the country reports we also used here the following structure: 1. Introduction; 2. Context of the country; 3. Good governance, general aspects; 4. Good governance, six specific aspects; 5. Conclusions including answer research question(s).

Also in this paragraph we made a summary of the reports with a special focus on the three dimensions of good governance which is concluded at the end of each country summary. At the end of this paragraph you will find an overview of the whole group of Southern Europe countries for each dimension of good governance in the two ellipses design in which each country is theoretically positioned. In some keywords under these designs we gave a short clarification.

7.4.1 Greece

The Greek Code of Administrative Procedure mentions several principles concerning good administration. An important one is the principle of impartiality of the administrative bodies in article 7 of the Code, which states that the administrative bodies should provide guarantees of impartial judgement in the performance of their duties. Greece's Code of Civil Servants gives rules on the behaviour of civil servants.¹⁹¹ Art. 27(1), “a civil servant, both in and out of service, must behave in such a manner as to be worthy of the public’s trust.” According to the second paragraph, a civil servant “must behave with propriety towards the administered persons and to serve them in the dispatch of their cases.” Article 107(1) state that improper behaviour towards citizens is a disciplinary offence.

In the context of the (sub) principles of properness, Greece has problems related to abuse of powers by law enforcement officials. A culture of abuse and impunity in the Greek police force exists, as officials make excessive and arbitrary use of force and are unable to prevent or investigate racially motivated crimes. The inability leads to a lack of legal certainty.

According to research reports, we find in Greece quite a lot of corruption.¹⁹² Greece is faced with corruption challenges as the public sector suffers from substantial integrity gaps in both law and practice, allowing corruption to thrive. However, the Greek government has made positive developments in the battle against corruption. Due to the Transparency Program Initiative, Greek Ministries and public bodies are required to post all decisions they make online¹⁹³ and are not valid unless published. The Government has developed a set of open government initiatives to introduce significant levels of transparency, accountability and citizen engagement within all levels of the Greek public administration. It also established a Prosecutor of Financial crime, to investigate tax and financial crime cases.¹⁹⁴ Regulations have been created to address political immunity. Also, a Special Permanent Committee on Institutions and Transparency has been empowered and can request hearings of state functionaries or other public persons for issues that concern the principle of transparency.¹⁹⁵

The citizens of Greece have felt estranged towards the current public administration model. The Greek Action Plan 2012 established a new ‘social contract’ between citizens and the State.¹⁹⁶ As part of this new situation, attention was given to citizens’ comments and suggestions, so there is more participation than before. There are some forms of citizens’ initiative, panels and referenda in Greece. In 2013, a Greek think tank was the first to launch

¹⁹¹ The Code of Regulations of Public Civil Administrative Servants and Employees of Legal Persons of Public Law (Code of Civil Servants), Law 2190/1994, *Official Gazette Issue No 28/A*, available at: <http://www.oecd.org/mena/governance/35526160.pdf>

¹⁹² Amnesty International Publications, “A law unto themselves – a culture of abuse and impunity in the Greek police”, Amnesty International Publications London 2014 (Amnesty International April 2014), at: http://www.amnesty.nl/sites/default/files/public/greece_policing_web.pdf

¹⁹³ The Transparency Program initiative can be found online at <https://diavgeia.gov.gr/en>

¹⁹⁴ Transparency International, “Corruption Per Country/Territory: Corruption Challenges” : <http://www.transparency.org/country/#GRC>

¹⁹⁵ Open Government Partnership, “Introduction”, derived from: <http://www.opengovpartnership.org/country/greece>

¹⁹⁶ Open Government Partnership, “Greek Action Plan 2012”, April 2012, available at:

http://www.opengovpartnership.org/sites/default/files/legacy_files/country_action_plans/12_04_09_OGP_ACTIONPLAN_eng_2.pdf

a European Citizens' Initiative, which aimed to boost investment in education in times of crisis.¹⁹⁷ However, there still remains work to be done, such as introducing a code of deliberation applicable to all public entities or initiating a public audit mechanism which can evaluate quantity and quality of proposed legislation for public consultation.¹⁹⁸ Since Greece started participating in the Open Government Partnership, it strives to provide for a more effective and functional organisation within all levels of the Greek public administration.

The Court of Audit is allowed to examine the constitutionality of laws and may refuse to apply any provisions deemed not to conform to the constitution. It also has the right to decide on the liability of public servants, as well as servants of public bodies or local agencies, for losses caused to the state, public corporations or local agencies through fraud or gross negligence. In 2000, the Taxation Information System (TAXIS) entered into force, an electronic system established to strengthen transparency and battle corruption, thus creating an increase in accountability.

Unfortunately, Greece has huge problems with guaranteeing human rights. A wide range of violations of human rights occur: inhabitants do not have proper access to healthcare, basic rights, education and hospitals are not always guaranteed, protestors are faced with excessive violence by public servants and detainees are tortured by police. The Government has promised to come up with legislation that has stricter requirements.¹⁹⁹

Greece has come a long way by implementing, interpreting and applying the principles of good governance. On the 16th of December 2013 the first European Citizens' Initiative was (??) published, which aims to boost investment in education in times of crisis.²⁰⁰ There is also DIKTIO: Network for Reform in Greece and Europe, developing the idea the European Federation is necessary for the prosperity of all European people.²⁰¹

Finally, we can conclude that the principle of properness remains not very specified and there is attention for the application of human rights. Important developments can be seen related to the democracy dimension, where we see a strong development of the principles of transparency and participation. There is strong work on effectiveness especially in relation to the implementation of EU and international norms. The accountability principle is not yet strongly developed in the financial and tax policy.

7.4.2 Italy

The principles of good governance are definitely developed in Italy in all their forms, even if not always in the same way, but their application and development tend to converge as a single functioning system. Comparing to good governance, the term good administration has a narrower meaning, referring only to the executive power and its application of the six principles. The term good governance can be referred to all three traditional powers of the State. Italy has a very strict separation of powers and also a system of checks and balances in order to protect this system, making the Italian *Stato di Diritto* more similar to the German tradition of the *Rechtsstaat*, than to the Anglo-American experience. This means that the good administration terms should be considered strictly separately from the application of these principles to the other powers of the State, but it is possible to see how all institutions provide a development of these principles together, because they are strictly intertwined to each other.

Good governance can be seen as a sum of principles, to be distinguished from values. While the Italian doctrine and the powers of the state sometimes refer to values (such as suitability, integrity and openness) it is possible to say that usually, looking into the way they

¹⁹⁷ Open Government Partnership, "Independent Reporting Mechanism Greece: Progress Report 2012-2013", 2013, p. 22, available at: <http://www.opengovpartnership.org/country/greece/progress-report/report>

¹⁹⁸ Progress Report Greece 2013, p. 23.

¹⁹⁹ In September 2013, the Greek Ombudsman ruled that racist violence and impunity for the perpetrators undermine social cohesion and rule of law.

²⁰⁰ EurActiv "First citizens' initiative launched in Greece" Dec 2013.

²⁰¹ DIKTIO: Network for Reform in Greece and Europe, "Our Priorities", 2013:<http://en.todiktio.eu/index.php/the-network/who-we-are>

are applied, the norms specified can be related in a narrower sense to the principles. Transparency, openness and integrity may be misleading and values are in fact sometimes used as synonym for the principles, when they should be considered distinct as they have also an ethic content that transcends the strictly legal concept of the principles. One of the policy fields is integrity and its link with transparency.

Article 97²⁰² of the Constitution states in the official translation that “Public administration offices shall be organised according to the provisions of law, so as to ensure the **efficiency and impartiality of the administration**”.^{203,204} This is not a correct translation because this should be something dynamic and evolving that cannot just be described as efficient – an economic way of minimizing the input and maximizing the output – but implies something more. Probably a good translation would be **Good Administration**.²⁰⁵ This term is not only fundamental for this research, but it is also a good representation of the Italian situation in the area of the principles of good governance: not always nominalistically clear at first sight, but only later it emerges how its content has been precisely elaborated by the legislator and jurisprudence.

The executive power is usually keen in the fulfilment of the public interest given by the law. The judiciary is keener on the recognition of violation of the private interests in single cases and their protection. The Ombudsman and the Court of Audit instead are not always directly involved in the protection of public or private interests; this particular position allows them to look at this contrast through an external position and to help find the right balance.

The principle of properness is mostly worked out by the legislator and the jurisprudence. The transparent governmental information is still worked out as a right of the citizen to obtain information, while the obligation of the administration to give all relevant information is less developed and many authors proposed an improvement.²⁰⁶ In 2013, however, new regulations about transparency were introduced.²⁰⁷ The GRECO group (Groups of States against Corruption) of the Council of Europe in its report of 2011 also underlined the strong link between corruption and transparency, and published a report about the Italian party founding system and the supervision by the Court of Audit.²⁰⁸ The principle of transparency is usually linked in many reports with the different value of integrity. So, the legislator uses a very broad interpretation of this principle, but in fact, when implementing new legislation, it usually gives a narrower interpretation of this principle. The right of participation has been mostly elaborated by the jurisprudence and then codified. It can be linked with democracy, and in this sense the legislator is the main developer of the principle. Participation of the citizens is developed in the Italian system in many forms.²⁰⁹ Thus the legislator, under limits indicated by the Constitution, can move administrative functions from the central to the local government. Also²¹⁰ there are two more principles that must be considered: Law n. 59/1997 enounces the principles of

²⁰² “I pubblici uffici sono organizzati secondo disposizioni di legge, in modo che siano assicurati il buon andamento e l'imparzialità dell'amministrazione.”

²⁰³ Article 97 of the Constitution, its interpretation and new proposal.

http://en.camera.it/application/xmanager/projects/camera_eng/file/costituzione-aggiornata_EN_10_10_12.pdf

²⁰⁴ However, translating literally *Buon* can be defined as *Good*, while *Andamento* is a noun that derives from the verb *andare* (verb “to go”) and is defined by the Collins dictionary as *a course, trend or progress* and by the WordReference dictionary also as *evolution, pace, tendency*

²⁰⁵ In 2011 a proposal was made in order to add a new section to article 97 and introduce 4 new principles: efficacy, efficiency, simplicity, transparency; implying that not only *Buon andamento* is not the same as *efficiency*, but it also does not include this principle.

²⁰⁶ F. Merloni, *La trasparenza amministrativa*, 2008, p. 20.

²⁰⁷ Article 3 states a general right of the citizen to access every document that is considered public. Also there is the obligation for every administration to adopt a 3 year program to promote transparency and integrity and article 12 states the general obligation for the administration to publish documents and acts on an institutional website.

²⁰⁸ GRECO reports [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)7_Italy_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)7_Italy_Two_EN.pdf).

²⁰⁹ Article 71 of the Constitution allows 50.000 voters to propose a bill. Articles 48 and 49 of law n. 352 1970 require a relation in order to specify the aims and the content; it must be presented to the President of one of the Chambers. The Constitution itself provides kinds of referendum. Article 75 regulates an abrogative referendum when requested by 500.000 voters or five Regional Councils. However referenda are not admissible in the case of tax, budget, amnesty and pardon laws, or laws authorising the ratification of international treaties. The Constitutional Court of Italy also established other requirements, in fact is considered inadmissible a referendum in which many heterogeneous norms are proposed to be abrogated without a specific *ratio* or when the law has constitutional relevance.

²¹⁰ M. Clarich, *Manuale di diritto amministrativo*, 2013, p. 146-147

adequacy²¹¹ and differentiation²¹². Law n. 59/1997 also mentions other principles such as efficiency and liability of the government. This structure has been defined triangular, because at the same time the State can communicate with regions but also directly with municipalities without the necessary intermediation of the regions.²¹³ A form of accountability is the confidence that the Government must obtain from both Houses to begin their mandate.²¹⁴

Article 97 states the principle of the impartiality of the public administration and a general form of accountability is provided by the Constitution for civil servants; in fact, article 28 of the Constitution states that officials and employees of the State and public entities shall be directly liable, under criminal, civil and administrative law, for acts performed in violation of rights. In such cases, civil liability shall extend to the State and the public entities. The Italian Constitution also contains a list of human rights that is in part immediately applicable and in some part it has the function of driving the legislator into regulating these rights.²¹⁵ They have been developed by the legislator and by the jurisprudence.

We now come to the conclusions in relation to the good governance dimensions. The principle of properness has been developed in case law. The human rights are specified in the Constitution. For the democracy dimension the strong link between transparency and participation makes it necessary to further develop these principles. Effectiveness is important especially because of the several independent agencies and the strong decentralisation in the country. Accountability has been developed in the political context of the relation between minister and parliament, but also in the context of the position of civil servants.

7.4.3 Portugal

The administration in Portugal is much more developed now than it was a few years ago. The existence of regional and international organizations that support good governance and good administration, not only for its members, but also worldwide, gave a huge impulse to the progress made by the Portuguese authorities. The Portuguese Ombudsman does not assimilate any of the classical State powers and can be seen as "an independent constitutional authority" or "the fourth power of the state".²¹⁶

From a legal approach good administration embodies a set of constitutional rights, principles and rules of administrative law, legal measures of administrative modernisation, as well as public administration ethical norms, which are taken into account by the Ombudsman as an independent mechanism of oversight of the public administration. The Ombudsman's initiatives, the complaints received, the actions undertaken and the results achieved are described in its annual reports to the Parliament, as well as in special reports on specific matters.²¹⁷ The Portuguese Ombudsman had the initiative of a Code of Good Administrative Behaviour, addressed to the Parliament.²¹⁸ Likewise, the Portuguese Ombudsman was of the opinion that the demand for quality public administration, characterised by transparency and at the service of citizens has long been acknowledged within the framework of international organisations. Explicitly focused on the defence of citizens who come into contact with the public administration, the Portuguese Ombudsman clarified that the recommended Code was mainly intended to compile, in a clear, concise and accessible wording, the principles of good administration which should guide the conduct of every official, in their relations with citizens, stating the fundamental values of public service, the guarantee of the rights of citizens and the

²¹¹ Principle of adequacy means that the authority receiving the functions must have a proper organizational structure.

²¹² Principle of differentiation means the legislator must also consider the demographic and territorial differences of the receiving authorities.

²¹³ M. Clarich, *Manuale di diritto amministrativo*, 2013, p. 327.

²¹⁴ T. Martines, *Diritto Costituzionale*, 2011, p. 218.

²¹⁵ T. Martines, *Diritto Costituzionale*, 2011, p. 125.

²¹⁶ In: Freitas do Amaral «Limites Jurídicos, Políticos e Éticos da Actuação do “Ombudsman”», Provedor de Justiça, *Democracia e Direitos Humanos no Século XXI*, Lisboa, 2003, pp. 48-50 (available at <http://www.provedor-jus.pt/site/public/archive/doc/DemoDirHumanos.pdf>).

²¹⁷ These reports are available at <http://www.provedor-jus.pt/?idc=16> and at <http://www.provedor-jus.pt/?idc=83>.

²¹⁸ In 2010 and then renewed in 2012. Recommendation no. 1/B/2012, available at <http://www.provedor-jus.pt/?idc=67&idi=14862>.

rules concerning the behaviour which citizens expect from the public administration officials²¹⁹, therefore making them more visible to citizens.

Following the above mentioned reviewing process, a new Administrative Procedure Code has just been adopted.²²⁰ The chapter of the new Code relating to the general principles of administrative activity now includes the principle of good administration, in line with, as stated in the Decree-Law's preamble, what was suggested by comparative law, with that or other designation, and by the doctrine. According to article 5 of the new Code, the principle of good administration requires that public administration be guided by criteria of efficiency, economy and expeditiousness, while also encompassing the constitutional principles of bringing services closer to the population and of avoiding bureaucratisation. Further, in the context of the general principles of administrative activity which the new Code embraces, either by means of the inclusion of new principles or by reformulating principles already stated in the previous Code, the legislator's intention was to strengthen the fundamental values that should govern all administrative activity in a democratic rule of law, as also affirmed in the preamble of Decree-Law no. 4/2015. Lastly, as far as codes of conduct are concerned, it was foreseen that within one year from the date of entry into force of the new Administrative Procedure Code, the Government shall approve, by Resolution of the Council of Ministers, a "Guide to good administrative practice", having a guiding character and setting out standards of conduct to be taken by public authorities. Now enforcement becomes relevant and there is a need to implement a less bureaucratic process of decision by the courts so that the questions raised by the individuals and companies vis-à-vis the State can be solved fairly and on time.

Finally, we can conclude that the principle of properness is especially used in the context of the interpretation of vague norms. Human rights are influenced by developments on the international level. The principles of transparency and participation have been strongly developed in the Constitution and in several regulations. The principle of effectiveness has been developed in the direction of the need for a good organization of the institutions and in which there is also attention for the efficiency aspects. Accountability has been developed by administrative accountability and liability.

7.4.4 Spain

The principles of good governance should have become, within the concept of good governance, a cornerstone of the modern state and be linked to the rule of law and democracy. In order to get the broad concept of good governance in Spain we should look at different legal texts, but the focus here is mainly on two laws on national level: the Constitution and the Administrative Procedure Act²²¹, which deals with the juridical order and the procedure of the public administration. The principles of good governance are not really established or strongly specified in the legislation - it was developed more by interpretation. The Constitution includes (often implicitly) most of these principles of good governance and good administration which have become regulatory principles for the administrative activities.

It is very important that these principles are respected because in a state there are several different administrations and they must follow and be controlled by the same legal principles to achieve equality and legal certainty in the activities of the administration. Recently, in Spain not all principles have been respected. There are cases of corruption, of citizens who are not heard and where the right of participation is not really applied. It is important to also stimulate the application of principles from the international and European level.

²¹⁹ Such as lawfulness, commitment to the public interest and respect for citizens' rights, absence of discrimination, proportionality, absence of abuse of power, impartiality, objectivity, fairness, duty to state the grounds of decisions, keeping of adequate records.

²²⁰ Decree-Law no. 4/2015, of 7 January 2015.

²²¹ Law 30/9210.

The civil society in Spain needs to get closer and more involved in the decision-making process of the government, in order to improve the democracy dimension.²²² There is a need for democratic instruments as a part of the system in which people live. The Spaniards need the media that allows them to properly participate in the activities of the government which are undertaken in the public interest. Different types of participation should be developed more and there is a need for more control by courts, thus stimulating the accountability of the governmental institutions. The political parties must also be responsible in their competences. A system of controlling by courts is needed in order to avoid behaviour that violates principles of good governance. In recent years maladministration has been caused by a too intense relationship between public and private interests. Conflicts of interest and corruption are the results of a particular behaviour by civil servants as well as politicians, as part of the public administration.

The situation has become so urgent that courts are using different measures to fight against and to prevent dishonest practices such as misuse of power, favouritism or corruption. Currently, all these measures are grouped under the concept of promoting integrity which seeks to guarantee the fulfilment of duties by public officials in accordance with the general interest and avoiding interference in the performance of any (direct or indirect) personal interest which may affect the impartial approach. Integrity refers to the completeness, consistency and congruence between values, principles and standards that guide the actions of employees, and its real and effective action due to the absence of conflicts of interest. Integrity means no undue influence coming from the private interests of public officials and employees in public decisions. Integrity is based on public ethics, understood as the proper performance of the duties of public employees, respect for the rule of law and the satisfaction of the general interest and aspirations of citizens. However, the concept of integrity is also based on various mechanisms that facilitate good governance. Integrity not only prevents conflicts of interests, but also promotes the fight against corruption, and good governance.

From a legal point of view, integrity is developed along four lines: 1. transparency;²²³ 2. good management;²²⁴ 3. prevention of misconduct and conflicts of interest;²²⁵ 4. control and accountability.²²⁶ Because of the recent cases of corruption, the government adopted in September 2013 the Democratic Regeneration Plan.²²⁷ The administrative authorities are subject to the legal duty of good administration, a duty to act according to a mandate satisfying a set of legal obligations²²⁸ which includes acting rationally, objectively, in a coordinated fashion, effectively, efficiently and for the general economic interest.²²⁹

In Spain, when we refer to the public administration and to its good functioning, we refer to five main principles: effectiveness, hierarchy, decentralization, deconcentration, and coordination. Each of them has several sub-principles. Therefore, in an indirect way, we could understand these as the principles of good administration in Spain. They can be found in article

²²² Lorenzo Martín-Retortillo: "Democracy is a long process that must be strengthened every day. The rules connected with participation and transparency are fundamental and should look at all the actions of the public sector. And it must begin to work to ensure the proper functioning of public affairs. It is very important that the state, at all levels, is taken seriously and defended at all cost" in: Martín-Retortillo, L., «*Cuánto nos va a costar cada clavo?*», *Heraldo de Aragón*, 14 de julio de 2012.

²²³ Law of Transparency 19/2013.

²²⁴ Right to good administration, duty of motivation, use of electronic media.

²²⁵ Law 5/2006 of conflicts of interest.

²²⁶ Court of Accounts, Ombudsman, different Courts.

²²⁷ Elements of the plan are a. the approval of Law 19/2013, of December 9, transparency, access to information and good government, and b. the draft law on control of economic and financial activities of political parties.

²²⁸ under articles 9.3, 31.2 and 103.1.

²²⁹ From jurisprudence on art. 9.3 of the Spanish Constitution there is not only a prohibition on irrational behaviour, but also a requirement that "*the actions of the administration rationally serve the general interest*" (STS June 11, 1991, Ar. 4874), adopting decisions "*consistent and rational*" (STS February 27, 1987, Ar. 3378), according to "*the rationality required from the point of view of the principle of prohibition of arbitrary action by public authorities*" (STS February 21, 1994, Ar. 1455), stating that "*the prohibition of arbitrary (art. 9.3 of the Constitution) is the need for the public to justify at all times their own performance*" (STS 17 April 1990, Ar. 3644), as the use of powers by the administration "*must always occur without exceeding the scope of the law and a rational and balanced way*" (STS February 25, 1998, Ar. 1410). The duty of objectivity requires a decision with proper grounding and balancing of the circumstances.

103.1 of Spanish Constitution: '*The Public Administration serves the general interest with objectivity and it acts in accordance with the principles of efficacy, hierarchy, decentralization, deconcentration, and coordination while fully complying with the law and legality.*'²³⁰ Finally, a very important principle in Spanish legislation is also the principle of **hierarchy**. This principle requires the subordination of the lower to the higher-ranking rules. We find it in article 9.3 of the Spanish Constitution and in the article 103.²³¹

Concluding about the good governance dimension of the rule of law, we see that the principle of properness is in the process of further development by impartiality; more generally, they are strongly developed, with the ombudsman playing an important role in the process. There is a new law on transparency, while for participation we find a basis in the Constitution. Effectiveness means here especially efficacy, the ability to achieve effect. Accountability has been worked out by the Court of Audit.

7.4.5 Cyprus

Cyprus is a divided country, and almost since the moment it established independence the country had already veered from the strict letter of the Constitution, not by choice but out of necessity for the State to survive. Governance includes the functioning of political institutions, the checks and balances of the political system of a society, the capacity of the state to provide public goods and services and to implement effectively and efficiently policies and reforms, and to regulate economic activity.²³²

In Cyprus the Constitution lays down the legal framework necessary for the separation of the legislative, executive and judicial branches of the government, as well as additional institutions that have a specific duty to regulate and investigate, independently from the government. Specific institutions such as the Ombudsman (named the Commissioner of Administration in Cyprus) apply the principles of accountability and effectiveness on a regular basis in order to properly do their work. The Ombudsman also ensures the protection of human rights which are of utmost importance and take priority over all other principles. This can be shown in the conflicting principles of protection of privacy rights and access to information. The justification used for the lack of access to public information is that they are more concerned about protecting the privacy of personal information. Information that is not accessible to citizens creates a lack of transparency and a lack of trust between government and its citizens.

The principle of properness seems to be relatively prevalent in the Constitution, international regulations adopted by Cyprus, and in certain positions within institutions. The sub principle of equality is very prominent and can be found in different sources of law, whereas the sub principles of confidence and carefulness are lacking. The principle of properness was developed in response to the narrow traditional formal control of the functioning of the government. The law is often unclear, so the development of good administration principles was necessary for dealing with unavoidable legal uncertainties.²³³

Transparency can be found in one form in meetings of the government, governmental acts and governmental information. In Cyprus, all meetings of the House of Representatives are open to the public; however, they can be closed from the public if it is decided by a resolution.²³⁴ Investigations conducted by the Ombudsman on government officials and institutions on the

²³⁰ Article 103.1, Title IV of Spanish Constitution.

²³¹ Article 9.3, Preliminary Title of Spanish Constitution. *The Constitution guarantees the principle of legality, the normative order, the publication of the norms, the non-retroactivity of punitive provisions which are not favourable to, or which restrict individual rights, legal security, and the interdiction of arbitrariness of public powers.*

²³² V.T. Rapanos and G. Kaplanoglou, Governance, Growth and the Recent Economic Crisis: The Case of Greece and Cyprus. *Cyprus Economic Policy Review* 2014, Vol. 8, No. 1, pp.3-34.

²³³ Addink, (2013) p. 78. Addink, G.H., (2013). *Principles of Good Governance: Concept and Context*. Utrecht University. The Netherlands

²³⁴ Constitution, Article 75.2.

effectiveness, policies and functions of the government are not open to the public.²³⁵ In terms of transparency in governmental acts, it is the job of the State to make the new acts, policies and laws public for the citizens.²³⁶ When it comes to transparency in governmental information, Cyprus has incorporated several laws that give a limited amount of access to government documents. Citizens have the right to write complaints to the competent public authority and expect a reply within thirty days.²³⁷ The GRECO report indicates that no law regulated the entire access to public information to complete the Constitutional provisions.²³⁸

All the four kinds of participation can be found in Cyprus: a citizens' initiative²³⁹, a citizens' panel, a referendum, and community participation²⁴⁰. Cyprus is a member of the European Citizens' Initiative which gave Cyprus the chance to propose legislation on matters where the EU has competence to legislate. This resulted in the multilateral agreement to eliminate austerity measures that made cuts to education spending.²⁴¹ Another form of participation is a referendum which is a general vote by the electorate on a single political question that has been referred to them for a direct decision. In Cyprus, possibly the most famous referendum was the Cypriot Annan Plan referendum of 2004, which asked: "Do you approve the Foundation Agreement with all its Annexes, as well as the Constitution of the Greek Cypriot/Turkish Cypriot State and the provisions as to the law to be in force to bring into being a new state of affairs in which Cyprus joins the European Union united?" The result of the referendum was an approval by 65% of the Turkish Cypriots, but a rejection by 76% of Greek Cypriots.²⁴² Another form of participation is community participation which can take various forms. An example in Cyprus is the wide range of formal and informal arrangements and measures that are put in place to encourage and facilitate citizen participation in decision making. The Union of Cyprus Municipalities' aim is to contribute to the development of local government autonomy and to promote local government interests.²⁴³

Cyprus has incorporated both basic and additional (??) human rights in its Constitution²⁴⁴ and national legislation in an adequate way. The Commissioner of Administration is the institution responsible for protecting human rights. The Law of the Commissioner of Administration incorporates specific laws that supervise, regulate and investigate the successful implementation and use of the protection of human rights within the State, as well as in private corporations and services. When the Commissioner concludes that the investigated action against which the complaint has been made violates human rights of the interested person and may constitute as a criminal offense, a copy of the report will be submitted to the competent authority to further deal with the situation (for example, the Council of Ministers, the House and the Attorney-General of the Republic).²⁴⁵ In a report on Cyprus that stressed the theme of criminalization of corruption, GRECO found that despite the fact that

²³⁵ *Law of the Commissioner of Administration*, Art. 4.

²³⁶ *Constitution*, Art. 47. An example of this is the function held by the President of the Republic to promulgate all laws in the official Gazette of government acts.

²³⁷ *Constitution*, Art. 29(1).

²³⁸ GRECO Report III, Cyprus (2010).

²³⁹ A current citizens' initiative in Cyprus has been set in motion by the Cyprus Volunteer team of Supporters of the European Citizens' Initiative "Invest in Education". The initiative aims to propose legislation which will put an end to education cuts using a formula which excludes from the calculation of each country's public spending deficit that part of government spending for education that is lower than the last five-year Eurozone average. Co-organizers of the initiative include: Association for Social Reform (OPEK), Cyprus Academic Dialogue (CAD), European Parliament Office in Cyprus and the European Youth Movement (EYM). *Cyprus Mail News* (2014).

²⁴⁰ In Cyprus, annual budgets of community councils are approved by the district officer, both municipalities and communities have responsibility for the certain services, such as waste management, water supply, sewers and drainage systems, street maintenance, public health, among others.

²⁴¹ European Citizens' Initiative, Facts (2014).

²⁴² Chadjipadelis and Andreadis, (2004); Chadjipadelis and Andreadis (2004):Analysis of the Cyprus referendum on the Annan plan. Theodore Chadjipadelis and Ioannis Andreadis. Department of Political Sciences. Aristotle University Thessaloniki. Cyprus.

²⁴³ Local Government Systems, (2011).

²⁴⁴ which include: the right to life and corporal integrity and the abolition of the death penalty; (art. 7) the prohibition of torture and unreasonable torture; (art. 8) prohibition of slavery or forced servitude; (art. 10) the freedom of thought, conscience and religion; (art. 18) and the right to property and that no one can be deprived of his property (art. 23).

²⁴⁵ *Law of the Commissioner of Administration* Act. 9(a)(1-5).

there was legislation in Cyprus that had been in force for several years, it has never been applied by the prosecutorial authorities or by the courts. Instead, Cypriot authorities have continued to exclusively apply old legislation concerning corruption offences.²⁴⁶ Additionally, information provided by Cypriot authorities indicated a rather limited number of prosecuted corruption cases in Cyprus in general and that these cases have been prosecuted exclusively under the “old legislation”.²⁴⁷ Effectiveness in regards to anti-corruption measures was not found in Cyprus.

Finally, we can conclude that most of the sub-principles of properness can be found in legal documents. Human rights can be found in the Constitution, but there is also a strong international influence. The transparency principle can be found in relevant regulations, but the implementation is not so strong. There is a need for further development of the participation principle. The effectiveness of a bill is checked by the Parliament, but there is a need for enforcement of law as a form of effectiveness. Effectiveness of international law is especially related to the case law on human rights.

7.4.6 Malta

Malta is a parliamentary republic that operates on a district system. The 68 districts in Malta form together the only administration layer, besides the board on national level, which works with a written Constitution. The government is made up of members of the elected parliament and is answerable to the parliament for its policy; parliament is the exclusive legislative authority.²⁴⁸

The office of the national ombudsman is created by an act of the parliament in 1995.²⁴⁹ The ombudsman Act in Malta is in accordance with the principles of good governance and is perhaps the only major law that was specifically intended to empower persons to seek redress against maladministration that affected them personally.²⁵⁰ Then the House of Representatives finally resolved that individuals should be served by a workable system of administrative justice that would put right that which was badly managed and provide appropriate redress to individuals who have experienced delay and inefficiency and the distress that often results from maladministration. The Act not only promotes good governance, but it also underlines the accountability of the State and its officers for the proper execution of the mandate they received from the electorate. The Constitution also sets up a number of commissions to ensure that the whole system functions democratically. There is an electoral commission, broadcasting authority, public service commission, employment commission and a commission for the administration of justice.²⁵¹ These commissions are an example of putting in practice the principles of good governance.

In 2009, a new Public Administration Act was enacted, introducing a declaration of principles, such as public administration values, and a Code of Ethics which was included as a Schedule to the Act.²⁵² The current Public Administration Reform was started earlier this year and aims at addressing: a. the performance plans and assessment of senior public officials; b. the re-introduction of quality service charters; c. decision-making; d. simplification and updating policies and directives; e. one-stop shopping for better accessibility and effective and efficient delivery of services to the citizens; f. a strong leadership by officers in headship positions.

²⁴⁶ GRECO Report III, (2011).

²⁴⁷ GRECO Report III, (2011) p. 20.

²⁴⁸ Refalo e.a., *Constitutional Law of the EU Member States*, Kluwer, Deventer 2014. p. 1150-1153.

²⁴⁹ Refalo e.a., *Constitutional Law of the EU Member States*, Kluwer, Deventer 2014. p. 1182; it has been constitutionalized in 2007.

²⁵⁰ See website Ombudsman.

²⁵¹ Refalo 2014, Refalo e.a., *Constitutional Law of the EU Member States*, Kluwer, Deventer 2014. p. 1183.

²⁵² The online version of the Public Administration Act: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8963>.

There are relevant decisions of the European Court of Human Rights in the following cases: Loulou Massoud v. Malta²⁵³ and Suso Musa v. Malta²⁵⁴. The two decisions concern the violation of more classic human rights: the aliens' detention and its lawfulness. In the two decisions we find a lot of principles of good governance: the principle of human rights (and more specifically the due care principle) and the legal certainty principle. Furthermore, the principle of public participation is at stake because art. 5 par. 4 ECHR has been violated. The procedure took too long and was not effective. One can also argue that the principles of transparency and accountability were at stake. The court held the government of Malta responsible for not doing enough and therefore asked the committee of ministers to take action. The principle of effectiveness is also involved. In the second case we see the wide (??) reach of the principle of effectiveness. From the words used by the Court in the two decisions one can tell that the system of Malta towards aliens is weak and an update is needed to conform to international standards and fit in with the principles of good governance.

Two other cases – Dadouch v. Malta and Genovese v. Malta²⁵⁵ – concern social human rights and the range of art. 8 ECHR and what could be expected from a government. The case of Dadouch is about the principle of transparency and accountability, in relation to people who have a Maltese passport; does that person have to prove that he has the Maltese nationality or is it up to the government of Malta to prove that he does not have said nationality? Furthermore, the principle of effectiveness is at stake since the delay of 28 months in registering the marriage was in the breach of art. 8 ECHR. The case of Genovese is an interesting one, from the perspective of the principles of good governance related to the principle of human rights. This is because this is a new line of the Court. One could not say that the legal certainty has been breached; on the contrary, by giving this new decision, the Court is breaching legal certainty. On the other hand, by giving this clear and elaborate decision, the member states now know what the new rule is and the first stone of the legal certainty is now set. The principle of equality is obviously involved. The state of Malta was not obliged to create these rules, but when they do so, it must be done in a fair way and without any discrimination.

Concluding, the principles of properness and human rights are very relevant but rather difficult to apply in the concrete regional situation of the moment. The principle of transparency has been developed by relevant case law and the principle of participation by the creation of different commissions. The principle of effectiveness has been developed by developing proportionality. Accountability can be found in the three forms of judicial, financial and political accountability.

7.4.7 Conclusions Region 3: Southern Europe

1. All southern European states are unitary states, which means that most of the powers of the state are on the central level and that the principles of good governance start at the central level and from there move on to the decentralised level. The histories of each of the countries are rather different.
2. Comparing Spain to Portugal we see relevant differences. In Spain we find some principles in the Constitution, and especially by judicial (??) interpretation these principles of good governance are developed. We see in practise that not all the principles are respected and also the more democratic principles like transparency and participation are not very developed in Spain. There is also the problem of corruption. In Portugal, these principles of good governance have been strongly developed during the recent years – also under the influence of international organisations - the principle of effectiveness especially should be developed more.

²⁵³ ECtHR 20 July 2010 the case of "Dadouch v. Malta", Appl. No. 38816/07.

²⁵⁴ ECtHR 9 December 2013 the case of "Suso Musa v. Malta", Appl. No. 42337/12.

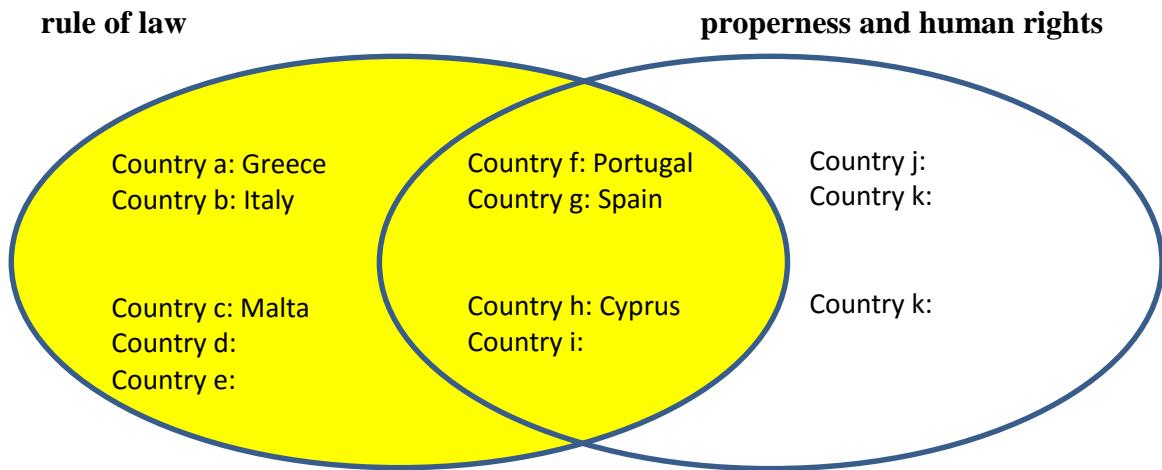
²⁵⁵ ECtHR 20 July 2010 the case of "Dadouch v. Malta", Appl. No. 38816/07.

3. Italy and Malta also have big differences, including geographically. In Italy we see big differences between the public institutions in the application of the principles of good governance. Rather recently a law on administrative procedures has been developed in which several of the classic principles have been developed. We see that the executive power and the judiciary are working on the developing of the principles of good governance, both from a general and from an individual perspective. The doctrine plays a major role in the development of the principles. In Malta we see, especially in the violation of the human rights, a relation drawn with the principles of good governance (which play an important role).
4. Greece and Cyprus are in different positions from a good governance perspective. In Greece we find several principles of good governance worked out in the Greek Code of Administrative Procedure, and their interpretation and application is determined by the courts. There is less participation of citizens and a lot of corruption, which is also called a lack of integrity, but rather recently in the Greek Action Plan 2012 we see several initiatives to establish a new social contract between the state and the citizens to develop citizens' initiatives, panels and referenda. Also the participation of Greece in the Open Government Partnership strives to provide a more effective public administration on all levels.
5. Cyprus is a divided country. Its Constitution includes the classical elements of the rule of law. Especially the ombudsman is important in developing the principles of good governance, playing an important role especially in relation to the principles of accountability and effectiveness.

Shifts of good governance dimensions in member countries

GROUP 3 COUNTRIES – SOUTHERN EUROPE

RULE OF LAW DIMENSION



Greece: properness is not very specified, human rights have practical relevance;

Italy: properness developed in case law, human rights are specified in the Constitution;

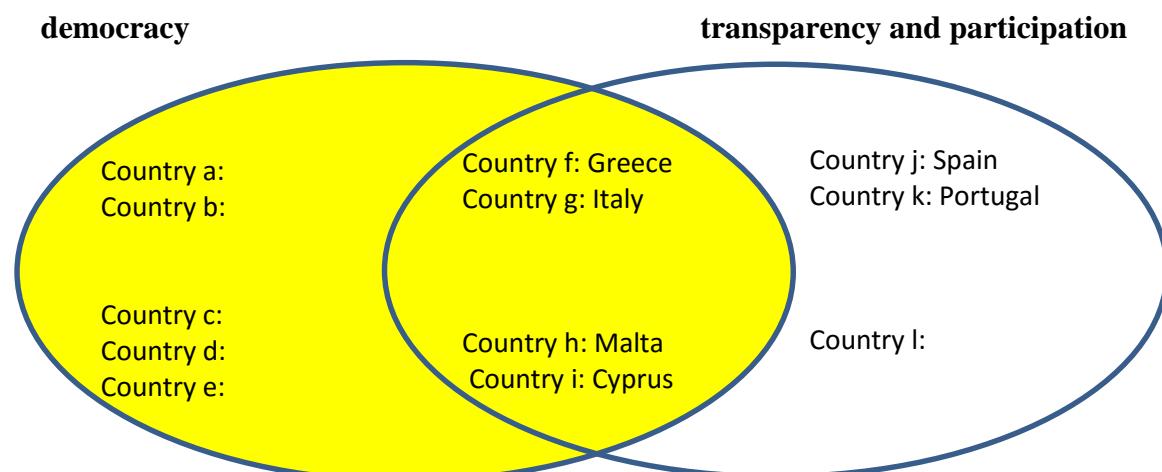
Malta: properness and human rights are very relevant but difficult to apply in the regional situation;

Portugal: relevance of properness in the interpretation of vague norms, human rights influenced from the international level;

Spain: properness is in the process of further developing by impartiality; principles are strongly developed in which the ombudsman plays an important role;

Cyprus: most of the sub-principles can be found in legal documents, most of the human rights have been codified in the Constitution but there is also a strong international influence.

DEMOCRACY DIMENSION



Greece: there is an importance of strong development of transparency and participation;

Italy: we find a strong link between transparency and participation; there is a need for further development of these principles;

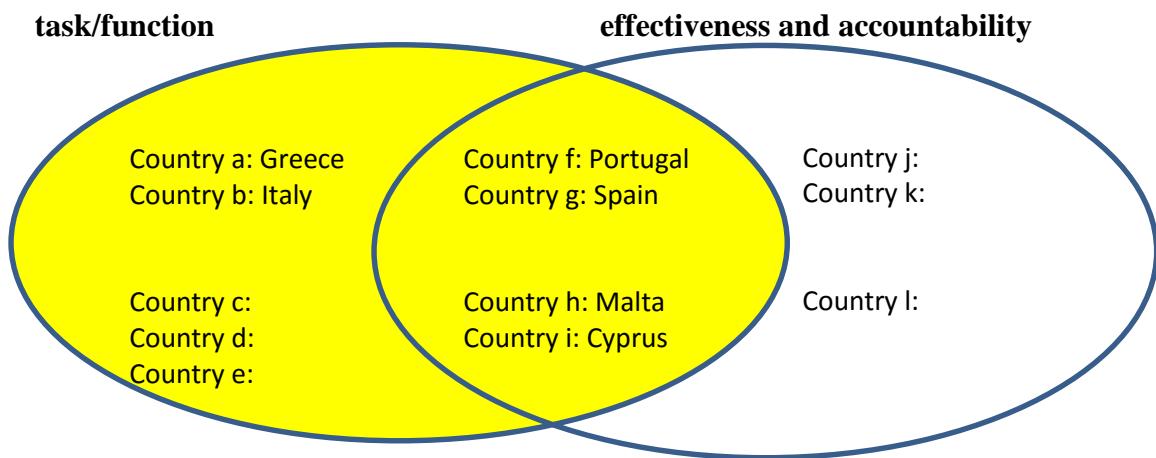
Malta: the principle of transparency created relevant case law, participation has been worked out by the development of commissions;

Cyprus: there are relevant regulations on transparency but there is a need for stronger implementation; the principle of participation still needs to be further developed;

Portugal: transparency and participation are strongly developed in the Constitution and other regulations;

Spain: there is a new law on transparency; participation has a basis in the Constitution.

INSTITUTIONAL DIMENSION



Greece: the principle of effectiveness especially in relation to implementation of EU/international norms; accountability looks problematic especially in financial and tax policy;
Italy: effectiveness is needed because of several independent agencies and strong decentralisation; accountability developed for the minister-parliament relation and for the position of civil servants;

Portugal: effectiveness is especially developed according to good organization criteria, in which attention for efficiency aspects also exist; accountability by administrative and legal accountability;

Spain: effectiveness means in this context efficacy, the ability to achieve effect; financial accountability is done by the Court of Audit;

Malta: effectiveness is used here in the context of proportionality; there is judicial, financial and political accountability;

Cyprus: the effectiveness of a bill is checked by the Parliament, but there is a need for enforcement of laws as a form of effectiveness; human rights in the Constitution but also case law from the European Court of Human Rights.

7.5 Shifts of good governance dimensions in Group 4 countries – Central Europe

The group of countries of this part of the European Union are Bulgaria, Romania, Hungary, Slovenia, Czech, Estonia, Latvia, Croatia, Lithuania, Poland, and Slovakia. In making the country reports also in relation to these countries the following structure was made: 1. Introduction; 2. Context of the country; 3. Good governance, general aspects; 4. Good governance, six specific aspects; 5. Conclusions including answer research question(s).

Also in this paragraph we made a summary of the reports with a special focus on the three dimensions of good governance which was concluded at the end of each country summary. At the end of this paragraph you will find an overview of the whole group of countries for each dimension of good governance in the two ellipses design in which each country is theoretically positioned. In some keywords under these designs we gave a short clarification.

7.5.1 Estonia

The Republic of Estonia declared its independence in 1991 and in 2004 Estonia joined the EU. Estonia is a democratic unitary parliamentary republic and since it has a republican form of government, the head of state is elected periodically. Section 65 of the Constitution provides that the President of the Republic shall be elected by the Parliament (Riigikogu). It has a single (chamber??) parliament, legislation and court system and the supreme power of the state is vested in the people (art. 1). Estonia observes the concept of separation of legislative, executive, and judicial power with mechanisms for ensuring balance of power.²⁵⁶ The legislative power lies with the parliament (art. 59), consisting of 101 members elected by Estonian citizens for a term of four years (art. 60). The executive power is vested in the Government of the Republic (art. 86), which consists of 13 ministers and the prime minister, who represents the Government (art. 93). The Government implements domestic and foreign policy and organizes the implementation of legislation. The Government opted for an innovative digital system, an e-Cabinet designed to prepare government meetings in an electronic form.²⁵⁷ The ministers can access all items and agendas at all times, but for the citizens it is convenient too. They can access governmental decisions and easily request information.

The judicial power is vested in the courts. Chapter XIII of the Constitution, the Courts Act and the codes of court procedure mentioned in art. 104(2) provide for the administration and jurisdiction. The Riigikogu controls the executive power in which the State Audit Office and the Chancellor of Justice (CJ) play a role. The CJ is established by the Constitution and its powers are stipulated in the Chancellor of Justice Act. Compared to most parliamentary ombudsmen the CJ has additional functions: 1. to conduct constitutional review procedure;²⁵⁸ 2. to resolve discrimination disputes between persons in private law.²⁵⁹

Good Administration is seen as an elaboration of good governance. In the judgement of the Supreme Court of December 19, 2006, it explicitly rules that EU law recognises the right of sound administration and to follow art. 3 of the Constitution, the right of sound administration is part of the Estonian legal system.²⁶⁰ But there can be a discussion whether or not the norm of “sound administration” is the same as “good administration”. The concept of good administration has been developed according to the lines of the principles of properness, transparency, participation, effectiveness, accountability and human rights.²⁶¹ The principle of

²⁵⁶ Guide to Estonian Legal System and Legal Research, K. Miil, J. Kuusik, and M. Ruttu, October 2013, GlobaLex.

²⁵⁷ <http://e-estonia.com/component/e-cabinet/>.

²⁵⁸ Art 142 of the Constitution.

²⁵⁹ He is the national preventive mechanism provided for in Article 3 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, performs the functions of protection of the rights of the child and promotion thereof according to Article 4 of the Convention on the Rights of the Child.

²⁶⁰ Supreme Court no. 3-3-1-80-06 – 19/12/2006.

²⁶¹ The Supreme Court has defined and used most of the principles listed in the paper in its case-law. Here are just some examples: principle of good administration as fundamental right: <http://www.nc.ee/?id=418> p. 14; legal certainty and legitimate expectation; <http://www.riigikohus.ee/?id=1516> p 89 and <http://www.riigikohus.ee/?id=1495>;

properness contains: prohibition on the abuse of power, prohibition of arbitrariness, legal certainty, legitimate expectations, equality, proportionality and carefulness. The elements are sometimes formulated as norms in the law²⁶², while in other situation these are used as review norms by controlling institutions. The right of discretion limits the lawfulness of an administrative act, as per art. 4 and 54 of the Administrative Procedure Act (APA).²⁶³ The Constitution states that the law shall protect everyone from the arbitrary exercise of state authority.²⁶⁴

Legal certainty and legitimate expectations are unwritten but generally recognized as legal principles. According to the principle of legal certainty, a person has the right to resolve a dispute pursuant to the law that was effective during the event that constitutes the object of the dispute. It is prohibited in criminal law to retroactively apply rules that impair the person's situation. There should be no infringement of a right without any legal base. Art. 55 APA states that an administrative act shall be clear and unambiguous. According to the principle of legitimate expectation, a person shall have the right to exercise his or her rights with the reasonable expectation that the promises created by the lawmaker are kept.²⁶⁵ This principle is partly codified.²⁶⁶

The main principle of equal treatment derives from the Constitution, § 12. Additionally, the equal treatment of men and women is provided in the Gender Equality Act.¹ The equality principle is also laid down in the manifesto “*To All Peoples of Estonia*”.²⁶⁷ According to the principle of equality of treatment, equal situations shall be treated in the same way. Unequal treatment of identical circumstanced is discrimination. Art. 14 of the Equal Treatment Act states that each ministry shall monitor compliance with the requirements of the Act and cooperate with persons or agencies promoting the principle of equal treatment.

Another element of the principle of properness is carefulness, which is the most often used principle of proper administration. The substantive part of this element means that there should be a careful balance of interest by hearing the applicant or the stakeholders. The formal side can be described in four phases: treatment, research, consultation and publication. Division 5 of the APA focuses hereon. Also, chapter 4, division 2 focuses on the carefulness of an administrative act. In this division the prerequisites for the lawfulness of an act (art. 54), the form (art. 55), the reasoning (art. 56) and the reference to challenge (art. 57) are written. The principle of reasoning is in art. 56 APA: an administrative act should be well reasoned. Art. 108 APA elaborates this for measures. Art. 60 APA gives reasoning extra weight by stating “(...) parts of an administrative act, including circumstances identified in the reasoning of the administrative act, have independent legal meaning only in the cases provided by law”.

Transparency includes clarity of procedures, clear drafting, the publication and notification of legislation and decisions, and the duty to give reasons. Transparency consists of three sub-principles: the principles of governmental transparent meetings, information, and acts. The principle of transparency of meetings can be found in chapter 1 division 4 of the Constitution. The principle of transparency of information is found in the Public Information

non-discrimination <http://www.riigikohus.ee/?id=1301>; democracy <http://www.riigikohus.ee/?id=1347> p 131 ff and <http://www.nc.ee/?id=391>; proportionality in almost all cases – just one example: <http://www.nc.ee/?id=1149>.

²⁶² The Anti-corruption Act prohibits officials from demanding, intermediating and receiving income derived from corrupt practices as well as corrupt use of official position, public resources, influence and inside information. Provisions also in the Penal Code, Public Service Act.

²⁶³ Art. 4 APA states the right of discretion. The second paragraph of this article is relevant, because this is a positively formulated right that stipulates restrictions to the exercising of the right of discretion. It states that the right of discretion shall be exercised in accordance with: “the limits of authorization, (...), taking into account relevant facts and considering legitimate interests”. Art. 54 APA states the prerequisites for the lawfulness of an administrative act. For an administrative act to be lawful, it must be issued by a competent administrative authority pursuant to legislation in force at the moment of the issue. It should be in accordance with the legislation in force, proportional, make no abuse of discretion and be in compliance with the requirements for formal validity. Together, these articles cover the prohibition on misuse of power by making such an administrative act unlawful.

²⁶⁴ Art. 13 of the Constitution.

²⁶⁵ Legal principles, Ministry of Justice, 18 June 2012.

²⁶⁶ Art. 67 APA.

²⁶⁷ Declaration of Independence: To All Peoples of Estonia, The Council of Elders, Estonian National Council, 24 February 1918.

Act (PIA). The PIA contains lists of information that must be made public on the websites of the institutions and it also involves information concerning usage of public funds and public procurement. There is a requirement to register all public official documents in a document registry and make this available online and are directly accessible through the web-page (with the exception of information for internal use only and personal data, business secrets) in which art 12 of PIA is relevant. It means if there are no refusing grounds, it is directly accessible. Other (active) obligations to make information public stem from other laws, e.g. the Law Enforcement Act art 25 (7).

Another active obligation is written down in the APA. This is related to the principle of transparency of governmental acts. Art. 7 APA states that the administrative authority is responsible for the display in its premises of important information concerning administrative proceedings²⁶⁸; also, an administrative authority shall provide such information on its official web page, if it has one (art. 7, par. 2). Furthermore, an administrative authority is required to maintain state and business secrets and the confidentiality of information intended for internal use of an agency, including private personal data (art. 7, par. 3).

The Estonian government claims the “e-government” system that exists in Estonia improves transparency. The government claims that through this system citizens have more transparency about the meetings, acts and information of the government.²⁶⁹ Art. 3 sub 6 of the Local Government Organisation Act states that the transparency of the activities of the local government is one of the principles for good local government. A combination of transparency and participation is to be found in Chapter 3 APA about open procedure. Art. 46 APA states that administrative proceedings for the issue of a legal act shall be conducted as open proceedings. Art. 48 APA states that an application must be displayed for public examination.

Participation is the active involvement of persons in a collective process. There are different forms of participation. Popular initiative means not only the right to legislative initiative (in Estonia formalised only on local level), but also the right to free self-realisation (Constitution art 19), to accede to or form political NGOs (the Political Parties Act²⁷⁰ and the electoral laws permit election coalitions and sole candidates), and to send inquiries to public authorities (art 44 Constitution); the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act gives a person this latter (??) right.

In 2001, the Government established a public initiative web-site (whose successor is now the web-site www.osale.ee) by which people can provide ideas and suggestions to the Government, collect signatures and submit public initiatives, give opinions to draft legislation and seek legislation and policy documents. Everybody has free access to the Draft Laws Information System at <http://eelnoud.valitsus.ee>. In 2011, the government approved the policy paper "Good practice of involvement", which aims to increase the transparency of decision-making in relations to stakeholders and the general public.

The referendum is of value because seven referenda have taken place and one citizen initiated referendum, the last one being in 2003. The current law does not provide a citizen initiated referendum or a public poll. A public poll is favoured by the principle of democracy, according to which it is essential to take the opinions of the people into consideration.²⁷¹ The

²⁶⁸ Instructions for submission of documents, instructions for completing forms, forms, explanations provided for in art. 36 of this Act.

²⁶⁹ e-voting: <http://www.vvk.ee/voting-methods-in-estonia/> and judgement of its constitutionality at <http://www.nc.ee/?id=381>;

e-health: <http://www.e-tervis.ee/index.php/en/>;

e-residence for foreigners in order to give digital signatures which is very wide spread in Estonia (f. ex. at the Office of the Chancellor of Justice almost 95% of the documents have been digitally signed): <http://e-estonia.com/e-residents/become-e-resident/>; see also https://www.mkm.ee/sites/default/files/digital_agenda_2020_estonia_eng.pdf and <https://www.eesti.ee/eng/>;

e-signature: <http://e-estonia.com/component/digidoc/>

other e-services: <http://e-estonia.com/component>

e-State Charter: <http://www.riigikontroll.ee/Riigikontrollipublikatsioonid/Muudpublikatsioonid/tapid/113/language/en-US/Default.aspx>

²⁷⁰ See: the State Gazette webpage <https://www.riigiteataja.ee/en/search>.

²⁷¹ Referendum in the Estonian Constitution: Historical and Comparative Constitutional Aspects, Ero Liivik : <http://www.juridicainternational.eu/?id=14844>.

outcome of a public poll would not be binding. This non-binding nature would be a problem (in politics) and thus a referendum should be preferred to a public poll.²⁷² The basic right to referendum is written in art. 56 of the Constitution and specified in the Referendum Act. The outcome of a referendum shall be binding for all state authorities. The norms for the process of a referendum are laid down in art. 2 of the Referendum Act. Issues to be submitted to referendum are amendments of the Constitution, other draft Acts that amend the Constitution and other draft Acts or other national issues (art. 1). What not shall be submitted to a referendum are issues regarding: the budget, taxation, financial obligations of the state, ratification and denunciation of international agreements, the declaration or termination of a state of emergency or national defence.²⁷³ The referendum is used to propose parliamentary approved changes to the Constitution and other draft legislation. A referendum takes place in the decision-making phase.

There are also more than 50 advisory committees to the ministries, six advisory bodies to the President, a Youth Advisory Committee to the Chancellor of Justice (acting also as Ombudsman for Children), aiming to involve different stakeholders into the decision making process.²⁷⁴ Concerning the community-level participation, there was in recent years a big development of local initiatives. The partnerships between local governments, local NGO's and business sector organisations are becoming more popular with the common aim of finding solutions to local problems. Furthermore, the local councils may carry out hearings on important matters. Community level participation takes place in the policy development phase.

The Riigikogu has approved in 2002 the Estonian Civil Society Concept²⁷⁵ – EKAK – which includes the idea that the public sector needs to hear its citizens and co-operate with as many of them as possible. In decision-making, the public sector must consider the special interests, values and goals of the public (?). By ensuring citizens' associations and democracy, members of the society and their organizations and the public sector can work together for the preservation of fundamental values enacted in the Constitution: liberty, justice and law, internal and external peace, social progress and welfare, Estonian nation and culture. The EKAK formulate the society goals, the principles and values (including participation, equality, accountability and respect), the way to achieve those goals and the implementation mechanisms.

The principle of effectiveness is intertwined with the other principles of good governance. The legal perspective of this principle is that the principles of good governance will not reach their goal if they are not implemented effectively, and therefore they will not guarantee legal protection. The principle of effectiveness does overlap and work together with the other principles. “Realizing the aim/goal of a regulation”: whether there is meant to exist an obligation to conduct impact assessment of draft legislation (in Estonia obligatory according to Government Regulation “Rules of good legislative practice and legislative drafting”), or an obligation to use auditing (obligatory according to art 92.1 of the Constitution), or an obligation to make follow-up of impact assessment of every piece of legislation, or an obligation to use different means to be sure the aim of administrative act is achieved (Substitutive Enforcement and Penalty Payment Act).

The principles of good governance are a subjective right for citizens and an obligation for the government. The principles are written down in international norms. In art. 41 of the Charter of Fundamental Rights of the European Union, the right to good administration is

²⁷² T. Annus, *Riigiõigus (Constitutional Law)*. AS Juura 2006, p. 56.

²⁷³ Ibid, paragraph 2.

²⁷⁴ See also joint initiatives “Let’s do it!” at <http://www.teemeara.ee/en> and Festival of Opinion Culture at <http://www.arvamusfestival.ee/en>. According to the Riigikogu Rules of Procedure and Internal Rules Act²⁷⁴ customarily sittings of the Riigikogu are public. Sittings may be observed from the gallery of the session hall or via webpage <http://www.riigikogu.ee/index.php?id=173840>.

The Institute of Baltic Studies encourages this method of participation by young citizens more actively in the life of the Estonian society and participate in the political process: <http://www.ibs.ee/en/component/content/article/200-noorte-kodanike-paneel-politika-on-lahe>.

²⁷⁵ Estonian Civil Society Concept, Tallinn, 12 December 2002.

codified. Beside the international control of compliance with the treaties, the Estonian Human Rights Centre is an independent human rights advocacy NGO dedicated to the advancement of protection of human rights in Estonia. It was founded in 2009.

Finally, the conclusion in relation to the three dimensions of good governance. Several of the subprinciples have been codified and only a few are unwritten; human rights are strongly influenced by the international level, which is also relevant in relation to the group of non-citizens in the country. The transparency principle has been regulated on central and local levels. In relation to participation we find some of the four forms, especially on local level. The principle of effectiveness is not very strongly developed and the accountability principle is particularly developed by the Court of Audit.

7.5.2 Latvia

The Republic of Latvia has been independent for 23 years and chose a pro-western and pro-Europe approach, transforming itself from part of a socialist regime to a western independent state with a liberal capitalist nature. Latvia is a small country in the north-east of Europe and is bounded by the Baltic Sea; in 2015 it had 1.9 million citizens. According to information from 2011, this consisted of 62.1% Latvians and 26.9% Russians. The capital of Latvia is the city of Riga, founded in 1201 by German Catholics. It has 658,640 inhabitants, the biggest city of the Baltic States.

The Latvian Constitution is called the Satversme. According to the Constitution, Latvia has a State President with an organizational and representative function. Chapter 3 of the Constitution regulates the Office of State President. The President is elected by the Parliament (the Saeima) for a term of four years (art. 35). The President represents the state in international affairs and meetings. He is thereby a diplomatic figure. The President has the right to initiate legislation. The President shall proclaim laws passed by the Saeima not earlier than the tenth day and not later than the twenty-first day after the law has been adopted. A law shall come into force fourteen days after its proclamation unless a different term has been specified in the law. The President also implements the decisions made by the Saeima about international agreements (art. 41) and can grant clemency to criminals (art. 45). At first glance, the President seems to fulfil a symbolic role, comparable with monarchs in constitutional monarchies. All orders of the president are signed by the prime minister and the appropriate minister (art. 53). He lacks any political responsibility and shall be the Commander-in-Chief of the armed forces of Latvia (art. 42). He shall be entitled to propose the dissolution of the *Saeima*. (art. 48) The cabinet²⁷⁶ shall be composed of the prime minister and the ministers chosen by the prime minister (art. 55).

After the elections the President invites the representatives of the political parties, who decide which party will deliver the prime minister. The new prime minister has the right to appoint the ministers of his cabinet (art. 55). The prime minister and ministers must have the confidence of the Saeima. The prime minister is also part of the cabinet. The cabinet is the most important executive body of the State. The number of ministers in the cabinet is provided by law (art. 57). Ministers can also be members of the Saeima. If the minister is not a member of the Saeima, he has the right to attend sittings of parliament (art. 63). Ministers and the cabinet can issue legal acts if there is delegation by the Saeima (art. 61) and issue binding instructions for their subordinate public institution (art. 58). As stated above, some public institutions are subordinated to the cabinet, but there are also independent authorities, which is according to the rule of law: the Bank of Latvia, the Central Election Commission, the Public Utilities Commission and the State Audit Office. Although these authorities are independent and not mentioned in the Satversme, each of them is regulated by law.

²⁷⁶ Chapter 4 in the Satversme.

The Latvian Constitution has many ways of providing for direct democracy and initiatives from the people into Latvian politics. Civil Society Organisations (CSO) have a special place in Latvian law. Figures show that the CSO's are on the rise, promoting participation rights. The government of Latvia strives to ensure the people to get access to governmental meetings by using different ways of mass-communication like the internet and radio.

The concept of good governance is to provide a healthy society in a social, economic and legal way. The principle of properness ensures that everyone gets treated equally and fairly and that people know what they can expect. It needs to be transparent, so the people know what is going on in their backyard and can participate in an effective way. The government should therefore realise that the principle of effectiveness is important. The state powers need to deliver good governance, a good administration and a good civil service. Important to note is that all activities need to be based on law or the Satversme. The principles of good administration are the specified versions of the concept of good governance.⁸ Administrative instances need to be open and clear, to ensure transparent administration, delivering balanced and legally viable decisions for a proper administration. Interference of the citizens can have a positive influence on the administration, so an administration needs to be open for public participation. Of course, the administration needs to respect human rights as well and also relies on state funds, so it needs to be durable. Good governance and integrity mean the government is consistent in its actions, and is fair, open and honest. An integrated government strives for an open society, where all members can participate. Elements that distort this process are corruption and secrecy. Especially the first has an important role in this paper, because the battle against corruption in the Republic of Latvia is an ongoing struggle. Integrity has plenty of benefits for the government. It supports a level playing field for businesses and is essential to maintaining trust in government. There is a strong legal framework by the Corruption Prevention and Combating Bureau (KNAB), launched in 2002, that independently fights against corruption. Under supervision of the Cabinet, they fight corruption by pre-trial investigations and stating: 'We take action against corruption for the good of society and the national interest with the full force of law and public support, in order to achieve integrity in the exercise of power vested in officials of State.'²⁷⁷

Participation by popular initiative is regulated in art. 78 of the Constitution. There is a Law on National Referendums and Initiation of Laws, and the European Citizens' Initiative is important. According to art. 22, at least 10.000 citizens need to apply a fully elaborated draft law or draft amendment to the Constitution at the Central Election Commission in a first round. In the second round, one tenth of the electorate is needed to bring a fully elaborated draft of an amendment to the Constitution or of a law to the President on the agenda of the Saeima. The Saeima can decide to adopt the law; if it is not adopted, a referendum will be held. In art. 79 of the Satversme we see that at least half of the voters need to vote in favour and that the quorum is fifty percent, otherwise the referendum has no binding effect. Five initiatives have reached the ten thousand-limit since 1991. The latest example took place in 2012, concerning the place of the Russian language in Latvian society; the initiative proposed that Russian should be the official second language of Latvia. It reached the second stage but the Saeima did not vote in favour. This time the quorum was meet, 71.1 percent of the registered voters did participate but rejected the proposal with 74.8 percent.²⁷⁸

Direct democracy plays a key part in Latvian law. One very peculiar provision is in art. 68 of the Satversme. Membership of the European Union had to be decided by national referendum, which was decided in 2004. If the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come

²⁷⁷ <http://www.knab.gov.lv/en/knab/>.

²⁷⁸ Maija Setala, Citizens' Initiatives in Europe: Procedures and Consequences of Agenda-Setting by Citizens.

into force as law, shall be submitted to a national referendum. All the people who have full citizenship and have achieved the age of 18 years may vote (art. 8 of the Satversmē). This seems not to create much trouble, but in fact it does. After the separation from the Soviet Union, the new republic was looking for its national identity. The return of independence was, according to the Latvian people, based on continuity of the state: the Latvian Republic had never ceased to exist during the Soviet occupation. This means that not every resident of the renewed republic was considered to be a Latvian citizen. Only people who could prove to be Latvian or had Latvian relatives from 1940 were granted citizenship. Integration possibilities exist and post-Soviet citizens are invited to become citizens of Latvia.²⁷⁹ According to official data, there were 276 797 non-citizens on 01.07.2014.²⁸⁰

The Law on Civil Society Organisations For Civil Society Organisations, Associations and Foundations Law, and the Public Benefit Organisation Law are of importance. An association is, according to Section 2.1. of the association and foundation law, “a voluntary union of persons, founded to achieve the goal specified in the articles of association, which shall not have a profit-making nature.” Section 3 of the Law on public benefit organisation states when an association is a benefit organisation.

For the people to control the State Powers, they need not only participation. To have a genuine change or to contribute to a discussion, the people need to be well informed about the issues at hand. Access to information and openness are two key elements when defining transparency. The right to know or the right to information about individuals is one side. Transparency can also be about knowing what the government is undertaking. Having an open and transparent administration that speaks a clear language is important for building trust between the government and the residents. The word transparency will be used in three ways: transparency and governmental meetings, transparency and governmental acts, and transparency and governmental information. Transparency of governmental meetings is achieved by making Sessions of the Saeima open for public; this is stated in article 22 of the Satversmē. Only in exceptional cases, if by a majority vote of not less than two-thirds of the members present, can it be decided to sit in a closed session, if so requested by ten members of the Saeima, or by the President, the Prime Minister, or a Minister. As stated by article 21 of the Satversmē there is a Procedural Code for the Saeima: the 'Rules of Procedure of the Saeima'. In this code, we see in article 77 paragraph 2 that sessions of the Saeima are broadcasted on the public radio. Article 139 of the RP states that voting at Saeima sittings shall be open, unless the Constitution states otherwise.

There is in Latvian law no rule that states draft bills need to be open for the public. The people can have access to this information though because art. 100 guarantees the freedom of expression, which also guarantees access to information.²⁸¹ Also, art. 104 guarantee a reply from a governmental institution, when a submission is addressed. In practise we see that the Saeima publishes a lot of parliament information on its website. Information on the status of motions and bills can be viewed on this website. Overall, we see that the Saeima strives for a high degree of transparency, more than is requested by law.

The right to governmental information means the right to his or her own file, regarding any individual measure that would affect him or her; this is recorded in art. 100 of the Satversmē, as shown above, and in art. 54 of the Administrative Procedure Act: The information to private persons and institutions, which are not participants in administrative proceedings, is provided in accordance with the Freedom of Information Law, the Personal Data Protection Law and other laws and regulations. The law that provides these restrictions is the Freedom of Information Law. It defines generally accessible information and restricted access information.

²⁷⁹ Resolution 1527 (2006) Rights of national minorities in Latvia Parliamentary Assembly.

²⁸⁰ http://www.pmlp.gov.lv/lv/assets/images/statistika/iedzivotaju%20reg.statistika%2001072014/ISVP_Latvija_pec_VPD.pdf.

²⁸¹ This is decided by the Constitutional Court of Latvia in the Case of 06.07.1999. Nr.04-02(99).

The exceptions are summed up in articles 5 to 8. Examples of restricted information are: private information, commercial secrets, and documents for internal use, as well as information which has been granted such status by law.

Properness is codified in the Administration Procedural Act. Abuse of power is (also) linked to corruption and very relevant. The prohibition on abuse of power is codified in (??) section 4 paragraph 3 and section 7. In this context, it is more appropriate to talk about section 9, which is about the principle of not allowing arbitrariness. Legal certainty means that rights are recognizable and foreseeable. This means that government actions have a legal basis and it is clear which rules need to be followed. In the APA we see a codification of this principle, in section 4 paragraph 7 and in section 11. This section states that for every administrative act there is a need for a legal basis. Attention needs to be paid to the fact that this only applies for administrative acts that are unfavourable for the private person. The laws that may be used as basis are: the Satversme, national law and provisions of international law.

It is also important to know which rules are applicable. Therefore, the Latvian APA contains the principle of priority of laws, in Section 4 paragraph 10 and Section 14. In Section 14 we see that the APA gives priority to human rights over other laws. The principle of legitimate expectations is well established in Latvian Law. Section 4 paragraph 6 and section 10 of the APA state that a private person may assume that the administration acts legally and consistently. The private person cannot be held at fault, or even if it can, this may not cause negative consequences for them. In the jurisprudence, we see that the principle can also be derived from Article 1 of the Satversme, according to Case No. 2010-69-01, decided by the Constitutional Court of Latvia. This means that when an unfavourable amendment occurs, a person should be provided with a lenient transition to the new regulatory framework. It also means that a person can trust the fact that the rights and legal interests once granted will not be denied later.

The principle of equality is codified in article 91 of the Satversme: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind." The APA also codifies the equality principle. In section 4 paragraph 2 and in section 6 it states that: "identical factual and legal circumstances, institutions and courts shall adopt identical decisions". It also states that the following may not play a part in the decision: "the gender, age, race, skin colour, language, religious beliefs, political or other views, social origin, nationality, education, social and financial status, type of occupation or other circumstances of participants in the administrative proceedings."

Section 4 paragraph 9 and section 13 of the APA are about proportionality. They state that, if an administrative decision is unfavourable for the addressee, there needs to be a greater advantage for the society than the detriment to the addressee. Significant restrictions are only allowed when there is a great advantage for society. When a weighing between interests is made, article 66 of the APA will be taken into account. It states that when an administrative decision is made, the following need to be examined: Necessity of the decision; Suitability of the decision; Need in the sense of proportionality of the decision; Conformity with regard to the infringement of a private person's rights

In section 4 paragraph 1 and section 5 of the APA, the principle of carefulness was worked out. Section 5 states that institutions and courts have the responsibility of looking out for the legal rights and interests of the private person. A few of the legal rights can be found in the Judicial Power act. The subprinciple of reasoning can be found in section 4 paragraph 4 and section 8 of the APA. Section 8 shows us limited methods of how norms of law may be interpreted in order to achieve the most equitable and useful result.

The principle of accountability is important for a democratic society to control the government. There are different kinds of accountability. Political accountability is important for a democratic state to control the direction in which the government is heading. In some

cases this can lead to a recall of the elections. In elections, poorly performing politicians can be punished for their performance. Ministers play a prominent part in this play. They are responsible for conveying confidence in the cabinet. They are responsible for their own work, but also for the work of their civil servants. Second, there is the judicial accountability. This is a whole other kind of accountability that centres on civil and/or criminal responsibility. Sometimes there is immunity for the state or some figureheads of the state. In those cases lawsuits are prevented. Lastly, there is the financial accountability, which looks upon budgetary rules and rules of good bookkeeping. Effectiveness will be measured in different ways. First, we will take a look at the differences between the law in the books and the law in the real world. The annual report of the Ombudsman will help us find more about this subject. Second, we will take a look into the effectiveness of the implementation of European law in the Latvian legal system. Finally, we investigate the effectiveness of legal protection. In the Civil Service Law, article 1, the principle of effectiveness is codified. Civil Servants are obliged to make sure that the Civil Service works as effectively as possible. Another codification can be found in the APA, section 2 paragraph 3.

Different to the other Baltic States, the Latvian Constitution is not very clear about the status of international agreements in the national legal system. Article 89 of the Satversme states that: “The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.” Article 68 of the Satversme states that the Saeima needs to ratify international agreements.

The principle of properness and most of the sub-principles are codified in the Administration Procedure Law (APA). The principle of reasoning even explains how courts need to motivate their verdicts in an intensive way. Sometimes criminal law interferes with the APA to secure good behaviour by the civil servants.

The executive branch of the government is to a great extent politically and financially accountable to the Saeima. The Saeima also has the right to question the ministers at any parliament meeting, and it can also force the State President to step down. The Saeima is politically accountable to the people of Latvia. When it comes to judicial accountability, the ministers of Cabinet are just as accountable as any other Latvian citizen. There are also possibilities to hold the State President accountable. For Members of Parliament, however, there are very broad limitations for any judicial actions. This can lead to political actions that can cause the dissolution of the Saeima, as happened in 2011.

Finally, a short overview of the conclusion related to the three dimension of good governance. The properness principle is used in the context of the prevention of corruption by a specific institution (KNAB); there is not a clear situation on the effect of international human rights on the national level. All the three elements of the principle of transparency – meetings, acts and information – are found in this country. The three of the four forms of participation are not very popular. Some aspects of the effectiveness principle have been codified. Attention is given to the judicial, political and financial accountability.

7.5.3 Lithuania

The Constituent Assembly (Atkuriamasis Seimas) completed its task by adopting the 1992 Constitution, after it had been approved by a popular referendum.^{282,283} On May 1st 2004, Lithuania joined the European Union. Lithuania is a mixture between a parliamentary and a semi-presidential regime in a rather centralized state. The President is elected directly, but the

²⁸² On 11 February 1991 the parliament adopted the Constitutional Law on the State of Lithuania, which provided that “the state of Lithuania is a democratic and independent republic”, basing itself on the results of a plebiscite. In 1992 the parliament adopted the Constitutional Act “on non-alignment of the Republic of Lithuania to Post-Soviet Eastern Alliances”. Art. 150 provides that two Constitutional Acts, which were adopted before the Constitution itself and which represent main fundaments of the Constitution, are constituent parts of the Constitution.

²⁸³ V. Vaicaitis, *Constitutional Law of the EU Member States*, Kluwer Deventer 2014, p. 1030.

government must have the confidence of the parliament.²⁸⁴ The President appoints the Prime Minister with the consent of the parliament.²⁸⁵ The decentralisation of power in Lithuania used to be organised at two levels: municipalities and counties. Since the tier or governors was abolished, municipalities are the only level at which power is decentralised in Lithuania. Municipalities have directly elected representatives, city councillors, while the governors of the counties used to be appointed by the central governors. Since 2003 the municipal administration is nominated by the mayor and appointed by the city council.²⁸⁶ By doing so, the position of mayor became more independent from the municipal council.²⁸⁷ Municipalities have the ability to produce their own separate budget autonomously from the central government, but they do not have the right to collect taxes.

The Legislative power is the prerogative of the Parliament (Seimas), the Executive power is exercised by the President and Central government, and the judicial power by the Administrative Court and Constitutional Court. Important fourth power institutions are Ombudsmen, Audit agency, Central bank. The institution of the ombudsman is a non-judicial agency, since decisions of the ombudsmen may not be appealed to the courts.²⁸⁸ The tasks of the Parliament are: making legislation, controlling the government, approving the annual budget of the state, call elections, approve the post of the prime minister. The President is part of the Executive power and his task is related to national defence and foreign affairs, representing the country externally; he is also the head of the secret service. The central government also belongs to the Executive power and prepares legislation and makes regulation in the absence of necessary legislation.

The Administrative Court is established to improve the protection of individuals against infringement of their rights by public authorities. The Constitutional Court has to determine whether the laws and legal acts are in conformity with the Constitution and whether the acts of the President and the Government are not in conflict with the Constitution or other laws.

The Republic of Lithuania Law on Public Administration is the main law regulating public administration. The purpose of the Law is to create the necessary legal preconditions for the implementation of the clause of the Constitution stipulating that the responsibility of the governmental institutions is to serve the people. This Law defines the subjects of public administration and their system, the principles related to their activities, the grounds for administrative regulation, the administration of rendering of public services and the internal administration of institutions, as well as the administrative procedures and duties when analysing and making decisions on personal applications and claims.²⁸⁹

Good governance norms specific for civil servants can be found in two (draft) codes: the draft Code of Conduct for Public Servants and a more advanced and detailed draft Code on Professional Ethics and Conduct for Public Servants prepared by the Internal Investigation Agency, with the help of western and local experts. Another draft Code of Conduct for Public Servants was issued by a working group appointed by the Prime Minister.²⁹⁰

The properness principle was laid down in the Law on Public Service, the Law of Public Administration and the Law of Basic Principles of Activities of the Seimas Ombudsmen. Some subprinciples - the principles of legal certainty and of legitimate expectation - have been developed by the Constitutional Court.

²⁸⁴ Art. 92 and 101 of the Constitution.

²⁸⁵ This system shows similarities with the political system in France: a directly elected President with a strong Constitutional Court. K. Matsuzato and L. Gudžinskas, *An eternally unfinished parliamentary regime? Semipresidentialism as a prism to view Lithuanian politics*, Acta Slavica Iaponica, nr. 23 (2006), p. 152.

²⁸⁶ This model was introduced to meet the principle of separation between the executive and legislative branches.

²⁸⁷ C. Duits, *Country report on Lithuania's position in the EU*, Universiteit van Amsterdam European Policy studies 2013, p. 50.

²⁸⁸ V. Vaicaitis, *Constitutional Law of the EU Member States*, Kluwer Deventer 2014, p. 1059.

²⁸⁹ Ministry of the Interior of the Republic of Lithuania, <https://www.vrm.lt/Public_Administration239>

²⁹⁰ J. Palidauškaitė, *Codes of Conduct for Public Servants in Eastern and Central European Countries*, University of Lithuania, p. 3.

The principle of transparency is elaborated in many different acts like the Law on the Right to Receive Information from State or Municipal Institutions, the Law on State Registers, the Law on Legal Protection of Personal Data and the Law on Provision of Information to the Public. These acts guarantee the right to access to documents and the obligation to keep registers.²⁹¹ The same principles of access to personal files are laid down in art. 19 of the Law on Legal Protection of Personal Data. Art. 7 of the Law on Right to Receive Information from State or Municipal Institutions regulates that the individual has the right to get information about himself or herself from state or municipal institutions, except if access of such information is forbidden by law. The right to have access to one's personal file is closely related to right of access to documents. The right to public information and the procedure of exercising it is established in Law of the Right to Receive Information from State and Municipal Institutions. This right is also laid down in art. 6 of Law on Provision of Information to the Public. The provisions are detailed in Rules for Service of Citizens and Other Persons in Public Administration Institutions, established by the Government, and other legal acts of secondary legislation. According to art. 2 of Law of the Right to Receive Information from State and Municipal Institutions, these institutions are obliged to inform about their activities. The Law on Archive²⁹² states that in order to guarantee the individual's right of access to state and municipal institutions' documents and in order to cater for the needs of the institutions themselves, documents registers shall be established in each state or municipal institution.

The principle of participation is guaranteed in its basic form by the Constitution, which provides the citizens with almost all basic rights for public participation: the right of expression, the right to information, the right of free assembly, the right of association, the right to petition, and the right to petition the Constitutional Court for review. Several institutes investigated the participation of Lithuanian citizens in civil society, but the results were rather negative. Most surveys concluded that Lithuanian society still lacks the initiative and trust in order to develop further. There seems to be a lack of trust, initiative and interest among Lithuanian citizens. People are embarrassed to join civil society uninvited, and do not dare to express their position on political and social matters in public. Lithuanian citizens do not trust the political class as a result of several scandals and do not believe that collective action will actually matter or change their situation. Citizens have the right to participate in the governing of the state through elected representatives or directly (art.33 Constitution). This article also guarantees the possibility to criticize activities of state institutions and functionaries, and to appeal their decisions. Under this article, citizens in practice have the possibility to indirectly influence legislation and rulemaking through elected representatives, using legal, non-formal mechanisms for public participation. But the Lithuanian Constitution does provide citizens with important basic rights for public participation in legislation and rulemaking, such as the right of initiative and right to referendum.

Ineffectiveness is caused by corruption and the overall high bureaucratic and administrative burden. Although there is a lack of academic sources that underpin this, in several interviews it is claimed that it is really a huge problem. Without paying officials pocket money, there is a big chance that paperwork or construction permits are delayed. The main problem with the people's low trust in politicians is also that the people think that politicians can never get caught. Politicians are hardly ever prosecuted. Lithuania also suffers from administrative corruption, but it is further developing its anti-corruption policy. Lithuania signed the United Nations Convention against Corruption (UNCAC) in 2003, which it ratified

²⁹¹ Art. 27 of the Law on Public Administration ensures the applicant's or his representative's right of access to the available documents and other information collected during administrative procedure. Art. 14 and art. 16 of Law on State Registers states that the person whose data constitute the register object shall have the right to access the data as well as being entitled to submit enquiries to the register management institution and to request rectification of incorrect data or supplementing of incomplete data and deletion of unnecessary or unlawfully collected data. According to art. 17 of Law on State Registers the person can get register data about himself or herself, which is once a calendar year free of charge.

²⁹² Art. 10 and art. 11.

in 2006.²⁹³ The Special Investigation Service (SIS) is responsible for the coordination of Lithuania's national anti-corruption strategy, for solving and preventing corruption-related crimes, for encouraging the public to show intolerance towards and engage in an active fight against corruption, and for coordination on anti-corruption measures between governmental institutions and society.

Accountability is laid down in laws of the Seimas Ombudsmen. Several dimensions of legal accountability have to be in place for it to be effective: (a) laws must be passed and they must have enforcement provisions; (b) there must be a sustained effort to enforce the laws by investigating allegations and launching prosecutions where appropriate; (c) perpetrators must be convicted and sentenced by more than a slap on the wrist. Only if these criteria are met is the public likely to feel that justice is being done, and one can expect deterrence of corrupt acts to become effective. In 1997 Lithuania created a specialized anti-corruption agency.²⁹⁴

Human rights are laid down in laws of the Seimas Ombudsmen. Most human rights concerning good governance are laid down in the law of Basic Principles of Activities of the Seimas Ombudsmen. This is because the biggest task of the Seimas Ombudsmen is to examine complaints from citizens about bureaucratic intransigence and abuse of authority by public officials. One Seimas Ombudsman has the power to examine complaints concerning state officials and another one has a competence regarding officials of local government.

Finally, we draw some conclusions in relation to the development of the three good governance dimensions. Most of the properness subprinciples are codified in the law. There is a human rights action plan for strengthening human rights. The transparency principle has been regulated in the Constitution and specified in the Law on Public Administration. In this Law we also find the basic rights for participation, but these are not very specified. Effectiveness is a problem because of corruption. There is a special regulation on legal accountability and a special anti-corruption agency.

7.5.4 Poland

After the political transformation in 1989, there was a need for a comprehensive change in the Polish legal system. This led to the adoption of the Constitution in 1997.²⁹⁵ According to the Constitution, the supreme power in the Republic of Poland shall be vested in the Nation, exercised directly or through their representatives.²⁹⁶ The traditional division into two forms of democracy, direct and indirect, is established. Art. 10 of the Constitution states that the legislative power is exercised by two chambers of parliament (the Sejm and the Senate), the executive authority by the President of the Republic of Poland and the Council of Ministers, and the judiciary by the courts and tribunals. There is a bicephalous nature of the executive.²⁹⁷ According to this model, the vast majority of the competences belongs to the Council of Ministers and a strong Prime Minister. The Council of Ministers also has representatives at the local level (provincial governors, pol. wojewodowie).²⁹⁸ The President is primarily the head of the national army and has the competence to veto the acts of the Parliament

It should be mentioned that Poland is an unitary state, but also has a fairly strong decentralized system - but only to the executive level.²⁹⁹ Local government in Poland is organised with a three-tier: 1. commune (pol. gmina), 2. district (pol. powiat), and 3. province (pol. województwo). Within the local government, however, there is no hierarchy and instances.

²⁹³ Art. 36 of the UNCAC required that specialized agencies for combating corruption are being established. The Special Investigation Service (SIS) fitted the profile, since being an agency for fighting corruption.

²⁹⁴ This is laid down in several acts, like the law of Basic Principles of Activities of the Seimas Ombudsmen and two codes of conduct.

²⁹⁵ The Constitution of Republic of Poland of 2nd April, 1997. Published in *Dziennik Ustaw* No. 78, item 483. English translation available under the website of Polish Legislative Body, the Sejm: <http://www.sejm.gov.pl/prawo/konst/angielski/konse.htm>.

²⁹⁶ Article 4 of the Constitution.

²⁹⁷ Izdebski H. *Doktryny polityczno-prawne*, Warsaw 2012, p. 342.

²⁹⁸ Art. 152 of the Constitution.

²⁹⁹ Izdebski H. *Doktryny polityczno-prawne*, Warsaw 2012, p. 343.

The local government of each level is independent from any other entity of the local government, unless it voluntarily entrusted the performance of specific tasks to the other entity of the local government or to a union of such entities. According to the art. 165 of the Constitution, the entities of the local government are legally independent.

According to the art. 10 of the Constitution, judicial power is exercised by the courts and tribunals. There is a presumption of competence of the ordinary courts, organized on the principle of two-instance, and there are three levels of common courts: district, regional, and appellate. Legal supervision of the common courts is exercised by the Supreme Court, which is also the court of cassation. In addition to the ordinary courts, there are so called special courts: administrative and military. Since 1987 the National Ombudsman is the safeguard of the rights and freedoms of citizens. Despite its inability to issue binding decisions, it holds a widespread authority and has an impact on the way the law is applied. The Ombudsman is also able to accede to any proceedings on the rights of the public prosecutor, and is competent to submit applications to the Constitutional Tribunal to examine the conformity of particular provisions of the law with the Constitution.³⁰⁰ Another institution that can be classified as the fourth power is the Supreme Audit Office (NIK). The NIK performs audits related to the execution of the state budget, as well as public finance spending and management of public property by state, local governmental bodies and economic entities.³⁰¹ Every year, the NIK submits three key documents to the Legislative Body: the analysis of the state budget execution and monetary policy, the opinion on the vote of discharge for the Ministers, and the NIK annual report.

Neither the concept of good governance, nor the similar term of good administration was expressly mentioned in the text of the Constitution or the legislation. This issue was for a long time not a subject of interests of many lawyers. Scholars connected with the faculties of economics usually analyse the meaning of the effectiveness and accountability of public authorities in financial terms. However, the legal texts stress the importance of the principle of legal accountability, especially with regard to the damage caused by state bodies and their officers. Much attention is paid to transparency, especially to gaining access to public information. Other elements are not treated as part of the broader concept of good governance. It is difficult to speak about the differences between the terms administration, governance and management, also because these terms can be translated to Polish into one word.³⁰² In practise the terms good administration and good governance are usually understood in the way explained in the EU's documents.

Elements of the principle of properness are present in the Polish Constitution, legislation and court rulings. Special attention is given to the subprinciples of legal certainty, legitimate expectation, equality and proportionality. The prohibition on the misuse of power (competences) and the prohibition of arbitrariness were not indicated expressis verbis in Polish legislation. Their applicability should, however, be considered as obvious. With regard to the first of these requirements, it is usually decoded from the principle of legality, regulated by art. 6 of the Code of Administrative Procedure (hereinafter be referred as KPA)³⁰³, indicating that public authorities act on the basis of provisions of the law.

With regards to the prohibition on arbitrariness, it should be noted that this term in Poland is usually connected with the concept of administrative discretion, which is a situation in which the administrative authority can choose between at least two different options to decide the specific case and each of them will be legal.³⁰⁴ In addition, as noted by the Supreme Administrative Court in its judgment on March 19, 1981³⁰⁵, "the right of the administration to

³⁰⁰ Art. 14 of the National Ombudsman Act of 14th July, 1987. Published in *Dziennik Ustaw* No. 14, item 147.

³⁰¹ Art. 203 of the Constitution.

³⁰² Izdebski H. *Doktryny polityczno-prawne*, Warsaw 2012 at p. 126.

³⁰³ The Administrative Procedure Code of 14 June, 1960. Published in *Dziennik Ustaw*, No. 30, item 168 with amendments.

³⁰⁴ Administrative discretion is only possible in the particular matters provided by the law.

³⁰⁵ Judgment of The Supreme Administrative Court of 19 March, 1981, sign SA 234/81.

issue a decision based on discretionary authority does not release it from the obligation to collect and comprehensively examine the evidence and issue a decision on the facts at hand, convincingly both in terms of law and fact". Legal certainty was decoded by the Constitutional Tribunal from the broader principle of the democratic rule of law. The principle of legitimate expectation is generally defined in art. 8 of KPA.³⁰⁶ This provision provides the so-called principle of deepening trust. Art. 16 provides the principle of durability of administrative decisions.³⁰⁷ The principle of equality is one of the three fundamental principles in the Constitution, just before the detailed catalogue of human rights. The other two principles are the principle of dignity and the principle of freedom. According to art. 32 of the Constitution, everyone is equal before the law and is entitled to equal treatment by public authorities.

The principle of proportionality is regulated in art. 31 section 3 of the Constitution: "any limitations upon the exercise of constitutional freedoms and rights may be imposed only by statute and only if necessary in a democratic state for the protection of its security or public order, or the protection of the natural environment, health or public morals, or the freedom or rights of other persons. Limitations shall not violate the freedoms and rights in their essence".³⁰⁸ This rule introduces the requirement of legality, purposefulness and proportionality in the limitation of human rights.

The principle of carefulness is also one of the basics of Polish administrative law. According to the art. 7 of KPA, in principio, in administrative proceedings, "the authorities should undertake any actions necessary to accurately clarify the facts of a matter and to dispose of the matter".³⁰⁹ In art. 12 KPA the principle of prompt and simple proceedings is stated. The requirement of proper reasoning of the administrative acts is one of the foundations of Polish administrative procedure. Art. 107 KPA prescribes what a decision must contain.

The principle of transparency is an important issue. It should be noted that the meetings of parliament are, in principle, open for the citizens, and so are the deliberations of the particular parliamentary committees. Moving to the second of the indicated elements of this principle – the publication of administrative acts - it should be noted that the principle has the constitutional status in Poland. According to art. 88 of the Constitution, the condition for legislation entering into force is for it to be announced. In terms of access to governmental information, it should be emphasized that this is of fundamental importance in Poland and is governed by The Access to Public Information Act.³¹⁰ The Act introduces a broad definition of public information and grants every citizen the right to request a public institution to issue a response. This entitlement corresponds to the obligation to provide information by the administrative authority.

Despite formal possibilities to participate, the society is quite reluctant to do this. The best example is the amount of citizens' initiatives. The ability to influence the direction of state policy is the very essence of democracy. For this reason, it is impossible to overestimate the importance of the principle of participation. The most important form of participation are elections, during which citizens decide who is to represent them. In the era of universal juridification of social life, it is not appropriate to leave full discretion to the representative bodies. For this reason, we cannot forget forms of direct democracy, among which we can distinguish: citizens' initiatives, a citizens' panel, referendum and community-level participation. The regulations governing the exercise of the citizens' initiatives are found in the Constitution³¹¹ and in the Law on the Exercise of the citizens' initiative.³¹² The principle of

³⁰⁶ „Public administration authorities shall conduct proceedings in such a manner as to deepen the trust of the citizens to the state authorities and to expand the legal consciousness and culture of the citizens” Translation by the author.

³⁰⁷ “Decisions which are not appealable in the administrative course of instance shall be final. Such decisions may be quashed, amended, declared invalid or the proceedings may be reopened only in instances provided for in the Code or separate statutes” Translation by the author.

³⁰⁸ The Constitution of Republic of Poland of 2nd April, 1997. Published in: *Dziennik Ustaw* No. 78, item 483. English translation available under the website of Polish Legislative Body: <http://www.sejm.gov.pl/prawo/konst/angielski/konse.htm>.

³⁰⁹ The Administrative Procedure Code of 14 June, 1960. Published in: *Dziennik Ustaw*, No. 30, item 168 with amendments.

³¹⁰ The Access to Public Information Act of 6 of September, 2001. Published in: *Dziennik Ustaw*, No. 112, item 1198 with amendments.

³¹¹ Art. 118 of the Constitution.

³¹² The Law on the Exercise of the citizen's initiative of 24 of June, 1999. Published in: *Dziennik Ustaw*, No. 62, item 688 with amendments.

effectiveness in Poland is neither the subject of specific legislation, nor of scholars' analysis. This principle is implemented in Polish law primarily by the obligation to submit a broad analysis of the matter before submitting the draft of the new act to the Sejm. To every draft of an act, the following must be attached: the analysis of the law relating to this issue at the time of the project, the purpose of the changes, the effects of what is planned to be achieved, and the consequences for the state budget.

The principle of accountability plays an important role and is present in various spheres of the law: political accountability regulated by the Constitution, civil liability for the damages caused by the state regulated in the Civil Code, or the accountability before the citizens. In terms of this important requirement, it should be noted that it has its different aspects: from the traditional, financial accountability, through various political aspects, legal accountability (including liability of the state for damage caused to the action of public authorities), and accountability to the public, to the professional disciplinary accountability.

The principle of human rights is implemented by a catalogue of rights regulated in the Constitution and also protected before the courts. For the effective legal protection of human rights, the Polish Constitution has an exceptionally extensive catalogue of protected human rights, consisting of more than 50 articles. This catalogue includes fundamental rights (such as, for example, the freedom of speech and the right to privacy), the second generation rights (namely economic, social and cultural rights), as well as third generation rights. The method of regulating these rights is very different, which is reflected in their different legal nature. Fundamental rights are subjective rights and the citizen may claim them in court, in cases of alleged violations. Most of these rights create for the State not only an obligation to refrain from certain behaviours (negative aspect), but also the necessity to take certain affirmative action (positive aspect). Rights of the 2nd and 3rd generation are more in the nature of a directive addressed to public authorities, indicating the directions and priorities of state policy and the tasks assigned to the legislature and the executive. Claiming the protection of these rights through the courts is usually not possible because they do not create subjective rights. There are courts that protect the human rights provided by the Constitution. There is also the institution of a constitutional complaint to the Constitutional Tribunal. In the field of human rights, the international aspect is very important. The most well-known instrument is the Human Rights Covenants of 1966 and the European Convention on Human Rights. Under these systems, the citizen has the right to file a complaint to the Human Rights Committee at the United Nations (UN system) and the European Court of Human Rights in Strasbourg (the system of Council of Europe). Especially the second of these bodies receives the majority of complaints from Poland, concerning mainly the problem of excessive length of court proceedings. An important role in the protection of human rights is also held by the European Union, since the Charter of Fundamental Rights adopted in 2000 in Nice became part of EU treaties.

We come to some final conclusions in relation to the good governance dimensions as worked out in this research. All the sub-principles of properness can be found in the Constitution and in the Code of Administrative Procedure. There is also an extensive catalogue of human rights in the Constitution, which are enforced by the courts and the Constitutional Tribunal for Human Rights. The three forms of transparency are guaranteed by the Constitution and/or in the specific laws. The several types of participation are regulated, but not the citizens' initiative, which is not often used in practise; however, referenda are used often. The principle of effectiveness is implemented by law, but the implementation is often not controlled. The concepts of financial, political and legal accountability are strongly applied.

7.5.5 Hungary

Hungary has quickly developed since the fall of the Communist regime and its openness towards the European Union. The different powers in the state can be distinguished, as well as the ‘fourth power’. Hungary has become a democratic state with a correct separation of powers which establishes the checks and balances. All these institutions apply to a certain extent the different principles of good governance. Some differences on their interpretation can be found, however. The Good Governance Index (2013)³¹³ of Nézőpont Elemzőintézet is more focused on political and institutional stability and demographic indicators, such as the perspective for future generations and social inclusion.

Nevertheless, the principle of properness is included in the Fundamental Law (Constitution) of Hungary (2011) as the prohibition on misuse of power, arbitrariness, the principle of equality, proportionality and reasoning. With regard to the transparency and accountability principles, The Hungarian Act CXII of 2011 regulates both the protection of personal data and the right of access to information, by integrating the two informational freedoms in a single law. Two different and even opposite aims are covered by the provisions of the same act: while data protection aims to ensure individual self-determination in relation to personal data, the right to information promotes public debate and citizens’ control on public activities. Moreover, addressing informational rights in one single Act is difficult due to these rights’ different scope of application (data protection extends to the private sector, which is generally not the case for transparency) and basic concepts (data protection only applies to personal data, while transparency covers any information; moreover, the concept of sensitive data is totally foreign to transparency). This may in some cases give rise to interpretation and application problems.

Furthermore, the creation of the new legislative framework to prevent corruption in the beginning of the millennium was a major achievement, but in itself it proved to be insufficient in eliminating corruption. The next change of approach in Hungary’s anti-corruption efforts took place in 2010. From this time on, parting with the limited approach which focused exclusively on criminal law and legislative/institutional frameworks, Hungary has fostered good governance through strengthening the integrity of state organisations.³¹⁴ This integrity-centred approach creates a balanced mix of risk analysis and regulation elements; control, training, information, ethics and organisational development elements ensuring compliance with and the implementation of rules; as well as the efficient sanctioning of violations with a comprehensive and differentiated system of instruments, which ultimately also include criminal law instruments.

It is also relevant to point out the relation between decentralization and good governance in Hungary with regard to the principle of participation. Local governments have appeared as suitable forums for the improvement citizen participation in the decision-making process. However, not only participation on local self-government, but also the effectiveness of the implementation of European and international law has been weakened, as claimed by the Venice Commission with regards to the incorrect implementation of the European Charter of Local Self-Government.

Good governance in Hungary is also threatened by restrictions on human rights and limitations to the rule of law. In the 2011 Nations in Transit Report (FH 2011a, 21) Hungary ranked last among the eight “Consolidated Democracies”. For Hungary, in seven out of the eight indicators the evaluation was worse than it was in 2002, 2004 and 2009. Transparency International has made some criticism of a recent amendment to the law on freedom of information (Act CXII of 2011). According to this association, the changes ensure that the

³¹³ Good governance Index 2013 (14 April 2014). Nézőpont Elemzőintézet.

³¹⁴ Government Decision 1080/2013 on the approval of the Action Plan on Hungary’s commitments to be made in the framework of the Open Government Partnership international initiative.

Government operates in complete darkness. The amendment casts a wide net in banning public access to any information handled by public bodies that may be controlled by, for example, the State Audit Office, Government Control Office, the Public Prosecutor or the Ombudsman.³¹⁵ Of relevance is also the research on alternative control instruments.³¹⁶

Finally, we draw some conclusions in relation to the good governance dimensions. A few of the properness sub-principles can be found in the Constitution. This Constitution has a dualistic system for international law, including human rights law, and it means that the international sources fulfil an additional role also in relation to human rights. All forms of the transparency principle have been worked out in different regulations, but there seems to be some confusion. There is a restricted regulation on participation. There were many new laws enacted in 2013. There is some doubt about the efficiency of public institutions. There is political, administrative and legal accountability, in which not only the Court of Audit but also the Ombudsman plays a role. So the principles of good governance appear as a continuous challenge for the EU countries, in achieving what The Secretary-General of the United Nations describes as: ‘infrastructure is not just about roads, schools and energy networks. It is also, about the strengthening of democratic governance and the rule of law. Without transparency, not only from the Government to the people, but also among the people, there are no hopes for a viable democratic State.’

7.5.6 Slovenia

Slovenia is a decentralized unitary state with a parliamentary system. The Parliament (which consists of the National Assembly and the National Council) holds the legislative power, the independent courts hold the judicial power, the Government holds the executive power and finally the fourth power is fulfilled by the Human Rights Ombudsman and the Court of Audit.

The most important general law governing the field of the administration is the General Administrative Procedure Act (GAPA), which, pursuant to the existing regulation, applies to all administrative matters (artt. 3 and 4). A lot of basic norms of good governance can be found within the GAPA.³¹⁷ There is also the Access to Public Information Act that governs the procedure which ensures everyone has free access to public information held by state bodies. Furthermore, the Civil Servants Act in Slovenia regulates a number of important principles.³¹⁸ In these regulations we find the principles of good administration which encompass the classic procedural entitlements or rights of defence in the relations with - or even directly towards - the authorities.³¹⁹ The very essence of good administration (and good governance) is that every natural or legal person has the right to have their affairs handled fairly and within a reasonable time, have the right to be heard and to have access to any data in their file and the right to public information. Furthermore, the administration must give reasons for its decisions.³²⁰ The Slovenian government has to comply with the principles of good governance mostly because of their predominant position in binding legislation, but they have to comply with certain Codes as well.³²¹ There is no (direct) case law concerning violations of the codes or ethical norms, since disciplinary and similar procedures in public administration (as well as labour disputes)

³¹⁵ *The coming dark age of democratic governance in Hungary*. Transparency International. Hungary. 2011.

³¹⁶ A.Z. Varga, *Alternative Control Instruments over Administrative Procedures: Ombudsmen, Prosecutors, Civil Liability*, Passau 2011; A.Z. Varga, Z. Pinter, *The role of prosecutors outside the criminal law field*, Budapest 2013.

³¹⁷ The right of parties to be heard (art. 9), the right of parties to inspect and copy the files they need (art. 82), the obligation of the administration to state reasons when they are making a decision (art. 214) and the obligation of the administration to instruct parties on how they can file an appeal against a decision or commence some other proceeding before the court (art. 215).

³¹⁸ Principle of equal access (art. 7), principle of legality (art. 8), principle of professional conduct (art. 9), principle of honourable conduct (art. 10), principle on the restriction and duties in respect of the acceptance of gifts (art. 11), and principle of confidentiality (art. 12).

³¹⁹ P. Kovač, *Public service excellence through participation in administrative procedures – trends and challenges in Slovenia and EU* 16th Toulon-Verona Conference Proceedings 2013, p.4; <http://www.toulonveronaconf.eu/papers/index.php/16tvc/article/view/30>.

³²⁰ Kovač *Public service excellence through participation in administrative procedures – trends and challenges in Slovenia and EU* 16th Toulon-Verona Conference Proceedings 2013, p. 3; <http://www.toulonveronaconf.eu/papers/index.php/16tvc/article/view/30>.

³²¹ The Code of Ethics of the Government of the Republic of Slovenia and the Code of Ethics for Civil Servants in State Bodies and Local Communities. Principles in these Codes largely overlap with legal rules, and sanctions are provided in regular legal proceedings.

are conducted based on the Civil Servants Act.³²² Violations and sanctions are determined on the basis of legal rules, since the codes do not have the legal character of a generally binding regulation.³²³ Kovač states that ‘the Code of Ethics for Civil Servants is based on a few, briefly defined, value-based guidelines of ethical conduct of civil servants’³²⁴ and in that way is not applicable or clear at all.

The judiciary is an independent institution. A problem is that Slovenian courts are overrun by the inflow of new cases and suffer from a heavy backlog. This is a problem related to the effectiveness principle, although the Parliament passed various measures to make the work of the court more effective. There is a Supreme Court and a Constitutional Court. The two laws that regulate the judiciary on the basis of the Constitution, the Courts Act of the Republic of Slovenia and the Judicial Service Act, contain several provisions which support different aspects of the independence of the judiciary within the constitutional framework. These aspects are also established and explained in the Code of Judicial Ethics, which binds judges who are members of the Slovenian Association of Judges.³²⁵ The Constitutional Court expressed the importance of the right to equal protection of rights as mentioned in art. 22 of the Constitution and explained that from this right follows that the party must be guaranteed the right to be heard. According to the Court, the right to information is essential for the exercise of the right to be heard in proceedings and that is why they stress the importance of the service of documents.³²⁶

The Slovenian Ombudsman applies the principles of good governance according to art. 3 of the Human Right Ombudsman Act and shall act according to the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. The Ombudsman oversees whether the other institutions act in accordance with the principles of good governance and, if not, he may invoke the principles of equity, good administration or good management. In his recommendations and reports, he might refer to the ‘good management principle’³²⁷ as well. In 2006 it was observed that these reports were not always given the necessary attention: “In the past the National Assembly had an indifferent attitude towards these. The Assembly ignored the special reports and several series of decisions have not been complied with. However, the ombudsman kept communicating its recommendations, with the result that the National Assembly has promised to improve its co-operation”.³²⁸ The National Assembly stated in their Recommendations of the Annual Report 2010³²⁹ that: “The National Assembly recommends that all institutions and functionaries at all levels to take into account the recommendations of the Human Rights Ombudsman of the Republic of Slovenia, recorded in the Annual Report of the Ombudsman of the Republic of Slovenia for 2010.”³³⁰

The principle of transparency is important because after all, secrecy is a cloak for arbitrariness, inefficiency and corruption. Corruption is publicly perceived as an important problem in Slovenia.³³¹ In a report in August 2011³³², the Court of Audit declared that the conduct of the minister of the interior was improper and corrupt and was violating the principle of transparency - this led to her resignation. The Court frequently condemns the conduct of authorities and institutions for of a lack of transparency. The Court explicitly underlined the

³²² And the Act governing labour relations.

³²³ P. Kovač, Ethics of Officials in the Context of (Slovene) Good Administration, *NISPacee Journal of Public Administration and Policy*. Volume 5, Issue 3, p. 144. Online: www.degruyter.com/.../v10110-012-0002-3.xml.

³²⁴ Kovač , Ethics of Officials in the Context of (Slovene) Good Administration, *NISPacee Journal of Public Administration and Policy*. Volume 5, Issue 3, p. 132. Online: www.degruyter.com/.../v10110-012-0002-3.xml

³²⁵ M. Cerar, *International conference of the regulatory judicial authorities of the Balkan area: Independence of the Judiciary and Cooperation with the Legislative and Executive Powers*, 2012, p.4:<http://www.hcjp.gov.tr/news/sunumlar/yargi-bagimsizligi/slovenya-slovenya-yargi.pdf>.

³²⁶ Up-419/10 Constitutional Court.

³²⁷ See for instance: Annual Report of the Human Rights Ombudsman for 2012, p. 168.

³²⁸ S. DŽANIĆ, *Ombudsman as promotor of good governance* (thesis Erasmus University Rotterdam), 1996, p.23; <http://thesis.eur.nl/pub/3817/Ombudsman%20as%20promotor%20of%20good%20governance.pdf>.

³²⁹ Pursuant to art. 272 and 111 of the Rules of Procedure of the National Assembly.

³³⁰ <http://www.varuh-rs.si/publications-documents-statements/recommendations-of-national-assembly/priporocila-po-obravnavi-letnegoporocila-za-leto-2010/?L=6>.

³³¹ SGI Report Slovenia 2014, p. 17.

³³² Court of Audit of the Republic of Slovenia Annual Report 2011, p. 55.

importance of the concept of good governance in their Strategy for 2014, saying it will ‘continue to strive for the enforcement of good governance’.³³³ The Court is actively respecting the principle of transparency by publishing information.

Improvements on good administration can be found in Slovenia. According to Rakar and Kovač “the regulation and implementation of rulemaking and administrative procedures (as the two classical types of procedure which differ based on whether the end result is a general or individual administrative act) show that for Slovenia there is still room for improvement on good governance. The legal regulation of procedures could contribute to this end through educational norms, insomuch as the two types of procedure were harmonized following the example of certain countries (the US and the Netherlands, for example).”³³⁴

Good governance practices must be applied to all branches of government, but the principle of properness is directed mostly to the conduct of the administration. In essence we are speaking about proper administration: the legality and fairness of governmental conduct as opposed to maladministration.³³⁵ This is the principle of “la defense de détournement de pouvoir”, specified for the administration, which in essence can be found in art. 6 GAPA.³³⁶ This article entails the abuse of power, but the prohibition of abuse of discretion is also mentioned. Abuse of power means power has been used for an illegal purpose or that discretion is used in an unreasonable fashion - the sub-principle of reasonableness.

Formal legal certainty concerns the recognizable rights and duties and substantive legal certainty concerns durability of rules, orders that have to be complied with and the protection of rights and the prohibition or retroactive effect. In Slovenia, regulations must be published prior to entering into force, in the official gazette of the state or in the official publication of the local community, when local communities want to adopt a regulation (art. 154). The prohibition of retroactive effect of legal acts is codified in the Constitution (art. 155). The Constitutional Court stated that legal certainty does not only require that laws must be foreseeable, but that the activities of state bodies must be as well.³³⁷ The GAPA obligates the administration to have their decisions issued in writing, with certain demands that must be included in the decision: the reasons, name of the agency, number and date of the agency (art. 210).

Although the Slovenian legal system does not provide for the right to good administration or good administration as such, this right applies directly based on article 41 of the EU Charter of Fundamental Rights.³³⁸ Concerning the protection of human rights, there are specific Constitutional provisions (art. 15): ‘No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognize that right or freedom or recognizes it to a lesser extent.’

The Parliament is advocating the principle of transparency by publishing all of the legislation that they develop online. Transparency is necessary for the legitimacy of the government.³³⁹ Important elements of this principle are access to information, transparency of meetings and transparency of administrative acts. Of importance is the Access to Public

³³³ Furthermore, the Court stated that they ‘will comply with the principles and policies laid down in the INTOSAI Communication Guideline, the emphasis being placed on the promotion of a better understanding of the field of auditing and accessibility of information to the public and the media.’

³³⁴ Rakar 2013, p. 12. I.Rakar, Evaluating Procedural Aspects of Public Governance: Case of Slovenia, *NISPacee Journal of Public Administration and Policy*. Volume 5, Issue 3, p. 1-14. Online:http://www.nispa.org/files/conferences/2013/papers/201304090834470.NISPacee%20RakarSeverKovac%209%20apr%202013%20ENG.pdf?fs_papersPage=5.

³³⁵ Ethics of Officials in the Context of (Slovene) Good Administration, p. 27.

³³⁶ Art. 6 (2) GAPA states that “In administrative matters, in which the agency has been granted by statute or local community regulation the authority to decide at discretion, decisions must be reached within the limits of that authority, and in conformity with the purpose for which the authority was granted. The purpose and extent of such authority shall be determined by statute or local community regulation which embodies the authority for deciding at discretion.” Art. 6 (3) states that “if an agency is empowered to reach a decision at discretion it must as well proceed according to the GAPA.

³³⁷ U-I-89/99.

³³⁸ P. Kovač, *Public service excellence through participation in administrative procedures – trends and challenges in Slovenia and EU*, 16th Toulon-Verona Conference Proceedings 2013, p.5; <http://www.toulonveronaconf.eu/papers/index.php/16tvc/article/view/30>.

³³⁹ Addink 2014, p. 89. G.H. Addink, *Principles of Good Governance: Concept and Context*, Utrecht University 2014.

Information Act that governs the procedure which ensures everyone has free access to public information held by state bodies. The principle of transparency plays a great role in the policy field of integrity, and institutions like the CPC work hard to increase transparency, but the Ombudsman is sometimes obligated to step in, in favour of the protection of the privacy of citizens. They promote the principle of participation by holding referendums regularly. Referenda in Slovenia can be instituted by the National Assembly itself, or by forty thousand voters (art.90). The voters have the opportunity to confirm or reject a law/act adopted by the National Assembly. Laws may be proposed by at least five thousand voters (art. 88). The citizens of Slovenia have the possibility to participate in the legislative process.

The principle of accountability is also relevant in legislation, decisions, case law, and reports of the Court of Audit and the Ombudsman. Relevant sources of the principle of accountability are for instance found in the Court of Audit Act.³⁴⁰ The judiciary acts independently from the other powers, and in accordance with a code of Judicial Ethics.

The most important law in the field of integrity in Slovenia is the Integrity and Prevention of Corruption Act. Furthermore, the National Assembly passed a Resolution on the Prevention of Corruption in the Republic of Slovenia. An independent and autonomous state body with a number of corruption-preventive tasks has been installed: the Commission for the Prevention of Corruption (CPC). The CPC is an anti-corruption body that oversees the prevention of corruption on state level. It can give fines to natural persons, legal persons and public authorities³⁴¹ and is responsible for the implementation of the Resolution. For this reason, the CPC adopted the Action Plan for the Implementation of the Resolution, which contains specific implementation measures. The Resolution and the Action Plan cover a broad range of corruption issues³⁴² and are the most important policy documents in the field of integrity in Slovenia. Each state entity is obliged to develop and adopt integrity plans and inform the CPC about them.³⁴³ The CPC tries to incorporate the principle of transparency in the field of prevention of corruption by increasing the transparency of public finance. They have developed the Transparency Project. An element of this project is the development of an online application called ‘Supervizor’, which monitors expenses of public bodies and is available to everyone.³⁴⁴ In January 2013, the CPC presented the findings of a year-long investigation, revealing that two of the seven main party leaders, including Prime Minister Janez Janša, had systematically violated the law by failing to properly report their assets. While the CPC had no mandate to demand legal actions, the political consequences of the report were severe. As a result, the ruling coalition fell apart and the leader of the main opposition party stepped down.

In 2010, the Slovenian Ombudsman received many complaints about art. 46 of the Integrity and Prevention of Corruption Act (old). Pursuant to this provision, data on income and assets of persons responsible for public procurement were also publicly accessible. The Ombudsman determined that the provision was too great an interference with the privacy and protection of personal data of initiators, which is why it filed a request for the control of constitutionality of this provision with the Constitutional Court of the Republic of Slovenia. The Court agreed³⁴⁵ and it suspended the implementation of the provision in the part referring to persons responsible for public procurement. The Government proposed an Act Amending the Integrity and Prevention of Corruption Act in which the persons responsible for public procurement and officials of the National Review Commission are determined as exceptions

³⁴⁰ Article 20, 21 and 38 Court of Audit Act.

³⁴¹ See article 77-80 of the Integrity and Prevention of Corruption Act. Fines can mount up to as much as 100.000 euros for corrupt conduct by public authorities.

³⁴² OECD 2007, p.10. OECD Report on the application of the convention on combating bribery of foreign public officials in international business transaction and the 1997 revised recommendation on combating bribery in international business transactions <http://www.oecd.org/slovenia/38883195.pdf>

³⁴³ Article 47 Integrity And Prevention of Corruption Act.

³⁴⁴ See <https://www.kpk-rs.si/en/project-transparency/supervizor-73>.

³⁴⁵ Decision No U-I 36/11-8.

from the regulation in art. 46 regarding the publicity of data. The National Assembly adopted this act and the alleged disproportional intervention into the privacy and protection of personal data of persons responsible for public procurement was removed.³⁴⁶

We draw some final conclusions on the three dimensions of good governance. Some of the properness sub-principles have been codified. The human rights are protected by a general article in the Constitution. The transparency principle has been developed according to the line of the Access to Public Information Act. The participation principle is not strongly developed. There is no special attention paid to effectiveness. There is an important role of the Court of Audit in relation to financial accountability.

7.5.7 Slovakia

The Slovak Republic recognises the legislative, executive and judicial functions of government and these are formalised in the Constitution. The National Council of the Slovak Republic and referendums are the distinguished legislative powers. When it comes to the executive power, the relevant central bodies are the President of the Slovak Republic and the Government of the Slovak Republic. Obviously, the courts hold the judicial power. Slovakia has ordinary courts and a Constitutional court. Furthermore, the Slovak Republic has a number of other institutions, which have a place in the Constitution. These are the Public Defender of Rights and the Supreme Audit Office. When speaking about the combined body of all institutions that have a function and state power, it will be referred to with the term ‘government’. The part as described in Title 6 Section 2 of the Constitution, the executive power, is specified by ‘Government of the Slovak Republic’ or ‘Government’.

The principles of good governance are interpreted and applied differently by the previously named institutions. A common element is the stress put on their use against corruption. For Slovakia, the primary source of administrative law is Act no. 71 on Administrative Proceedings, also known as the Administrative Code.

The principle of properness is not found as a single entity, but many of its subprinciples can be found in the Administrative Code. In brief, Slovakia has no general interpretation of properness, but does uphold most subprinciples in the Administrative Code, including the principles governing the proceedings of administrative authorities.

When it comes to the interpretation of the principle of transparency, the emphasis lies on the instrument against corruption and on increasing public trust in the administration. When it comes to governmental transparency, the first step is giving access to ‘information’ to individuals through a presumptive right to information regulated by law (the Freedom of Information Act).³⁴⁷ State agencies, municipalities, as well as legal entities and natural persons that have been given the power by law to make decisions on the rights and obligations of natural persons or legal entities in the area of public administration shall, only within the scope of their decision-making power, be the persons obliged to provide access to information, as defined by Section 2 of this law. The Slovak Republic has a good system when it comes to access to information.³⁴⁸ However, the Slovak Republic has also come under scrutiny for certain parts of its right to information policy and they want to be more open to dialogue with society and stakeholders. In its latest action plan³⁴⁹, the Government announced four pilot projects concerning dialogue about public policies in which different models and tools are used for discussion between representatives of stakeholders, experts and citizens.³⁵⁰

³⁴⁶ Human Rights Ombudsman Report 2011, p. 32.

³⁴⁷ The Slovak Republic’s Reconstructed Act No. 211/2000 Coll. is known as the Freedom of Information Act.

³⁴⁸ Of the Visegrád Group Slovakia provides the most consent to request, with 65,1%. It also answers all the requests. Transparency International, Enforcement of Freedom of Information Act in State- and Municipality-owned Enterprises in Czech Republic, Estonia, Hungary, Slovakia and Poland, found at <http://www.transparency.sk/en/vystupy/publikacie/>

³⁴⁹ Open Government Partnership Action Plan of the Slovak Republic, p 13.

³⁵⁰ These are: 1. Dialogue on Strategy for the Social Services Provision – by the Ministry of Labour, Social Affairs and Family of the Slovak Republic; 2. Dialogue on National Strategy for Biodiversity Conservation for 2012-2020 – by the Ministry of Environment of the Slovak

Transparency as an instrument against corruption and to increase public trust in the administration is shown in the Government Manifesto of August 2010.³⁵¹ One of the principles for changing the culture of politics is transparency in the decision-making processes, enabling public control - including the access to information and the disclosure of information.

The principle of participation is also undergoing a transformation. A trend within the Slovak Republic's government can be observed in that it wants to work closely on the principles of open government.³⁵² Along with the promotion of transparency, the fighting of corruption and leveraging new technologies, empowering citizens and civic engagement seem to be priorities. Participation is a key element of the public administration. The Slovak Constitution grants a unique position to the referendum and it is placed in the same context as the National Council of the Slovak Republic, as part of the executive power. It is used to confirm a constitutional Act on joining an alliance with other states or on withdrawing from that alliance, but also on other important issues of public interest.³⁵³

Effectiveness is interpreted as achieving the goals that are set and the auditing powers report on whether or not the financial means are used appropriately in this sense. Effectiveness means setting the right targets to achieve an overall goal, including the different elements in the process (the effect).³⁵⁴ Whilst the Constitution and other laws of the Slovak Republic contain varieties of the word 'effective', in the vast majority of cases it refers to the situation when a decision of a court gains the legal authority to bring about its consequence.³⁵⁵ There is also another way effectiveness presents itself, and that is by The Operational Programme Effective Public Administration (OP EPA)³⁵⁶ which has as its main aim the creation of 'a client oriented, transparent public administration, providing its services swiftly, effectively and in good quality, in the interest of supporting sustainable growth, job creation and social inclusion'. To conclude on this principle, in theory the Slovak Republic should be more effective. The Slovak Republic is now applauded for working hard on creating a transparent and well-functioning government.³⁵⁷

Political accountability is strongly developed, legal and administrative accountability are common forms, but others, such as social accountability, need to take more shape. The way bodies of state hold each other accountable is termed 'internal accountability'. Slovakia also allows for the opportunity for citizens to hold their public administration accountable. On the basis of Article 46(2) of the Constitution any person who has his or her rights denied by the public administration may come to court to have the legality of the decision reviewed. The ability to hold the public administration accountable reaches further than the mere legality.³⁵⁸

Republic. 3. Dialogue on Nationwide Strategy to Protect and Promote Human Rights – by the Government Office of the Slovak Republic, Department of Human Rights and Equality of Treatment.4. Development of rules for the public participation in the legislative process by law – by the Ministry of Justice of the Slovak Republic.

³⁵¹ "The Government of Slovakia is aware that an open approach of public institutions towards citizens is the best way to secure public trust in the state and its institutions."

³⁵² Letter of Intent 'The government of the Slovak Republic, welcomes and wishes to join the OGP's initiative, found at <http://www.opengovpartnership.org/country/slovakia>.

³⁵³ The President of the Slovak Republic has the power to call for a referendum either on request of at least 350000 citizens by a petition or following the adoption of a resolution of the National Council within a period of 30 days from receiving a petition of citizens, or from the adoption of a resolution of the National Council. Article 95 of the Constitution of the Slovak Republic. By means of Section 54 of the Rules of Procedure of the National Council committees may invite specialists and other persons or authorities to their meetings to provide their opinions.

³⁵⁴ G.H. Addink, *Principles of Good Governance: Concept and Context*, Utrecht University 2014, p. 119.

³⁵⁵ An exception to this statement is Article 44 of the Slovak Republic's Constitution, which states that the 'State shall care ... on effective environmental policy...'. It is thus that in the context of the environment, most indications on the interpretation and application of the principle of effectiveness can be found.

³⁵⁶ Whereas <http://www.minv.sk/?operational-programme-effective-public-administration> writes about it in English, there is no official English translation available

³⁵⁷ Therefore, a better (read: less corrupt) allocation of funds should logically lead to a more effective government; one that achieves more of the goals it has set out. Obviously this assumption lacks the empirical data to confirm the statement.

³⁵⁸ The Administrative Code allows for cases in which certain principles related to properness are not followed in proceeding in which the rights, the legitimate interests and the duties of the citizens and organizations regarding the public administration are decided by administrative authorities.

The human rights protection in Slovakia is of an adequate level and is to be interpreted broadly, as also incorporating fundamental rights and freedoms. Human rights protection is placed in Title 2 of the Constitution (Arts. 12 – 54).³⁵⁹

The Slovak Republic has received praise for its Open Government development. When looking at the principles differently, certain aspects of the Slovak Republic's good governance growth deserve this praise, while others need developing. The Slovak Republic is making good progress for a country that is relatively new on a European level. Yet, the following quote from OGP policy documents puts the Slovak Government's view on good governance into perspective quite well: 'The Slovak Government welcomes and appreciates the Open Government Partnership's initiative to promote transparency, to fight corruption, to empower citizens and civic engagement... we do share your will, determination and call for more transparent, effective and accountable government...' It is evident that it has been marked by its corrupt past, as the principles of good government are used strongly as instruments to guard against corrupt practices. Clearly, the Slovak Republic is in the start-up phase, but it is quickly moving to the next one.

Finally, we reach some general conclusions about the three dimensions of good governance. The basic sub-principles of properness are codified in the Administrative Code, and in the Constitution we find the codification of a broad group of human rights. In relation to the transparency principle, we have to mention the codification in the Freedom of Information Act and the activities in the frame of the Open Government Partnership and other relevant dialogues. In line with that Partnership, there is a strong development of the participation principle. The Constitution and several regulations contain the specification of the principle of effectiveness. The Operational Programme Effective Public Administration is also relevant. For accountability, we find political, legal and administrative accountability, which all are relevant in the prevention of corruption.

7.5.8 *The Czech Republic*

The Czech Republic (Czech) is a unitary state and territorially decentralised. The legislative authority in the Czech Republic is vested in the bicameral parliament, which consists of the Chamber of Deputies and the Senate. The President is the head of state and appoints a prime minister from the majority party or coalition. The central state power in the Czech Republic is divided based on democratic principles and the rule of law. The three branches explicitly provided for in art. 2(1) of the Constitution are the legislature³⁶⁰, the executive³⁶¹, and the judiciary³⁶², which includes the Constitutional Court. There are also the inherent fourth powers existent in the Czech Republic, entrusted with administrative tasks, running separately and independently from the government of the day. These include the Czech National Bank³⁶³, the Ombudsman (also known as the Public Protector of Rights) and the Supreme Auditing Office³⁶⁴, all of which enjoy a high degree of autonomy from the central government by being financially independent.

Overall, the frequent changes in the top management of the administrative bodies following each political change of government has resulted in a loss of institutional memory, continuity and administrative capacity which has slowed the Czech Republic's adoption of good governance principles. However, it is with growing external influence that 'Europeanization' and modernisation is occurring. For example, the Czech Republic is now part of the European

³⁵⁹ It's system of rights and freedoms is based on international treaties and conventions which were entered into and ratified by the Czech and Slovak Federal Republic, which ended up being bundled in the Charter of Fundamental Rights and Basic Freedoms regulated by Constitutional Act No. 23/1991 Coll.

³⁶⁰ Ibid, Chapter II.

³⁶¹ Ibid, Chapter III.

³⁶² Ibid, Chapter IV.

³⁶³ Constitution of the Czech Republic of December 16, 1992, Chapter VI.

³⁶⁴ Ibid, Chapter V.

Union. The European Union's cohesion policy of 'Smart Administration'³⁶⁵ is a beneficial step towards the application and adoption of good governance principles, and is pushing states such as the Czech Republic in the right direction.³⁶⁶ Thus, the Republic is slowly shifting its attitude and harmonising its law to adopt this more modernistic approach in its reform and recovery process³⁶⁷, with other surrounding nations providing the catalyst for change - but there is still a long way to go. However, this must be viewed in the light of the Czech Republic's historical background.

The concept of good governance is a collection of principles, which look to govern the institutions involved in running a country. The six key principles that can be applied across many facets of a country's functioning are properness, transparency, participation, effectiveness, accountability and human rights. By providing the checks and balances, good governance can ensure the integrity of governments - and if integrity is not present, it can provide actual points of reference on which criticism and scrutiny can be based. In the Czech Republic, the beginnings of adoption of the principles of good governance and good administration can be seen, as was posited by Skulova, who argued that 'these dimensions of public administration in post-communist countries have undergone and are undergoing fundamental and necessary changes'³⁶⁸, but that these processes were 'far from having been finished'. A country that adopts and adheres to good administration sees the benefits across the whole of society, through the economy, through social standards, and through political success and recognition. Factors compromising integrity in the Czech Republic's current system include³⁶⁹: the 'infrequent prosecution of high-level corruption'³⁷⁰ for a multitude of reasons including 'inadequate legislation concerning disclosure of sources of assets, the use of anonymous bearer bonds, weak rules governing the financing and lobbying activities of campaigns and parties, a lack of rules to protect whistle-blowers and civil servants from political pressure, and the limited number of experienced investigators at regional levels'.³⁷¹ The Czech Republic is making some progress, albeit with hiccups, but that is to be expected judging by its close past. Public administration bodies should continue to adopt decisions based on good governance principles and qualities, mould their practices around them, and should continue to be assessed and subject to judicial review.

In discussing whether the Czech Republic adheres to the principles of properness, it is most effective to look to the specific sub-principles, which break the large topic down into its component parts. An adherence to formal carefulness can be seen in relation to procedural rights regarding the running of a trial.³⁷² Evidently, there are issues of abuse of power in the Czech Republic, through a series of political corruption cases. Principles of legal certainty can also be seen in the running of a trial in the Czech Republic.³⁷³ Equality, having strong links to human rights, is enshrined in the Charter, being the first and foremost article, 'all people are free and equal in their dignity and rights...inherent, unalienable, non-prescriptable and unrepeatable'³⁷⁴

³⁶⁵ E. Zakova, 'Cultural and Structural Funds in the Czech Republic', *European Expert Network on Culture*, (2013) EENC Paper, online available: <http://www.eenc.info/wp-content/uploads/2013/07/EZaková-Culture-and-the-Structural-Funds-in-the-Czech-Republic.pdf>, (last consulted 20 October 2014).

³⁶⁶ The 'Smart Administration' procedures have been adopted by Resolution of the Government of the Czech Republic No 757 in 2007 for a number of reasons including pressure and demand from citizens, the European Commission and NGOs, desire for effective management and quality assessment amongst functions of government and increased competitiveness.

³⁶⁷ M. Toášek, et al., *Czech Law between Europeanization and Globalization*, (Karolinum Press 2010), Prague.

³⁶⁸ S. Skulova, 'Several Remarks to the Legal Bases of the Principles of Good Administration', Masaryk University, Brno, 1995, accessed online: <<http://is.muni.cz/do/law/1237864/web/principles/pdf/skulova.txt?lang=en>> (last consulted 19 October 2014)

³⁶⁹ according to the US Department of State's Bureau of Democracy, Human Rights and Labor's report in 2013

³⁷⁰ US Department of State, '2012 Country Reports on Human Rights Practices: Czech Republic', *Bureau of Democracy, Human Rights and Labor*, report: April 19, 2013, online available: <http://www.state.gov/j/drl/rls/rrpt/2012/eur/204278.htm>, (last consulted 19 October 2014)

³⁷¹ ibid

³⁷² For example in article 37 of the Charter, a person may refuse to give an incriminating testimony, have the right to legal assistance, have the trial conducted in their mother tongue and without unreasonable delay.

³⁷³ For example, in article 4 of the Charter limitations may only be placed on rights and freedoms by law Charter of Fundamental Rights and Freedoms, No 2/1993 Coll. article 4.

³⁷⁴ Charter of Fundamental Rights and Freedoms, No 2/1993 Coll. article 1.

and in article 3.³⁷⁵ In being consistent with the sub-principle of reasoning, it is ensuring that people are given the factual and legal basis for the issue that affects them, and also the considerations made when taking the decision.³⁷⁶ The government of the Czech Republic has been vested with an obligation to inform the parliament and public regularly and in advance on issues connected with its obligations. This is codified through legislation, for example in the Rules of Procedure of the Chamber of Deputies, where we find legislation pertaining to the principle of transparent meetings of the government³⁷⁷ and principles related to the transparency of governmental acts³⁷⁸. The Government of the Czech Republic, in response to criticism, has approved the accession to the ‘Open Government Partnership’, an international initiative, in its Resolution no. 691 of 14 September 2011. This strong initiative reflects the Czech Republic’s commitment to promote transparent, open and effective state administration. The Republic has encouraged participation by a number of different groups and developed ‘The Action Plan’, the result of inter-ministerial cooperation and consultations with NGOs and the private sector. The law of the Czech Republic provides for public access to governmental information and it experiences some success. The remains of the former centralised system in which the local administration is subject to a dominant, overarching centralised system, still largely influences the political processes in the Czech Republic. Citizen participation in politics still represents one of the key issues of representative society and democracy. On the 9th of March 2005, the Czech government approved a bill that would permit referendums to be called on fundamental issues relating to the country’s internal and foreign policy. It involved a trigger mechanism by any of the following: petition containing at least half a million signatures of Czech citizens, two thirds of the members in either chambers of the bicameral Czech parliament, and the government itself. It has been decidedly unclear however, as to whether this bill would gain the requisite support it needed to be successful. In regards to local referenda at the municipality level, the Czech Republic has enjoyed some success, indicating that in working from the ground up, there is potential for success and greater participation at the national level, once people become more accustomed to their use. The opinion of the local community makes the municipality more sensitive to the requirements of the citizens, along similar lines to a popular initiative. Community level participation in the form of consultations is currently implemented in the Czech Republic by giving the public the right to comment on some acts.

The Administrative Courts also play a role in upholding and providing effective legal protection for the legal rights of citizens of the Czech Republic. This includes the area of public law, such as unlawful administrative acts taken by public authorities, unlawful interferences of public authorities into the protected spheres of individuals, and competence complaints. The Ombudsman was created in the late 1990s and modelled on the example set by the Scandinavian states. Its role in the system is to protect the people from administrative malpractice and inactivity, with detailed provisions of its abilities, competencies and limitations in law no 343/1999 Coll., the ‘Public Protector of Rights Act’. Prior to the enactment of this act, the actions of public administration officers did not come under scrutiny, which also came in conflict with the principle of accountability and properness. The Ombudsman’s scope is wide-ranging, from ministries and other authorities, to police and public health insurance, and its work may commence either from its own initiative or at the initiative of a natural or legal person. The powers of the Ombudsman are also expansive, including the right to enter buildings of various authorities, examine files, question staff and speak to people in institutions, with the full cooperation of the authorities. The Ombudsman has come under scrutiny with its ‘weak

³⁷⁵ Charter of Fundamental Rights and Freedoms, No 2/1993 Coll. article 3. *gender, race, colour of skin, language, faith and religion, political conviction, membership in a national or ethnic minority...*

³⁷⁶ For example, in Czech, the procedure for granting international protection to those seeking asylum belongs to administrative procedures and is therefore also governed by the general law on administrative procedures, Code of Administrative Procedure, No 500/2004 Coll.

³⁷⁷ Law No. 90/1995 Coll. of 19 April 1995 on the Rules of Procedure of the Chamber of Deputies, article 37, article 39.

³⁷⁸ Law No. 90/1995 Coll. of 19 April 1995 on the Rules of Procedure of the Chamber of Deputies, article 98.

competences', in the fact that it can only recommend, notify or propose. The Ombudsman stands up for the rights of those who may be marginalised or under-represented. There is some question as to the effectiveness of legal protection in the Czech Republic. The considerable length of legal proceedings, debilitating costs and complex system are 'very de-motivating for the victims, because they do not want to be tangled in a long litigation, moreover, usually with an uncertain result'.³⁷⁹

The Czech Republic recognises the supremacy of international treaties over conflicting national law and is thus a monist society. This is demonstrated through their efficacy in applying the European Convention for the Protection of Human Rights into their national framework through the second paragraph of the Constitution. Whilst the Czech Republic has been criticized for its 'complicated way of establishing [principles] and slow penetration into the legal regulations and administrative practices',³⁸⁰ nonetheless, progress is being made and the Republic should be encouraged to continue rather than criticized continuously.

Finally, some general conclusions related to the three good governance dimensions. Many properness subprinciples have been codified, but the biggest problem seems to be the prohibition on abuse of powers. There is also a broad codification of fundamental rights. There is an involvement in the Open Government Partnership which is relevant in relation to the prevention of corruption. Important is the participation principle, which has been developed especially on local level. There is a relevant influence from the effectiveness principle to the administrative reform, in which audits play an important role. It must also be mentioned that an evaluation model has been developed in which effectiveness is promoted. Effectiveness is also developed in relation to legal procedures. Accountability plays a role in the context of the Code of Ethics of Public Administration and the Administrative Procedure Act.

7.5.9 *Croatia*

The parliamentary republic of Croatia has a mainly centralized government. The three classical (separated) powers - legislative, executive and judicial - are rather functioning in a system of checks and balances. There is also the fourth power: the Ombudsman and the Constitutional Court. The People's Ombudsman represents citizens before governmental bodies and bodies of local and regional self-government. It is a commissioner of the Croatian Parliament that promotes and protects human rights and freedoms enshrined in the Constitution, laws and international documents on human rights and freedoms, ratified by the Republic of Croatia.³⁸¹ The Ombudsman is elected by the Croatian Parliament, and is therefore indirectly democratically chosen. Anyone who states that their constitutional or legal rights and freedoms have been infringed or threatened, due to unlawful or irregular work of public bodies, can present a complaint to the Ombudsman. There are several special Ombudsmen in Croatia, namely for Children, for Gender equality and for persons with disabilities.

The Republic of Croatia has a long way to go in further developing the principles of good governance and implementing them. The public bodies of the state are all provided with sufficient regulation, but not with sufficient ethical codes. The legislator's ethical code is lacking, as there is none. The bodies of the state have been well developed but there is a lack of a certain level of integrity and efficiency. Good governance works when all the principles it entails are being applied properly. If a democracy is functioning transparently, this will increase participation in the decision-making process and increase the efficiency and accountability elements of the government. In its entirety, it promotes the development of the rule of law and

³⁷⁹ European Union Agency for Fundamental Rights, *Access to Justice in Europe: an overview of challenges and opportunities*, 2011, accessed online: <https://fra.europa.eu/sites/default/files/fra_uploads/1525-access-to-justice-2011-country-CZ.pdf> (last consulted 20 October 2014), p. 5.

³⁸⁰ S. Skulova, *Several Remarks to the Legal Bases of the Principles of Good Administration*, Masaryk University, Brno, 1995, accessed online: <<http://is.muni.cz/do/law/1237864/web/principles/pdf/skulova.txt?lang=en>>.

³⁸¹ Art. 93 of the Constitution; art. 2 Ombudsman Act.

democracy. When efficiency and accountability are increasing in the state, the public bodies and their servants will become more enticed in their work and thus will improve the integrity of the bodies. If a state is corrupt and negligent, it makes for lesser functioning bodies, as there is no real motivation for their integrity. The Republic of Croatia has been improving its good governance principles in order to gain access to the EU, but also afterwards the accession reforms and amendments have been a priority. Before it became a member of the EU its integrity was low. There was a very corrupt government that didn't have room for public participation and there were no codes for efficiency and integrity. By its accession to the EU, the Republic of Croatia has been rather drastically changed, in a positive manner.

The principles are nearly all codified in either the Constitution or additional regulations. For those that are codified, the legal system has a rather extensive description of the implementation that leaves little doubt as to the rights and obligations they entail. Many of these principles have been properly codified and are easily called upon by the authorities and by the citizens themselves. The principles have been most clearly codified in the General Procedure Act, as they either elaborate on constitutional rights or define the principle on its own. Examples of the principles in the Constitution are articles 14 to 16 and 26 to 29, codifying the principles of prohibition on arbitrariness, legal certainty, fairness and impartiality, equality and proportionality. Misuse of power is often found in cases of corruption. Since corruption in the Republic of Croatia is such a present problem, numerous anti-corruption plans have been implemented. These plans have been successful in diminishing it through arrests and prosecutions on all levels of the state.³⁸² Due to the apparent corruption in the judicial branch, the public does not seem to put much confidence in the judiciary.

The principle of legitimate expectations is an unwritten principle. It follows from judicial decisions, an example of which is the case of Margus v. Croatia, where in the concurring opinions a clear example of the expectation has been made³⁸³. The discrimination is mainly targeted against national minorities, and in particular Roma and Serbs. An example hereof is the case where two students of the Varaždin Business School were refused by the Branka d.o.o. Company for being Roma, while the training was mandatory for all students³⁸⁴. The application of the principles is quite often lacking, unfortunately. The highest values in the country are equality and human rights. These are constitutionally guaranteed by article three of the Constitution. Although these rights may be constitutionally guaranteed, they lack development. An example of the lacking principles is the principle of equality. There are a lot of measures taken in order to guarantee equality in the state, but in practice there are many cases where the principle has been infringed. Most discrimination is targeted at minority nationals and asylum seekers. The Ombudsman is the central body responsible for anti-discrimination.³⁸⁵ There is a special Ombudsman for equality in the Republic of Croatia. When falling victim to discrimination, a person can file a complaint with the Ombudsman. The ADA gives the Ombudsman the power to eliminate discrimination and promote equal treatment for all who reside in the Republic of Croatia.³⁸⁶

According to art. 52 of the GAPA, the interested parties have the right to participate in the proceedings. The principle of transparency, which includes information and openness, aims to achieve sound administrative processes and outcomes and to maintain consistency with pre-established rules.³⁸⁷ Accountability has become a symbol for good governance, as it ensures the

³⁸² A big example of the misuse of power was the case of Ivo Sanader, who was the Prime Minister from 2003 to 2009.

³⁸³ CASE OF MARGUŠ v. CROATIA (Application no. 4455/10) JUDGMEN STRASBOURG 27 May 2014 par. 11.

³⁸⁴ Municipal Court of Varaždin Date of decision: 7 February 2012 Name of the parties: L.I. and Ž.B. (both minors) v Branka d.o.o. and B.J. Reference number: P.817/11.

³⁸⁵ <<http://www.non-discrimination.net/content/enforcing-law-25>>

³⁸⁶ Article 12 Anti-discrimination Act 2008

³⁸⁷ Reforming the Civil Service as the Precondition for Public Administration Reform in Croatia <http://www.academia.edu/1295311/Reforming_the_Civil_Service_as_the_Precondition_for_Public_Administration_Reform_in_Croatia> p. 4.

effectiveness and quality of the actions of the public authorities. In order for a democracy to be successful, the public bodies need some form of accountability. This can increase the quality of the administration and while developing good governance, it can prevent governmental errors.³⁸⁸ Accountability is both connected to the ethical principles and the legal principles. Transparency is needed for both the citizens of the country and the powers within the state. In this sense there is a system of checks and balances between the powers and the Open Government Partnership initiative has had substantial influence in the increase of transparency. An example hereof is, despite the significant progress, the inadequate use of the Right of Access to Information Act. The Republic of Croatia has therefore, as part of the process, pledged to amend this inadequacy in order to ensure the achievement of the principle of transparency and free access to the information that is in possession of the public authorities.³⁸⁹

Finally, here are some general conclusions in relation to the good governance dimensions. Most of the properness sub-principles have been codified in the General Procedure Act, including the enforcement of the violation of the prohibition misuse of power. The Constitutional Court and the Ombudsman play an important role in the enforcement of the human rights codified in the Constitution and in international treaties. The transparency principle plays an important role in the context of the Open Government Partnership and in the prevention of corruption, as worked out in the Anti-corruption plan. It is lacking in the work of the judiciary. The participation principle has been worked out on all levels of the government. Efficiency of public resources and effectiveness of policy goals are applied. Effectiveness is also used in the context of judicial reform. Accountability is present in the context of the Code of Civil Servants Act. It can be concluded that for nearly all the principles there is no adequate application. This follows from surveys, researches on government indicators and most importantly the absence of trust that the public has in the state. Many principles need further development and more time in order to be called good governance.

7.5.10 Bulgaria

The Bulgarian train is on its way to good governance. Considering the huge amount of catching up it had to do, a considerable distance has been covered in a relatively short period of time. As to the governmental functions, Bulgaria can be described as a unified democratic constitutional state, with local self-government. The Constitution recognizes the separation of the three traditional state powers: the legislative, the executive and the judicial, and also mentions (the institutions of) the fourth power. The most important legislative institutions to perform these functions are the unicameral parliament (the National Assembly), the Grand National Assembly and the Municipal Councils. The essential institutions of the executive power are the national and municipal administrations: the government (the Council of Ministers) on national level and the municipal mayors on local level. Though of growing importance, the Bulgarian regions, the level between the national and municipal level, have only played a secondary role for a long time.³⁹⁰ The judicial power institutions are the ordinary courts of first and second instance, specialized courts for administrative, military and organized crime, the Supreme Court of Cassation and the coordinating administrative Supreme Judicial Council (the Constitutional Court is not part of the judiciary). Fourth power institutions mentioned in the Constitution are the National Audit Office, to supervise the implementation of the budget, the Ombudsman, to defend the rights and freedoms of the citizens and the press and other mass information media, which shall be free and shall not be subject to censorship.³⁹¹

³⁸⁸ G.H. Addink, Principles of Good Governance, Concept and Context, Utrecht 2014/2015, p. 133.

³⁸⁹ Government of the Republic of Croatia Action Plan for implementation of the Initiative open government partnership in the Republic of Croatia for the period 2014 to 2016, July 2014.

³⁹⁰ Other relevant public institution are the National Social Security Institute (NSSI), the National Police Service, the National Revenue Agency and the National Health Insurance Fund (NHIF).

³⁹¹ The Ombudsman issued in 2009 a paper entitled „The Rights of People, Decentralisation and Local Power- Recommendations to Municipalities. These recommendations, as an act of the national Ombudsman, are addressing mainly the municipalities, but also the central

When it comes to interpretation and application, the research has not brought clear evidence of awareness in the past of the concepts of good governance and good administration among the public authorities of Bulgaria. In the run-up towards, and even more since, the EU membership of Bulgaria, the concepts of good governance and more specifically good administration, seem to have reached a higher position on the agenda. Where in the past individual elements and principles of both concepts were worked out in and divided into multiple laws and codes, since 2007 there are more policy documents, reform programs and reports giving notice of coherent plans for improving the implementation of both concepts. This development seems to be boosted on the one hand by the wish of Bulgaria to be a member of the EU and the conditions to make that happen and on the other hand by the input from international and EU law, institutions and expertise. Thus initiated, helped, stimulated, sometimes forced by external powers and triggers, little by little good governance and good administration start to penetrate Bulgarian public institutions as a concept, as more than static, individual provisions spread over regulations. However, what is true in theory is often not yet applied in real life situations. Recommendations and reports of researchers and (international) organisations, reform programs and ratings of the perception of public institutional performance by the citizens show that there is still a lot of work to do to achieve the full application and added value of good governance and good administration.

As for differences and similarities between principles, they have all been and still are part of laws, regulations, codes and programs, thus giving the impression that ‘codification’ has been on the Bulgarian agenda for a long time. There is however an extreme variation in how much attention each of the principles gets and to what extent elements are worked out. The principles of properness and participation are well represented, with an overload of provisions that work out elements of prohibition on misuse of power, prohibition on arbitrariness, equality, carefulness and direct and indirect democracy. A possibility is that this might have something to do with a democratic answer to the former totalitarian regime. On the other side, the principle of effectiveness in all its approaches³⁹², wherever mentioned, is to be found in general terms. Somewhere in between these extremes, the principles of human rights, transparency and accountability take their positions. Some elements of these principles are very well worked out³⁹³, while others are only mentioned in general terms (professional, administrative and financial accountability) or hardly mentioned at all (clarity and quality of information and publications).

As for the principle of human rights, a special remark should be made on the gap between theory and practice. Recommendations and reform programs in fields like healthcare, education, pensions, social security, finance, administrative and judicial systems etc., combined with the significant load of case law at the ECHR on violation of the right to education, family life, fair trial and the position and rights of minorities, especially Roma, illustrate that constitutional guarantees often do not (yet) bring what citizen might expect from them.

Based on the foregoing, for the interpretation and application of the principles of good governance and good administration the summary can be as follows: little by little the individual elements and principles are starting to make the shift from individual notions to part of the concepts of good governance and good administration, of coherent plans and programs. The next and even more important step is to overcome the wide gap between theory and application in real life, which to a certain extent might be even more of an ethical/moral challenge than a practical one (of executing regulations and programs).

Coming from ‘the opposite direction’ of communism, that lasted till 1989, in the short period of 25 years since then Bulgaria made the switch to democracy and the membership of

authorities of power and the structures of civil society. The goal was to systematise and outline those of the institutional, regulatory and practical measures, requirements and criteria, which form the foundation of the concept of good governance at the local level.

³⁹² Implementation of law, compliance and enforcement of regulations and achieving the aims pursued by regulations, cost efficiency.

³⁹³ Constitutional guarantees of human rights, open meetings and voting, passive and active supply of information, political accountability.

the EU. That doesn't happen overnight. On the one hand enormous reforms have been made and a lot has been accomplished on the way to good governance. On the other hand recommendations, reform programs, case law and citizen's ratings of public performance illustrate that there is still a long way to go to make the concepts of good governance and good administration part of everyday life of public institutions and civil servants.³⁹⁴ Furthermore recommendations and reports often mention that progress is not always made in the possible and promised pace. The train is rolling, but speed is low. Unfortunately the route to follow might be extra complicated due to the wide spread lack of integrity and presence of corruption.

Final conclusion about the three dimensions of good governance. Most of the properness sub-principles are codified in the Constitution and in specific regulations. There is a human rights influence from the international level. Several norms on transparency can be found in the Constitution but also in the Access to Information Act and the Municipality Code. Especially the participation on local level has been regulated. The Constitution has a monistic system for international law and that is relevant from the effectiveness perspective. The ombudsman also looks to the effectiveness of the public sector. The Constitutional Court works on the legal accountability and the Parliament on the political accountability.

7.5.11 Romania

Romania is a semi-presidential republic, founded on the principle of separation and balance of powers, with the framework of a constitutional democracy, in which the principles of good governance are differently interpreted and applied, according to the specific field where they are found. All the powers in the state develop their activity in order to satisfy the needs of the society (instrumental) and to protect the rights of the citizens (protection).

The legislature highlights more the presence of the principle of participation, as the people have the right to vote for their representatives in the Parliament, but the principle of effectiveness is strictly connected to the first statement, as these elected representatives must fulfil their tasks, and must represent the interests of the citizens; in order to do so, they benefit from immunity. Transparency is present due to the existence of the law that regulates the entire process of election. The executive highlights the principle of accountability via the right of the Head of State to dissolve the Parliament, and that of the Chamber of Deputies, the Senate and parliamentary commissions to exercise a control over the activity of the Government and public administration, asking them to present the requested information and data, and of the Prefect's control of legality over the Mayor's and County/Local Councils' decisions.

The Constitution of 1991, revised in 2003, instituted for the first time in Romania the institution of the People's Advocate.³⁹⁵ In a democratic state, where the separation of powers is a real command of the state authorities, the law must keep a balance between legal competence and discretion of powers, providing joint government initiative, within certain limits, depending on the specific areas or activities, so as to not prejudice the rights and freedoms of individuals by abusive action or inaction. The role of the Ombudsman is to protect the rights of people who consider themselves victims of injustice from the administrative authorities and to ensure compliance by public authorities with the principles of legality and good administration. The ombudsman mediates conflicts between citizens and public authorities in cases of "maladministration". Exercising the constitutionality control, the People's Advocate may raise

³⁹⁴ The Development Strategy for Public Administration (2014-2020) contains a precise analysis about the situation of the administration and the problems, shortcomings and challenges. In this annual report to the National Assembly for 2013 the Ombudsman recommended a Code of good administration to be drafted and adopted.

³⁹⁵ The constitutional name under which the Ombudsman is organized and operates in Romania By the creation of 14 territorial offices, the Ombudsman sought on the one hand to meet the fundamental requirement of facilitating citizens' access to the Ombudsman, and on the other hand to maintain a constant awareness of the problems facing citizens and the disruption in the activities of local government in the areas where the territorial offices are located.

exceptions of unconstitutionality, or may formulate points of view on the exception of unconstitutionality of laws and ordinances relating to the rights and freedoms of citizens.³⁹⁶

The principle of participation is exercised in referenda and in the local/county elections. In specific legal situations, well-described in the Constitution, with a strong respect for the principle of legitimate expectation, the Chamber of Deputies and the Senate can initiate a vote of no confidence in the Government. The citizens expect that their representatives will fulfil their tasks, and respect and protect their rights, but the sanctions applied in case of an opposite behaviour are public and found in the law, so that each representative knows what the reaction of the citizens or of the Government might be.

Transparency is needed in order for a normative administrative act to produce effects, as it must be published before it can take effect - without being informed, citizens cannot obey the law, and in order for this to happen, transparency is needed. Generally speaking, in Romania transparency is more active, with the information usually published online and every person having easy access to this information and the decisions that were made, the required permits for a given situation, the rules of functioning of an institution, and last but not least their rights regarding all these administrative issues.

Discretion must be exercised with respect to the general principles of public law, the principle of equality, fairness, non-retroactivity of administrative acts, and proportionality. Administrative acts submitted to judicial review are a way of asking the judge to decide whether the act was issued within the law or as a result of abuse of power.

The ombudsman's contribution to ensuring good governance is achieved by exercising control over public administration acts and deeds.³⁹⁷ Administrative services must be related both to justified demands of citizens and the law. In this respect, through his work, the Ombudsman can give "an appropriate barometer of social needs" and bring them to the attention of both government and legislature. In the spirit of participatory democracy, the Ombudsman has the legal means needed to help ensure good governance by maintaining an open and transparent dialogue with citizens and public authorities, aimed at preventing and mediating disputes between the two parties.

The judiciary displays a higher preoccupation with and implication of human rights: the right to a fair trial, the right to private life, no punishment without law, no inhuman or degrading punishment. A meaningful impact on human rights is the one of the Ombudsman. The national Ombudsman addresses the court on behalf of a person in cases where their rights were infringed. The interesting protection is reflected in the possibility of the citizen to choose whether to continue with the law suit or not.

Romania is part of the Aarhus Convention, displaying an increasing preoccupation for environmental protection. People can freely participate in the decision-making process

³⁹⁶ The provisions of Law. 35/1997 on the organizing and functioning of the Ombudsman Institution provide that, in the event of a notification regarding the exception of unconstitutionality of laws and ordinances related to rights and freedoms of the citizens, the Constitutional Court should also request the point of view of the People's Advocate. In addition, the provisions of the Law on the organization and functioning of the Constitutional Court, republished, establish that the president of the Constitutional Court will send the conclusion through which the Constitutional Court was notified to the presidents of the two Chambers of Parliament, the Government and the People's Advocate, by indicating the date up to which they can submit their points of view.

³⁹⁷ Resources made available to the Ombudsman for review and processing of complaints are: information which may be requested from public authorities; own investigations (inquiries); hearings of civil servants concerned and taking statements from the heads of the public authority involved, as well as from the civil servants. During the course of the investigation the Ombudsman tries to clarify petitions through mediation and dialogue with public authorities. Thus, following investigations, the situations claimed by petitioners (or in ex officio cases) have been solved. In some cases, when the Ombudsman found shortcomings in the work of public authorities, they have shown responsiveness in remedying the shortcomings identified by solving cases favourably or by accepting the view of the Ombudsman.. Also, in cases where serious violations of petitioners' rights or unlawful administrative acts were found, the Ombudsman made recommendations. Since the work of the Ombudsman has no a coercive character, as he is a mediator between citizens and public authorities, it can only make recommendations. A recommendation is issued by the Ombudsman if he found that government authorities violated of citizen's rights or if there is a finding of illegality of administrative acts. In addition, Law no. 554/2004 regarding administrative conflicts (administrative contentious procedures) has provided the Ombudsman with legal means of securing rights and freedoms: the ability to seize the administrative court on behalf of the citizen affected by a public authority or to defend a public interest.

regarding environmental issues and can associate in NGOs, groups or other forms of assembly. Having these possibilities, democracy is developed in a practical way and at the same time the environment gets its much needed attention. Companies begin to create a code of conduct in order to “educate” their employees in the spirit of a behaviour based on integrity. This shows that integrity is a value increasingly sought after in the character of the employees of companies, institutions, organizations etc.

To conclude, here are some remarks about the good governance dimensions. The development of the properness sub-principles has been started. In relation to human rights, there is a special attention for the conflict of human rights. There are regulations on transparency and participation, but there can also be conflicts with certain human rights. Professional accountability can be found in the Constitution, and financial accountability is applied by the Court of Audit. The general courts have a role in enforcing regulations or in giving effect to regulations.

7.6.12 Conclusions Region 4: Central Europe

1. Looking at the three Baltic States – Estonia, Latvia and Lithuania – we can conclude there is a development of their constitutional systems similar to that of the Weimar Republic, with single chamber parliaments elected by the people. The three constitutional powers in these unitary states – legislative, executive and judicial – are strictly separated. We see in these three countries a very strong influence from the EU (including in the area of the principles of good governance), but also from other international organisations. The countries have a monistic system in relation to international law, meaning it can be applied immediately. The peoples themselves do not have much trust in their governments, which also has to do with the history. Rather weak are the implementation of the democratic principles of good governance, like transparency and participation. Nevertheless, in some countries these principles have been codified (for instance, Latvia). In relation to this last point it is relevant that the Russian minorities do not have the nationality of the countries where they reside, and that creates separation within the countries. The principles of properness have been codified in all three countries. The ombudsman plays an important role in the development of the human rights principles,
2. Poland and Hungary are countries in which we find most of the principles of properness and human rights in the constitution or in the administrative laws. In Poland, where the codification of the human rights in the Constitution is important, the Constitutional court plays an important role in the development of the good governance elements in the constitutional human rights. Hungary has developed legislation in relation to the democracy principles – transparency and participation – and these regulations are enforced by different controlling institutions.
3. Slovakia recognises the three classical powers in the state and each of these powers are implementing the principles of good governance. We find many of the principles in the Administrative Code, but not all the institutions have the same interpretation of the good governance principles. The democratic principles are fully developed and effectiveness and accountability are also in development. The human rights protection is on an adequate level. The Czech Republic has had a slow start, due in part to the political change of the public management: after each change there is sometimes a loss of institutional memory. The Czech Republic has a lot of catching up to do and is making good progress in the development of the principles of good governance.
4. Slovenia and Croatia have rather similar constitutional institutions and instruments, but there are two important differences. In Slovenia there are several Codes of Ethics in addition to the classical regulations, and the constitutional institutions are active in

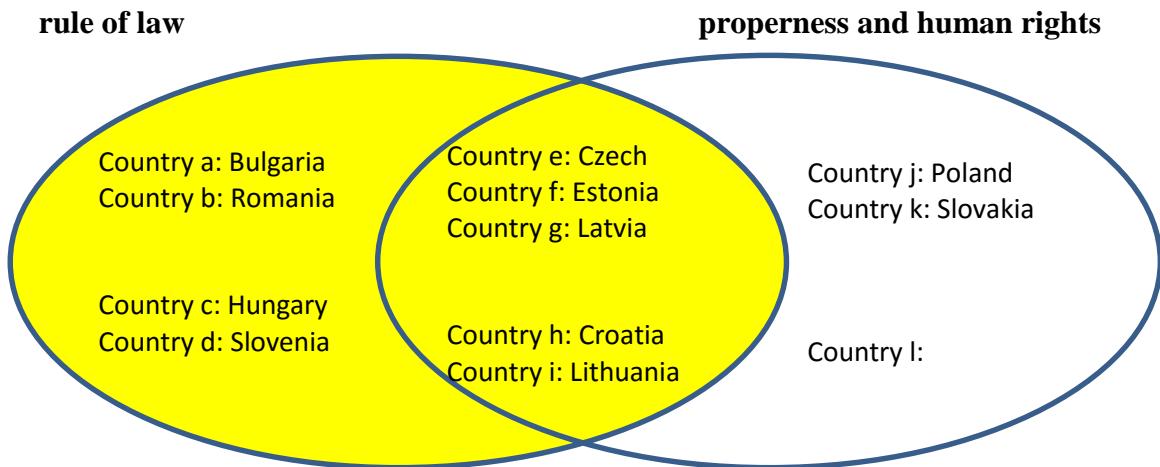
working with the principles of good governance. Croatia still has a long way to go, especially for the implementation of the principles of good governance, because the codification and the regulations have been developed, but the application in practice gives a lot of difficulties.

5. Bulgaria is a unitary state with local self-governance and Romania is a decentralised unitary state. In both countries, we find the classical three powers of the state. In Bulgaria there was regulation on these principles, but there was no awareness at the level of public institutions. Since 2007 that has been changed, also under the EU-influence. We find also more policy papers in Bulgaria about the implementation of the principles of good governance, but in daily practise there is still a long way to go. In Romania there is already a further application of principles of good governance in practise. Interesting is the conflict between principles like transparency versus right to privacy. Also in the new international regulations like the Aarhus convention, Romania is very active in implementation.

Shifts of good governance dimensions in member countries

GROUP 4 COUNTRIES – CENTRAL EUROPE

RULE OF LAW DIMENSION



Bulgaria: most of the properness sub-principles are codified in the Constitution and in specific laws; human rights are especially influenced from the international level;

Romania: the development of properness sub-principles as part of the development of administrative law has been started; attention for conflicts between human rights;

Hungary: a few of the properness sub-principles can be found in the Constitution; the country has a dualistic system for international law, including human rights in addition to the national constitutional rights;

Slovenia: some of the properness sub-principles are codified; human rights are protected by a general article in the Constitution;

Estonia: several sub-principles of properness are written and some unwritten; human rights also from the international level;

Latvia: properness principle as norm for prevention corruption by a specific institution (KNAB); unclear situation on effect on national level of international human rights;

Croatia: most properness sub-principles codified in General Procedure Act, including strong enforcement of the prohibition on misuse of power; Constitutional Court and Ombudsman play important role in enforcing Constitutional and international human rights;

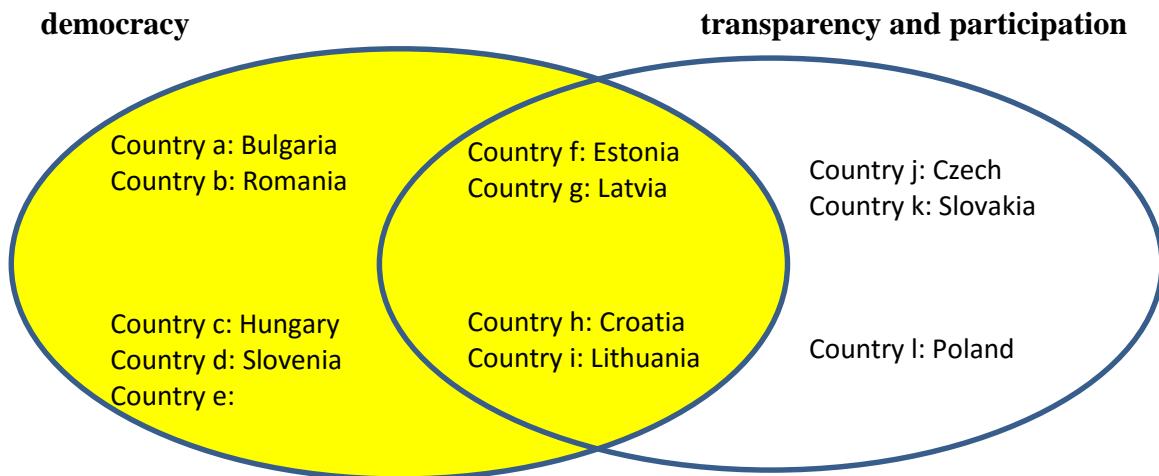
Lithuania: most of the properness sub-principles in the law; a Human Rights Action Plan for strengthening human rights in practice;

Czech: many properness sub-principles codified, but the biggest problem is violation of the prohibition on abuse of power; national codification of fundamental rights;

Slovakia: the basic principles of properness are codified in the Administrative Code; the Constitution has codified a broad group of human rights;

Poland: all the sub-principles of properness in the Constitution and in the Code of Administrative Procedure; extensive catalogue of human rights in the Constitution, which are enforced by the Courts and the Constitutional Tribunal for Human Rights Complaints.

DEMOCRACY DIMENSION



Bulgaria: several norms on transparency in the Constitution and the Access to Information Act and the Municipality Code; participation on local level has especially been regulated;

Romania: regulations on transparency and participation can be found in different regulations, but there can be conflicts with human rights;

Hungary: all forms of the transparency principle worked out in different regulations but there is confusion about the contents; participation codified in regulations has been restricted;

Slovenia: transparency principle has been developed in the Access to Public Information Act; participation principle is not strongly developed;

Estonia: transparency regulated on central and local level; some of the four forms of participation have been regulated on the (de)centralised level;

Latvia: transparency – meetings, acts and information – are found here; the four forms of participation are not very popular;

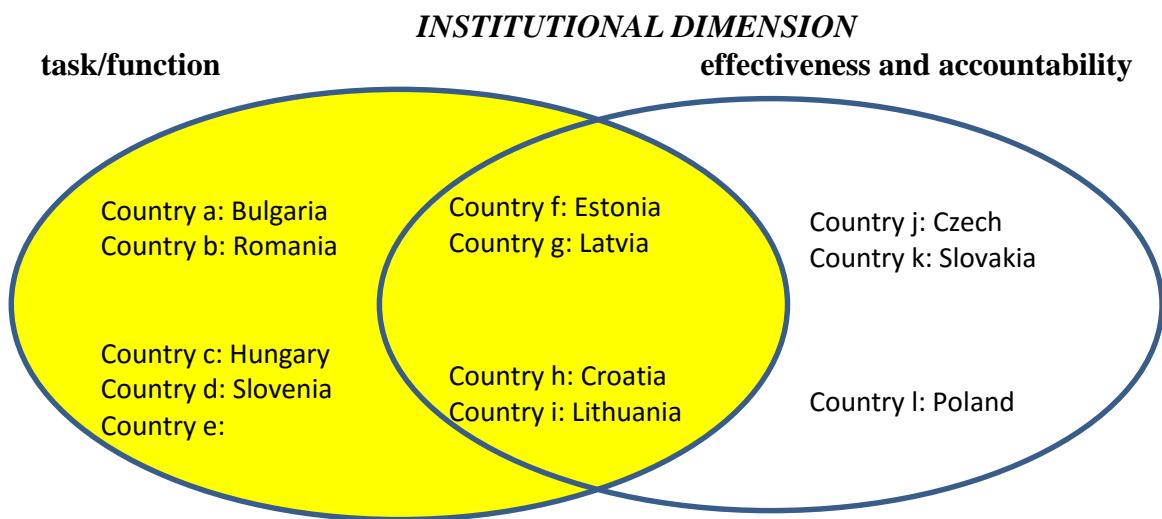
Croatia: is participating in the Open Government Partnership, also in relation to corruption where transparency plays an important role (Anticorruption Plan), but transparency is lacking in the judiciary; participation can be found on all levels of the government;

Lithuania: transparency regulated in the Constitution and specified in the Law on Public Administration; also the basic rights for participation can be found there, but not very specified in different forms;

Czech: participation in the Open Government Partnership, where transparency is relevant to corruption; important is the participation principle, which has been developed especially on the local level;

Slovakia: the transparency principle is codified in the Freedom of Information Act, and the activities in the frame of the Open Government Partnership and other dialogues are relevant; in line with that Partnership, there is a strong development of the participation principle;

Poland: three forms of transparency are guaranteed by the Constitution or by specific laws, several types of participation are regulated; the citizens' initiative is not often used and the referenda are often used.



Bulgaria: in the Constitution there is a monistic system, which is relevant for the effectiveness of international law; the Ombudsman looks to the effectiveness of the public sector; the Constitutional Court looks to legal accountability and the political accountability is controlled by the Parliament;

Romania: there is professional accountability according to the Constitution, and financial accountability is carried out by the Court of Audit; the Court has a role in enforcing regulation and so in giving effect to regulations;

Hungary: there are many new laws in 2013; we found some doubt about efficiency of public institutions; there is political, administrative and legal accountability and there is a role not only for the Court of Audit but also for the Ombudsman;

Slovenia: there is an important role for the Court of Audit in relation to financial accountability; there is no special attention paid to effectiveness;

Estonia: the effectiveness principle is not so strongly developed; accountability is especially related to public financial matters within the sphere of the National Audit Office;

Latvia: some aspects of effectiveness have been codified; judicial, political and financial accountability is applied;

Croatia: efficiency of public resources and effectiveness of policy goals are often combined, but effectiveness also in the context of judicial reform; accountability especially also in the context of the Code of Civil Servants Act;

Lithuania: the effectiveness of the public sector is a problem because of corruption; there is a special regulation on legal accountability and a special anti-corruption agency;

Czech: the administrative reform is seen from the effectiveness perspective, in which audits play an important role and in the development of an evaluation model; effectiveness also in relation to legal procedures; accountability in relation to the Code of Ethics of Public Administration and the Administrative Procedure Code;

Slovakia: the Constitution and several regulations contain the norm of effectiveness and there is the Operational Programme Effective Public Administration; we find political, legal and administrative accountability which is also relevant in relation to corruption;

Poland: the principle of effectiveness is implemented by law but not often controlled; financial, political and legal accountability are strongly applied.

7.6 Shifts of good governance dimensions in Group 5 countries – Anglo Saxon Europe

The group of countries part of the European Union is Ireland and United Kingdom.

In making the two country reports we used the following structure: 1. Introduction; 2. Context of the country; 3. Good governance, general aspects; 4. Good governance, six specific aspects; 5. Conclusions including answer research question(s).

Also in this paragraph we made a summary of the two reports with a special focus on the three dimensions of good governance which was concluded at the end of each country summary. At the end of this paragraph you will find an overview of the group of countries for each dimension of good governance in the two ellipses design in which each country is theoretically positioned. In some keywords under these designs we gave a short clarification.

7.6.1 Ireland

There is a noticeable fragmentation in the application of good governance norms across the different Irish government institutions and departments.³⁹⁸ The interpretations of the principles that have been applied also vary in the form and degree of their application by the relevant bodies. Legislation which by its nature is legally enforceable when public bodies fail to perform a legal obligation is among the most effective, and thus this rational applies to codes of conduct backed by legislation, such as those contained in the Ethics in Public Office Act, 1995.^{399,400} The application of good governance is at its weakest in areas where there are merely good governance values or guidelines to regulate administrative behaviour, such as the Ombudsman's Guide to Good Public Administration for Public Bodies^{401,402} or the values outlined in department statements of strategy, which lack a direct legislative enforcement mechanism. The Code of Practice for the Governance of State Bodies was most recently revised in 2009.⁴⁰³

Thus, specific good governance principles such as the properness sub principles of reasonableness, proportionality, reasoning and equality are lacking in application in the Irish system outside of judicial application. Indeed the judiciary in Ireland is the only real institution to consistently apply most of the principles, (excluding its own issue of accountability to the wider public, which is being addressed).⁴⁰⁴ It is the judiciary which often upholds and protects good governance principles which otherwise would be ignored or inconsistently applied due to

³⁹⁸ Active good governance institutions: The Ombudsman Offices; Office of the Information Commissioner; Standards in Public Office Commission; The Comptroller and Auditor General; The Courts; The Human Rights and Equality Commission; The Equality Tribunal; Health Information and Quality Authority; An Bord Pleanála; Health and Safety Authority; Office of the Directorate of Corporate Enforcement; Office of the Confidential Recipient; Environmental Protection Agency; Joint Oireachtas Committee on Public Service Oversight and Petitions; Public Accounts Committee; Data Protection Commissioner; Competition and Consumer Protection Commission

³⁹⁹ Ethics in Public Office Act 1995.

⁴⁰⁰ It should be noted that Section 4A of the Ombudsman Act 1980 as inserted by the Ombudsman (Amendment) Act 2012 (attached as Appendix 1) imposed a legal duty on public bodies falling under the Ombudsman's remit to meet certain administrative standards in their dealings with the public including the need to deal with them, properly, fairly, impartially and in a timely manner.

⁴⁰¹ The Ombudsman's Guide to Good Public Administration for Public Bodies. It should be noted that the Ombudsman's Guide to Good Public Administration does not have statutory force. However in September 2004 the Department of Finance issued Circular 26/04: The Civil Service Code of Standards and Behaviour. The Code is a statutory code drawn up under section 10 of the Standards in Public Office Act 2001. The Code had to be signed up to by all civil servants and now forms part of their conditions of service. It underpins existing rules in many areas and covers three broad areas *viz.* Standards Underpinning Service Delivery, Behaviour at Work and Standards of Integrity. It also introduced new rules governing gifts, hospitality and the acceptance of appointments outside the civil service. There is an acknowledgement in the Code that it builds on the principles set out in The Ombudsman's Guide to Standards of Best Practice for Public Servants which were first published in 1997 and updated in 2003. The guide emerged from experience gleaned by the Ombudsman in resolving complaints. We refer here to the Protected Disclosures Act 2014 which provides additional mechanisms for unearthing improper conduct by public bodies. It provides protections to whistle blowers who are penalised by their employer or suffer a detriment from a third party on account of raising concerns regarding possible wrongdoing in their workplace.

⁴⁰² In regards to local authorities, Section 10 of the Code of Conduct for Local Authority Employees concerning the employment of senior local authority officials following their retirement or resignation, was amended in 2007 to help prevent possible conflicts of interest, in line with the provisions for civil servants under section 20 of the Civil Service Code of Standards and Behaviour (2004), the ethical framework for local government under the Local Government Act 2001. We also refer to the provisions for codes of conduct in section 10 of the Standards in Public Office Act 2001, under which the Civil Service Code of Standards and Behaviour (similar provisions) was introduced in 2004.

⁴⁰³ <http://govacc.per.gov.ie/files/2012/03/codepractstatebod09.pdf>.

⁴⁰⁴ Department of Justice and Equality's Strategy Statement 2011-2014.

political convenience. Indeed the judiciary strictly interprets principles such as legal certainty and abuse of power as part of its role in scrutinising the government through judicial review.

In addition to dealing with individual complaints from members of the public, the Ombudsman has the power to commence investigations on his own initiative. The lessons learned from individual and systemic investigations are used to drive improvements in public administration in Ireland. The Comptroller and Auditor General enjoy Constitutional status, but the Ombudsman's Office does not.⁴⁰⁵ Under the Ombudsman Act 1980 (as amended) there are a number of restrictions imposed on the Ombudsman relating to the scope of his remit.⁴⁰⁶ The Ombudsman (Amendment) Act extended the Ombudsman's remit to over 200 additional public bodies, including the universities and other third level institutions.⁴⁰⁷ In Ireland there are also the institutions of Ombudsman for Pensions, for the Defence Forces, and a Press Ombudsman.

The government departments and local authorities exhibit a generally inconsistent approach to the application of good government principles. New initiatives and claimed good governance values are commonly stated by these bodies in the public sector. A significant development will be the (soon to be) enacted Registration of Lobbying Bill 2014 which provides for the establishment of a statutory register of lobbyists and mechanisms for the introduction of guidance and a code of conduct concerning the carrying-on of lobbying activities.⁴⁰⁸ Undoubtedly some of this inconsistency can be ascribed to the financial crisis in 2008, but a far more satisfactory analysis is that adherence to certain principles is based on political motivations i.e. what is publically demanded and electorally popular. An example of this is the current government's policies on improved financial accountability and transparency.

Traditionally, the principles of accountability and transparency have received inadequate attention, with citizens relying mainly on the reports from the Comptroller and Auditor General⁴⁰⁹ and the Committee of Public Accounts, along with largely ineffective financial regulators (now reformed) such as the Central Bank. As a result, there has been a distinct lack of transparency and accountability of government procedures and the drafting of the annual budget. Despite these shortcomings in the process of continued reform, the government and local authorities have showed positive developments in relation to these principles, evidenced in legislation such as the Local Government Reform Act 2014.⁴¹⁰ The state has also made positive developments in the principle of participation through the creation of bodies such as the Referendum Commission (when needed) and legislative requirements for public bodies to encourage and engage public participation, outlined in the Local Government Acts⁴¹¹ and the Aarhus Convention.⁴¹² Lastly, the state's performance in applying the principle of human rights has been on the whole adequate. While Ireland is party to the main international and European agreements on human rights and has applied many of the subsequent rights through legislation and judicial case law, difficulties have arisen where these rights conflict with the Irish Constitution. Such conflicts have demonstrated the Irish state's unwillingness to amend constitutional articles which are at odds with European standards, namely the use of special criminal courts, prohibition of abortion and secular education.⁴¹³ Therefore, although

⁴⁰⁵ The Report of the Constitution Review Group in 1996 recommended that the independence of the Office of the Ombudsman be guaranteed in the Constitution. The Group stated - "A constitutional guarantee for this independence would reinforce freedom from conflict of interest, from deference to the executive, from influence by special interest groups, and it would support the freedom to assemble facts and reach independent and impartial conclusions".

⁴⁰⁶ No complaints against the prison service, no complaints relating to the administration of the law relating to immigration and asylum matters, no complaints in relation to persons acting for or on behalf of the Health Service Executive where the action complained of is one taken solely in the exercise of clinical judgement in connection with the diagnosis or the care and treatment of a patient.

⁴⁰⁷ An indicative list of all the public bodies under his remit www.ombudsman.gov.ie.

⁴⁰⁸ The Bill also provides for restrictions on post-term employment of certain public officials who may wish to carry out lobbying activities <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2014/5914/document1.htm>

⁴⁰⁹ The office of Comptroller and Auditor General, that this is a single position. The office is currently held by Mr Seamus McCarthy.

⁴¹⁰ Local Government Reform Act 2014.

⁴¹¹ Local Government Act 2001, Local Government Reform Act 2014.

⁴¹² UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

⁴¹³ UN HRC Concluding Observations on Ireland and ICCPR, 24 July 2014.

the Republic of Ireland has achieved some promising basic developments in good governance, further continued development is necessary in all six fields of good governance.

Finally, we can reach the following conclusions about the good governance dimensions. There is a strong development of the properness sub-principles by way of the principles of natural justice, however there are also some differences; the human rights are strongly influenced from the international level and discussions on human rights. In recent years there was a strong development of transparency regulations, the participation seems to be a little behind. Effectiveness especially realized by the Ombudsman; the judicial, financial and political accountability have been strongly developed.

7.6.2 United Kingdom

In the research it became evident that good governance is not a directly enforceable, unitary right in the UK. In fact, the idea of the human right to good governance is far from being in the cards in UK legislation, particularly because of the reluctance of the Parliament in Westminster to incorporate such radical concepts into domestic legislation, for fear of complications or abuse of process. There is primary legislation in the field, but most often this merely offers the framework for various government bodies or professional organisations to create their own Codes or Regulations. These various secondary instruments may have no legally binding power, but benefit from "soft power", and as such all bodies which adhere to said codes actually follow them. The judiciary has the power to challenge and overrule the decision-making process, but not the decision itself (unless it is a case of violation of human rights). The fourth power is represented by the Ombudsmen and the NAO^{414,415} who work along similar lines to their European counterparts, but with little power to legally bind.⁴¹⁶

The UK has always relied more on constitutional⁴¹⁷ and political conventions to fill in the gaps in legislation. As a result, although there seems to be very little in the way of legally binding documents, in reality each government body or profession tends to follow its code as if it were law.⁴¹⁸ Moreover, the UK's common law system incorporates most elements that form the properness principle (proportionality, legal certainty, legitimate expectation etc.). The courts and fourth power bodies keep the government in check, and the people keep the Parliament in check via elections. This results in what looks like chaos from the outside, but in reality it is a very complex (but fragmented) system, with its roots in organisational efficiency and integrity of public bodies.

Members of the general public have some avenues of challenging official decisions in themselves, via the judiciary. Human rights are guaranteed by the Human Rights Act and, following recent ECJ decisions, it seems UK citizens may have a direct right to proper administration, as well as the specific three other rights in the Nice Charter. This interpretation

⁴¹⁴ In relation to the Ombudsmen and the National Audit Office, the Local Government Ombudsman be mentioned and of course the Parliamentary and Health Service Ombudsman plays an important role in holding public services to account and play therefore a key part in the system that promotes good administration in the UK.

⁴¹⁵ Related to the economic and financial aspects it is worth mentioning the role of the National Audit Office and of the Public Accounts Committee (PAC). The PAC plays a really important role in supporting the work of the NAO in Parliament - its reports (which build on the reports of the NAO) generate a lot of publicity and media attention and therefore enhance the scrutiny and accountability of government through Parliament and public opinion.

⁴¹⁶ The conclusion that the Ombudsmen's decisions are not legally binding is only the case for the public service Ombudsmen; decisions by the Financial Ombudsman Service, for example, are legally binding on the business complained about if the consumer/complainant accepts the Ombudsman's decision. Also, while the Ombudsmen are unable to legally enforce their decisions, it is extremely rare that a government organisation refuses to accept its decisions. Where this does happen, the Ombudsman has the power to lay a report before Parliament and the select committee to which they are accountable (Public Administration Select Committee) will consider their report. This usually means that the leaders of the government organisation have to defend their position before Parliament. Laying a report before Parliament in this way puts political pressure on the government organisation and usually has the effect that the organisation reconsiders their position and accepts the Ombudsman's decision.

⁴¹⁷ The Human Rights Act 1998 and the FOI Act 2000 are of course only a small part of what can be seen as the constitutional framework of the UK. The Government's Cabinet Manual provides a really useful guide to the UK's constitutional fabric, especially in relation to the operation of government.

⁴¹⁸ There are a large number of other guidelines, policies etc that try to ensure good governance in the NHS. One document that you may find of particular interest is the NHS Constitution.

is supported by the ECJ, but much less so by the UK Government and judiciary, who seem to think this is a step too far.

Let us draw some conclusions in relation to the good governance dimensions. There is a strong focus on the rule of law in the sense of legality; the principles of natural justice are partly similar to the sub-principles of properness; it seems that the international human rights regulations are less important than the national regulations. The principles of transparency and participation are not yet very well developed, but it is expected that because of the devolution developments these principles will be further developed in the near future. The principles of effectiveness and accountability are very strongly developed. Overall, an integrated approach (emulating the Dutch GALA), together with a monistic system, would have made for a more integrated and clearer system. But chaotic as it may appear, the British system displays relative uniformity (almost each document features almost the same principles, even if differently named or phrased). And with the increasing role of devolution, it is foreseeable that citizen participation will grow even stronger in the future.

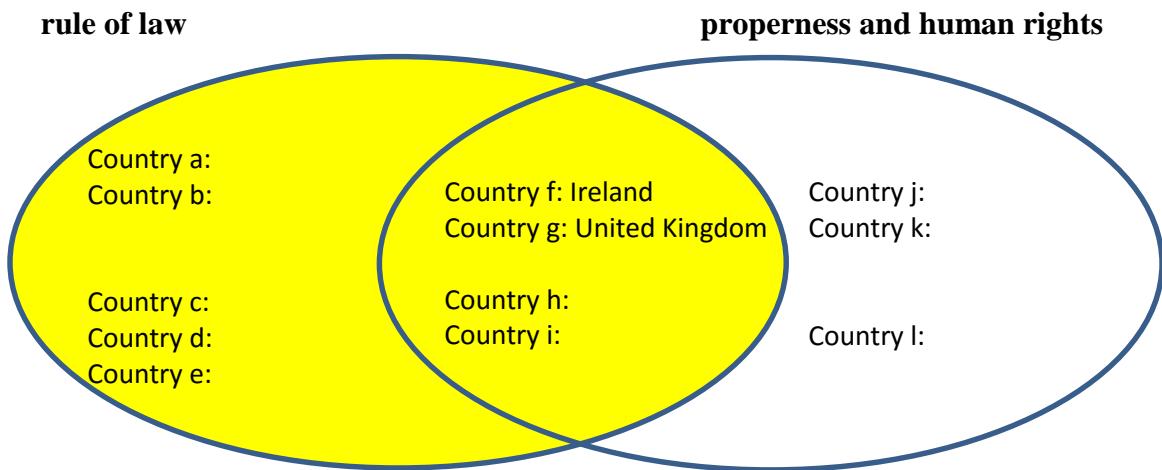
7.6.3 Conclusions Region 5: Anglo-Saxon Europe

1. In Ireland there is a noticeable fragmentation in the application of good governance, and not in the concept as such or in the regulations specifying the principles of good governance. There is a variation in form and degree in their application by the relevant bodies. Important for the enforcement are the codes of conduct which are backed by the legislation. Especially where there are merely good governance values or guidelines, the situation is weakest. The courts are consequently applying principles of proper administration, but the departments and local authorities exhibit a generally inconsistent approach to the application of the principles. Accountancy and transparency receive inadequate attention. But there are also positive developments in which we find more about the principles, like in the Local Government Reform Act 2014 and the creation of the Referendum Commissions. As a whole, the applying of the principle of human rights is adequate.
2. For the UK the right to good governance is a step too far. The reason is that the Parliament does not want this codification because of the fear for complications or abuse of procedures. Therefore, in general there is a preference for secondary regulations and soft law, like codes and regulations. We see various bodies and professional organisations have created their own codes or regulations. So perhaps less general binding norms for the principles of good governance, but in practise each government body or profession tends to follow its code as if it were law. It is complex because of the fragmental approach, but the members of the institution follow the norms. In that way the British display relative uniformity because each document features almost the same principles, even if different named or phrased.

Shifts of good governance dimensions in member countries

GROUP 5 COUNTRIES – ANGLO SAXON EUROPE

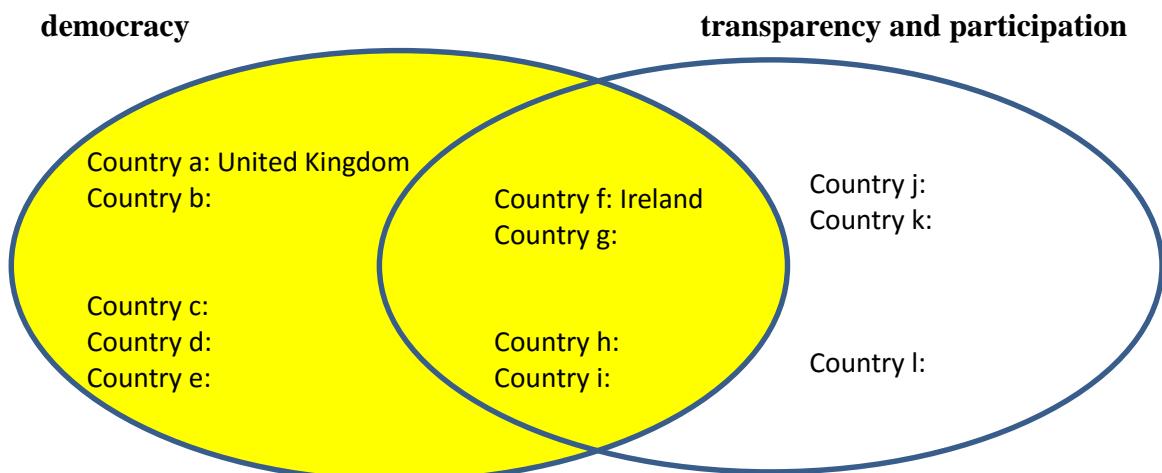
RULE OF LAW DIMENSION



United Kingdom: strong focus on rule of law in the sense of legality; the principles of natural justice partly similar to properness; not so much influence from international human rights regulations (more accent on the national regulation);

Ireland: strong development of properness by way of the principles of natural justice; human rights have strong international influences especially through case law.

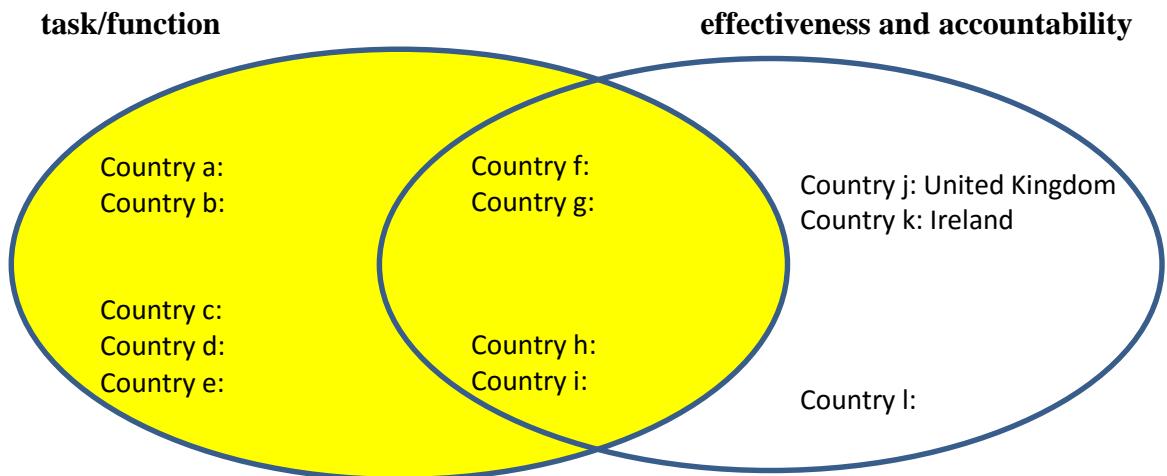
DEMOCRACY DIMENSION



United Kingdom: these principles are not yet very well developed, but it is expected that because of the devolution developments these principles will be further developed in the near future;

Ireland: in recent years there was a strong development of transparency regulations.

INSTITUTIONAL DIMENSION



United Kingdom: the effectiveness and accountability principles are well developed;

Ireland: the effectiveness principle is especially developed by the Ombudsman; judicial, financial and political accountability have been strongly developed.

8. Answering research questions and conclusions

In this part we will answer the general research question and the six specified sub-questions. The answers to the sub-questions will be drawn from answering the general research question, in the form of conclusions and recommendations. The general research question is:

What interpretations and applications of good governance exist in the member states, taking into account different functions of the governmental bodies?

8.1 Introduction

The issue of good governance receives the attention of the EU-member states, as supported by the fact that elements of history and culture relating to good governance can be found already a long time ago. In the literature it is said that the cultural dynamics led to several shared philosophical principles and that these principles should be the foundation of a European-wide dialogue on good governance. The results of this study contain the instruments for this dialogue.

Good governance is part of the modern state not only in Europe, but also in other parts of the world; not only on national and local levels, but also on the regional and international level. This concept has been developed through its six principles. Good governance has a dual nature, comprising both a real or factual dimension, and an ideal or critical one and has to be studied based on an interdisciplinary view. There are several reasons to work on good governance: the prevention of maladministration (including corruption), the fragmentation of legal norms, the need for good governance norms for new independent administrative authorities, the needs of a highly qualified administration, the proper control of the administration and legal protection by courts, the good control by fourth power institutions like ombudsmen and courts of audit.

In this study, the theme was developed through a theoretical framework and research questions. We have looked for interpretations and practices of good governance and underlying values. Attention was also paid to cases where, in applying these norms, different governmental institutions reveal differences in interpretation and application in the countries examined and which also influence countries' EU-attitudes. We distinguished three dimensions of good governance in the practice of the member states and noted that there are differences between the use of the terms *values* and *principles*, and also the term *integrity*. It is interesting to notice that there are not only shifts in the different dimensions of good governance but also a shift in thinking about situations of violation of integrity norms.

From a theoretical perspective, two elements are very relevant for the concepts and the definitions in this research: the concepts of good governance and the concept of states - the latter being linked to government and (good) governance. We defined government and governance, governance and administration, principles of good governance and of proper administration, good governance and integrity.

We have developed an interdisciplinary approach of good governance and distinguished a factual and a normative line of good governance, and the interrelation between the two lines. Based on this normative framework we described the good governance situation in the 28 EU member states, which we have divided in five regional groups.

We made a distinction between three dimensions of good governance: rule of law, democracy, and institutions. Within each of the three dimensions we distinguished between the following three developments: the general development, the specification, and the intermediate position. For example, in relation to the rule of law dimension: the general development in which there is a strong focus on legality, and the specific development by the properness and the human rights principles. The intermediate position is a mix of the general and specific

development. Within each development we can distinguish between a written development in the constitution, the law or the regulations, and a development of (un)written principles by case law and/or in the literature.

8.2 Answering the research questions

The first sub question is: What interpretations of good governance exist in the member states of the EU and what are the underlying values (suitability, integrity, and transparency)?

We can conclude that in all EU member states the concept of good governance is used as a norm for the activities of the administration, by the administration. It is mostly not applied as a norm for the other powers of the state: the legislator or the judiciary. Nevertheless, the two other powers are increasingly using and developing these norms for the administration. For that reason we can speak about good governance here, but in a strict sense it is about good administration. In countries where corruption is an issue (which in a strict sense can be seen as a violation of the principle of prohibition on misuse of power) a link is also made with the principle of integrity. In the Netherlands, the violation of integrity has a broader application than only for corruption situations, and we find there some links with the principles of good governance. In this research we distinguished ten forms of violation of the integrity principle, which are directly related to the principles of properness, the human rights, transparency and accountability.

The second sub question is: How are the principles of good governance applied in the member states?

In general we conclude that in all the countries the concept of good governance by way of its principles is known and applied. In almost all the countries we find the three dimensions of the principles of good governance: rule of law, democracy and institutions. For the rule of law dimension, in the Northern Europe countries there is a strong focus on the principles of properness and human rights (two of the three countries; one country was intermediate). In the Western Europe countries, three countries focused on properness and human rights principles, while three were intermediate. In the Southern Europe countries, the focus was more on the general line of the rule of law for three counties, while three other countries were intermediate. For the Central Europe countries there was a mix in which five countries were intermediate, four countries more focused on the general rule of law line, and two countries more on the specification of properness and human rights. The fifth group, the Anglo-Saxon Europe countries, had both countries in the intermediate bracket.

For the democracy dimension, in the Northern Europe counties we found that two of the three countries had specified transparency and participation, while one country was intermediate. For the Western Europe countries, most of the countries (four) were intermediate and one country was more focused on the general development of democracy, while another country was focused on the specification of transparency and participation. For the Southern Europe countries, four of them were intermediate and two countries had a specification of transparency and participation. In the Central Europe countries, four countries were intermediate, two focused on the general aspects of democracy and three on the specification of transparency and participation. In the Anglo-Saxon Europe countries, one country focuses on the general aspects of democracy, while the other is intermediate.

For the institutional dimension, in the Northern Europe countries, one is intermediate, while one focuses on effectiveness and accountability. In the Western Europe countries, three focus on the general aspects of the institutions and one country on the principles of effectiveness and accountability, while two are intermediate. In the Southern Europe, most of the countries

(four) are intermediate and two focus on the general aspects of the institutions. For Central Europe, we found four countries to be intermediate, four countries focusing on the general aspects of the institutions and three countries on the specific aspects of effectiveness and accountability. In the Anglo-Saxon Europe countries we found that both are focusing on the specification of effectiveness and accountability.

The third sub question is: What differences exist as to the interpretation and application of good governance as to the different functions of government (policy development, implementation, supervision)?

In relation to the three dimensions of good governance, we see that general aspects are often worked out in the constitution and general laws and regulation; this means there is an important role for the policy development and implementation components of the government. The specification of the dimensions by the development of principles is mostly initiated by the supervisory and controlling bodies of the government. After some time we will find codification of the specified principles in the general laws.

It is interesting to see that there are some differences in relation to each of the three dimensions. We find more often specification of the human rights, transparency and participation principles; the specification of the properness sub principles is lagging a little behind. The specification of the accountability and effectiveness principles is behind the properness principles. These differences can be applied mutatis mutandis for the five groups of Europe countries.

The fourth sub question is: How are conflicting values balanced? It concerns choices in member states, but sometimes it also concerns cooperating countries weighing in differently on these values.

Sometimes the legislator has already prevented the conflict in two ways: first by codifying one principle and not the other, or by giving priority to one principle over the other principles; the executive power is also doing that by making political priorities related to principles. So the question is: how should apparent conflicts of principles be dealt with? Given the fact that there is no hierarchy whatsoever, other factors are decisive in balancing the principles. According to the Dutch legal system, principles could be more important – on a case by case basis – depending on their legal status. For example, principles that are laid down in international treaties or formal law need to be applied in several countries. Also, principles can be laid down in policy documents and may therefore be more important than principles that have no formal status. The rule is: the more a principle has a legal basis, the more likely it is that this principle outweighs other principles. Thereby, two other rules stem from case law. The first is that of specialty. In case law often a special rule has priority to a general rule, but that can be regulated differently in the law. The second rule is less explicit, but not less important. When a court voids a decision on the basis of so-called principles of procedure, a governmental body may come to the same decision, as long as it follows the correct procedure. This is not the fact if the decision was made void on the basis of a principle affecting the merits. Therefore, it may be that the latter may prevail over procedural principles. But this balance is made on a case to case basis. Apart from these rules, might certain principles be more successful in certain situations? It should be assessed whether a certain conflict is general or particular in nature and if these conflicts can be solved according to the previously mentioned rules of the legal system. Also the courts are doing this in two ways: by specifying a principle or by translating the principle in terms of a human right.

The fifth sub question is: What is the influence of interpretations and applications of good governance in member states on their attitudes at the European level?

It is important whether the countries have a monistic or a dualistic system. In a monistic system internationally binding norms are also directly enforceable in the national legal system; in a dualistic system, there is always a need for national transformation of international law into national norms before these norms have legal effect on national level. In countries with a dualistic system there is a more explicit discussion about the relation between the national and international norms and principles. We see a growing attention for the national norms from the countries, in their position on a regional or international level.

The sixth sub question is: What are the main differences in the interpretation and application of the principles of good governance? How could these be explained and what are the chances and problems with regard to European politics?

We see at the EU level a strong development by the Fundamental Rights Charter, in which we find a fundamental right of good administration. Also, the EU Court of Justice is strongly developing the principles of EU law, of which the principles of good administration are a part. In the literature there is a strong emphasis on the development of a European administrative act. The EU executive level is very fragmented: the European Parliament is strongly focused on a more integrative approach of the principles of good governance.

8.3 Conclusions

General conclusion

The general conclusion is that in the EU member states there is unity in diversity. Coherence is found in the contents of principles, while there is variety in the factual application. Differences are found in the focus on each of the three general abstract norms (rule of law, democracy and institutional development) and to the extent to which principles have been developed (more focus on human rights and transparency than on accountability and effectiveness).

Specific conclusions

Based on our investigations in this research we conclude:

- consensus on concepts and dimensions of good governance;
- coherence in principles qualification, variety in contexts and differences in binding effect;
- context variation of principles like transparency: information, publication and manifestation;
- different focus on three dimensions: rule of law, democracy and institutional functioning;
- application of principles instrumentally, protectionally or a mix and different binding effect;
- good governance regulations in constitutions but often in general administrative acts;
- application also by informal codes which have an indirect binding effect;
- judicial good governance application by rule-interpretation and non-written principles;
- innovative good governance application in ombudsmen and audit institutions reports;
- differences conflict-solving good governance principles: legislator, judiciary, administration;
- bottom-up good governance discussion creates trust among member states and on EU level.

These conclusions are based on the following summarized considerations and arguments which have been detailed in the different chapters of this report.

Conclusion 1: *there is a general consensus on all the concepts and dimensions of good governance, but not yet about the specification of the principles.*

The eighth conclusion is about the question whether there is consensus on all the concepts, dimensions and principles of good governance. About the concept and about the general aspects of the three dimensions there is a consensus in the 28 countries. Real differences can be found between the specification in contexts of the three groups of principles. Perhaps not so many

differences exist for the principles of properness and human rights, but more for the principles of transparency and participation, and most for the principles of accountability and effectiveness. There is a more or less broad interpretation of the principles of good governance, due to social or historical reasons, but it can also be a consequence of the legal system.
(*consensus on concepts and dimensions of good governance*)

Conclusion 2: *when countries developed principles of good governance, we see a rather similar content to the six principles of good governance: properness, human rights, transparency, participation, effectiveness and accountability. Differences are found in the concrete contextual application of the principles.*

This conclusion brings us to a situation where the three types of principles have the same direction and the qualification of the six principles of good governance are rather similar in the member states. Differences can be seen in the concrete contextual application and binding effect of the principles which also influences the interpretation of the principles of good governance.
(*coherence in principles qualification, variety in contexts and differences in binding effect*)

Conclusion 3: *we found application of the six principles not only in the different policy fields but also in different contexts.*

In general good governance principles not only applied in the context of public institutions, but also in the context of specific corporations. We found the following specifications of the principles: properness (legal certainty, legitimate expectation, equality, proportionality, carefulness, reasonableness), transparency (access to information, publication, open meetings), participation (citizen's initiative, citizens panel, community level participation, referendum), effectiveness (implementation higher regulation, aim-realization, civil protection), accountability (political, legal, economic) and human rights (civil, social, economic and political rights; subjective right, instruction norm).

(*contexts variation of principles like transparency: information, publication and manifestation*)

Conclusion 4: *the focus of the three dimensions of good governance - rule of law, democracy and institutional structure – are applied differently in countries and the structure of the State can influence this process.*

We conclude that the interpretation of good governance (and good administration) is done through the three dimensions of good governance – rule of law/democracy/institutions. Sometimes this focuses on the general aspects, sometimes on the specific aspects, and sometimes on a mix of these general and specific aspects. In each of the five groups of countries we see that some have more general aspects, and others more specific aspects. We have to conclude that there is diversity in the application of the good governance concept. It is important to realize that the structure of the State can also have a certain influence on the diversity and development of good governance norms, especially on the decentralised level. In a unitary state, the good governance norms will come more often from the central level than in a federal system, where on state level these norms will be developed almost automatically.

(*different focus three dimensions: rule of law, democracy and institutional functioning*)

Conclusion 5: *the institutional principles (effectiveness/accountability) are often applied in the instrumental context, the democracy principles (transparency/participation) are applied for the citizens' protection, and the rule of law principles (properness/human rights) in both situations.*

This conclusion is that the starting point of these principles can be the legislator, the administration, the court, or the fourth power institutions. Often we see the fourth power institutions or the Court developing a principle of good governance. The rule of law principles

are often used or developed in the instrumental or in the protection context, the democracy principles mostly in the protection context and the institution principles frequently in the instrumental context. Differences in binding effect: sometimes as subjective rights for citizens, often obligations for the government and mostly policy indications.

(*application principles instrumentally, protectionally or a mix and different binding effect*)

Conclusion 6: *general principles of good governance are sometimes codified in the Constitution, but more often we found specific principles herein, and even when not in the Constitution, the legislator has developed these principles mostly in general laws.*

The conclusion is related to the public institutions which are applying these aspects of good governance. We sometimes find in the constitution some general norms in relation to the concept of good governance, but more frequently specific aspects of good governance can be found in a constitution. In the first situation the legislator has to specify these constitutional norms of good governance which will create legal certainty and equality. That is also useful from the perspective of enforcement of these aspects of good governance. It will also create trust in the civil society. We can also have situations where there are no specific constitutional norms of good governance, but the legislator has developed these norms by law, resulting in the same situation as with constitutional good governance norms. Finally, the administrative authorities can specify good governance norms in policy rules and internal directives sometimes qualified as codes. In that case, there is a more indirect binding effect of the good governance norms, by way of the principles of proper administration. This conclusion can be seen as the instrumental approach of the good governance norms.

(*good governance norms sometimes in constitutions, mostly in general administrative acts but application also by informal codes which have an indirect binding effect*)

Conclusion 7: *the courts also have developed principles of good governance, often by interpretation of regulations but also several times by developing non-written principles.*

This conclusion is about the courts developing good governance norms by interpretation. This interpretation can be done based on the written legal norms, but it is also possible that the Court develops unwritten (legal) principles of good governance. It is important to mention here that the Court acts in individual cases, meaning that only in individual situations these norms can be applied. But when that is done more frequently, we see a line of cases developing a principle. We notice here the protection approach in the development of good governance norms. It is important to realize that these norms create a form of continuity.

(*Judicial good governance application by rule-interpretation and non-written principles*)

Conclusion 8: *the ombudsmen and the courts of audit, the fourth power institutions, develop and apply – innovate - principles of good governance in their advising activities.*

The conclusion is related to the fourth power institutions, such as the Ombudsman and the Court of Audit. When these institutions develop norms of good governance from a broader more modern principle and not a classical strict legality perspective, in general or in specific cases, the outcome is an advice to the public administration. But in practice we see that the good governance norms developed by these institutions are enforced de facto. So we see that also these fourth power institutions are important sources of good governance norms.

(*Innovative good governance application in ombudsmen and audit institutions reports*)

Conclusion 9: *when there are conflicts between principles, there are four ways in which these conflicts are solved: a. by the legislator, b. the judiciary, c. by the administration in policy papers, and d. by the administration ad hoc.*

The conclusion is about the situation where principles with a more instrumental function could easily have another direction than the principles with a protection function. Then we have a situation of conflict of principles. Such a conflict has to be solved by the legislator, the administration, the Court, or the fourth power institutions. If there is discretion, each institution can use its own instruments, using a clear motivation as to why one principle has priority over another principle(s). Thus, each of the institutions can have instruments to give one principle priority over another.

(*differences conflict-solving good governance principles: legislator, judiciary, administration*)

Conclusion 10: *further gains can be expected from a bottom-up discussion amongst the member states regarding similarities and dissimilarities in good governance. It will create more trust among member states, also enabling the states to shape the discussion on good governance in the context of the European Union.*

The ReNEUAL Model Rules can serve as a convenient framework for the discourse. The confidence of all EU citizens and national authorities in the functioning of good governance is particularly vital for the further economic, social and cultural development of the member states. Based on the findings a further discussion is needed for the different applications of the principles in countries and regions. It would be appropriate to develop together a practical informal policy related framework for the application of good governance principles. It is advisable to work on a further codification and harmonisation of good governance on the national level, to bring unity in the good governance policies of the countries.

(*bottom-up good governance discussion creates trust among member states and on EU level*)

Final conclusion

Good governance: vital for further economic, social and cultural development in the EU. The final conclusion of the research is that further gains can be expected from the active good governance development and application. It will create more trust among member states and citizens and will improve a *bottom-up discussion* within the member states regarding similarities and dissimilarities in the discussion on good governance in the EU. The ReNEUAL Model Rules can serve as a convenient framework. Further *the development of a practical policy related framework for the application of good governance principles* is necessary, besides *working on a further codification and harmonisation of good governance principles on national level*.

9. Summary. Good governance: an inspiring concept with concrete results on the national level.

9.1 Introduction

In the study “**Good governance in the EU member states**” we investigated the interpretations and applications of good governance in the EU member states, taking into account the different functions of government bodies. Good governance is of growing importance on national level in the fulfilment of public tasks by the classical public and the autonomous authorities but also in relation to the private institutions, when fulfilling tasks that are in the public interest. Good governance embodies norms which are relevant for the development of a well-functioning civil society in which people pursue not only their own interest but are also aware of common interests, in the context of the municipality, the district, and the state. The common interest is related to the underlying public values in society and is directly linked to the concept of good governance. Good governance has a dual nature: the factual and the ideal. The factual side is the interpretation and application of the principles in the frame of government activities in practice, while the ideal side is the perception of how the government should have done the activities based on theoretical and societal wishes. Good governance promotes cultural, economic, and social dynamics coherently and in concrete situations. It can be found in licensing related constructions and the environment, the supervising activities of agencies and other new institutions, the development of energy and climate change policy, and the quality of schools and hospitals, among many others. It sets norms for the exercise of power in the management of a country’s economic and social resources for development and innovation. Good governance is the backbone of any modern European state.

The literature on good governance often places the origin of this concept on the international level. In the 1980s we saw good governance applied by the IMF, the World Bank and the United Nations in their relations to countries. In the definitions of good governance, they incorporated their institutional aims. The consequence is that each international organization now has its own definition of good governance and therefore it is useful to analyse and find the common elements of good governance on the international level. We present here more clearly the concept of good governance in the context of Europe. We found good governance norms specified in legislation, policy documents, and conclusions of courts and other controlling institutions like the ombudsmen and the courts of audit. EU member states gave an important impetus to the development of the concept of good governance as used by these international and European institutions. In essence, the sources of good governance can be found at the national level, where concepts of the rule of law, democracy and institutional framework have been developed and applied over a longer time.

In this study we investigated the development of good governance in the EU member states. This study focused not only on good governance as a concept, but it also looked at specifications and applications of good governance in several policy fields.

9.2 The need for good governance and the practical relevance

Before continuing this overview, we have to know why we need good governance. The first argument is preventing the malfunctioning of state institutions, but also in raising these institutions to the high level of quality – integrity, honesty, objectivity and impartiality – needed for a modern society in the member states. There are more relevant factors such as:

- preventing the fragmentation of legal norms, which impedes legal certainty and equality;

- the need of good governance for new and independent administrative authorities – like agencies - and private institutions fulfilling public tasks;
- the complexity of modern society calls for an effective and accountable administration ready for e-governance and with an open view to the latest societal developments including the audit society;
- the requirement of better knowledge of the interaction between the good governance norms applied by review makers (such as the judiciary and ombudsmen), and the norms developed and applied by the legislator and the administration; and
- the development of good governance norms to prevent fraud and corruption, and to promote integrity.

As a response to weaknesses in their governance systems (also revealed by the economic crisis), many countries have taken a wide range of measures to strengthen good governance and to achieve sustained convergence, and economic and job growth. The key question is to what extent the introduced rules and case law have been effective in achieving their objectives and to what extent they have contributed to progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the member states, while at the same time ensuring a high level of transparency, credibility and democratic accountability.

Good governance is about the quality of the governance by those institutions which act in the public interest. But the question is: where can we find the concrete norms of good governance the member states? We find these in the constitution or in the law as developed by the legislator. An example is section 21 of the Finnish Constitution. “*Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act*”. And section 124 of the same Constitution, which states that “*by delegating administrative powers to others than public authorities, the guarantees of good governance should not be endangered*”. These norms can also be found in administrative regulations, for example the Netherlands Code for Good Public Governance. Another example of interpretation and application of good governance norms is case law by the judiciary, like the decision of the International Court of Human Rights: in examining the conformity of events with the Convention on the Protection of Human Rights, *the Court reiterates the particular importance of the principle of good governance*.

In these examples we recognize the two ways in which the principles have been developed; we speak in this context about “two sides of the same coin of good governance”: the norm of good governance is both a rule for the administration, as well as a norm for protecting the citizens. According to each institution’s role and position there will be different specifications of the concept of good governance.

9.3 *Conceptions of the principles of good governance and integrity*

In relation to the specification of the concept of good governance the following three aspects are relevant in understanding the scope of good governance in practice: the difference between good governance and good administration, the relation between good governance and integrity, and the interpretation and application by principles of good governance.

The administration is in essence only one of the three (or four) powers in the state - the executive power - and its principles of good administration are only those related to the executive power. Parts of the administration or executive power are new (independent) administrative authorities like agencies and private institutions fulfilling public tasks. In a

narrow sense (as used in this study), good governance is the situation in which one of the three (four) powers makes a decision in relation to the activities of the administration. By using the term “fourth power” in this context, we mean the ombudsman and audit institutions in the countries.

Good governance and integrity are interrelated in terms and partly overlap. Integrity has both a legal and a moral component and is focused on (but not only) the actions and behaviour of the civil servants, the public authorities, or even the organisation of these authorities. As such, integrity includes the following principles of good governance: properness, accountability, transparency, and sometimes human rights. But good governance is much wider, as it includes the principles of citizen participation and scrutiny, and also focuses on the human rights aspects of the conduct of state bodies and employees. In most of the country reports attention has been given to the implementation of fighting and preventing corruption, also in relation to promoting integrity and good governance. We distinguish between a narrow and a broad view on integrity. In the narrow, the focus is only on corruption, fraud and theft. The broad view of integrity is related to the following activities and situations: 1. *Corruption*, including bribing, ‘kickbacks’, nepotism, cronyism and patronage (with gain for oneself, family, friends or party); 2. *Fraud and theft* of resources, including manipulation of information to cover up fraud; 3. *Questionable promises, gifts or discounts*; 4. *Conflict of interest* through jobs and activities outside the organization (e.g. ‘moonlighting’); 5. *Improper use of violence* towards citizens or suspects; 6. *Other improper (investigative) methods of policing* (including improper means for achieving noble causes); 7. *Abuse and manipulation of information* (unauthorized and improper use of police files; leaking confidential information); 8. *Discrimination and (sexual) harassment*; indecent treatment of colleagues/citizens; 9. *The waste and abuse of organizational resources*, including time; 10. *Misconduct at leisure* (domestic violence, drunken driving, use of drugs etc.).

Finally, the interpretation and application of good governance is along the lines of the six most common principles: properness, transparency, participation, effectiveness, accountability, and human rights.⁴¹⁹ These principles are legal principles and can be enforced in different ways. They are articulated as a response to issues of malfunctioning of state institutions. Therefore, new principles can also be developed like the principle of integrity.

9.4 *The study: research questions, normative framework and methodology*

The central point of this study is to answer the following question: ***What interpretations and applications of good governance exist in the member states, taking into account the different functions of the governmental bodies?*** Some related questions are: What differences exist among the member states and how are conflicts between principles of good governance dealt with? How do the supposed differences influence the agenda and attitude of member states as to European politics? What are the problems and opportunities of this for the European Union? These three questions are divided into six sub questions elaborated hereafter.

What interpretations of good governance exist in the member states and what are underlying values (suitability, integrity, and transparency)? This sub-question is strongly related to the following question: How are the principles of good governance applied in the member states?⁴²⁰⁻⁴²¹ The findings are linked to the different nature of institutions involved in

⁴¹⁹ G.H. Addink, *Goed Bestuur*, Deventer: Kluwer 2010, p. 28; G.H. Addink, ‘Good Governance’, in: G.H. Addink (Eds.), *Human Rights and Good Governance*, Utrecht, 2010, pp.11-134; G.H. Addink, *Good Governance: Concept and Context*, Oxford, OUP 2015 (forthcoming).

⁴²⁰ R. Alexy, *A Theory of Constitutional Rights*, par. 3III, Theories of Principles and Values, Oxford 2010, pp. 86-110.

⁴²¹ See R. Alexy, p.92, “The difference between principles and values is reduced to just one point. What under a system of values is *prima facie* the best, is under a system of principles what *prima facie* ought to be; what under a system of values is definitively the best, is under a system of principles what definitively ought to be. Principles and values are only distinguished by their respective deontological and axiological characters.”

different activities. How are conflicting principles balanced? It can often be the case that two principles of good governance conflict with each other. We expect that, when it comes to conflicts, member states will not always follow the same approach, because countries place different emphasis on different principles. What is the influence of interpretations and applications of good governance in member states on their attitude at European level? This sub-question is discussed and will also connect to other questions: What are the main differences in interpretation and application of the principles of good governance? How could these be explained and what are the benefits and problems with regard to European politics?

The research questions are approached from an interdisciplinary perspective.⁴²² To achieve interdisciplinarity, a reading committee was created with whom the research questions and concept-chapters were discussed.⁴²³ The opportunity to elaborate upon the sub-questions allows giving sufficient account of diverse aspects of good governance from the outset, as well as its meaning and underlying values and the multiple perspectives on good governance.

The research project was divided into three steps. In *September – November 2014* the 28 country reports - based on individual desk studies - were written and sometimes with help from experts from these countries. The country reports all have the same structure. In *December 2014 – February 2015*, we asked the *contact persons* of the European Ombudsman in each of the 28 countries – experts in these countries - to make comments on the written draft version of the country reports. We received comments and suggestions from 20 contact persons. In *February – March 2015*, we finalized the country reports and made some general provisional conclusions based on these revised country reports. In *April – July 2015* the final report was written.

9.5 *Specification of the study; interpretation and application of good governance*

The countries have been investigated individually and, for cultural, social, economic and comparative law reasons, were grouped into five regions. There is a certain cultural coherence, partly based on the history between the countries in each of the groups. Also from a social perspective the countries in each of the groups are related, looking at their social composition and layering. From an economic perspective we see that most of the countries in each group have strong economic relations with each other. And finally it is attractive from a comparative law perspective to compare countries which have strongly interrelated legal systems. The five regions are: *Northern Europe (NE)*: Denmark, Finland, Sweden; *Western Europe (WE)*: Belgium, Germany, France, the Netherlands, Austria, and Luxembourg; *Southern Europe (SE)*: Greece, Italy, Portugal, Spain, Cyprus, and Malta; *Central Europe (CE)*⁴²⁴: Estonia, Latvia, Lithuania, Poland, Hungary, Slovenia, Croatia, Slovakia, The Czech Republic, Bulgaria, and Romania; *Anglo-Saxon Europe (AE)*: Ireland, the United Kingdom.

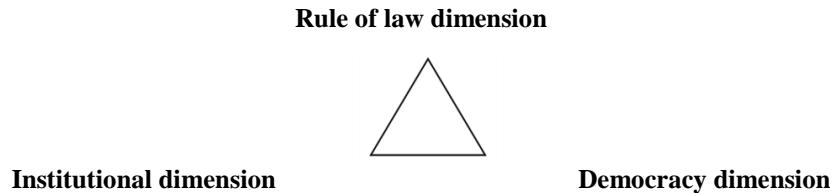
Good governance is a general concept in which we can distinguish three groups of dimensions. The first group is the rule of law related dimension, the second group is the democracy related dimension and the third group is the group of institutional dimension. These

⁴²² K. van Kersbergen and F. van Waarden, ‘Governance as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy’ (2004) *European Journal of Political Research*, Vol. 43, pp. 143–171; G.H. Addink, ‘Governance and norms: An interdisciplinary approach of good governance’, in: A.L.B. Colombi Ciacchi, M.A. Heldeweg, B.M.J. van der Meulen and A.R. Neerhof, *Law and Governance. Beyond the Public-Private Law Divide*, The Hague: BJU Publishers 2013.

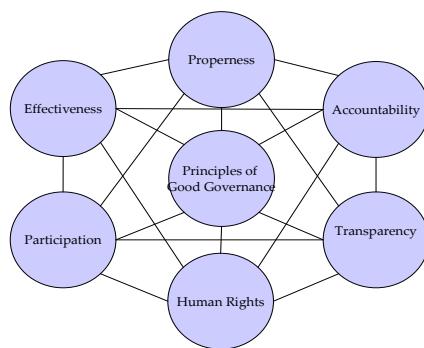
⁴²³ The members of this commission: prof. dr. Cees van den Bos, Social Psychology Including the Social Psychology of Organizations; Empirical Legal Science; prof. dr. Maarten Prak, Economic and social history; prof. dr. Sebastiaan Princen, Governance and Policymaking in the European Union, and prof. dr. J.J. Schippers, Labour Economics, all from Utrecht University.

⁴²⁴ In the EU the abbreviation is: CEE (Central and Eastern Europe).

values can be seen as sources in the further development of the concept of Good governance. In that development we distinguish here three main lines: 1. Rule of law; 2. Democracy; 3. Institution.



The three groups of values were further developed into six principles. The rule of law principles are properness and human rights, the democracy principles are transparency and participation, and the modern institutional principles are effectiveness and accountability. These principles are interlinked in different ways.



The principles of good governance have been developed in the member states by several institutions from different perspectives. In a more instrumental way these principles are normative for the administration, but good governance principles are also developed by the controlling institutions as norms for review. The legislation and the administrative regulation (including the policy rules in which principles have been implemented) are more related to the instrumental dimension of good governance; the controlling function of the judiciary and the ombudsman, and in a certain way also the court of audit, are using good governance principles as review norms. Put more simply, the first and the second powers are more focused on the instrumental dimension of good governance and the third and the fourth powers are more focused on the controlling dimension of good governance.

The principles of good governance can be seen as the normative side of the government activities. They steer the activities of the government, producing different effects depending on the legal form of these activities. But of course there are also factual effects. In this research we have investigated cases in different policy fields to get more information about the factual dimension of good governance.

Functions and structure of the state in relation to shifts in development good governance

There are different – classical and modern - powers in a state, each of them developing good governance norms. This development is strongly related to the function and structure of these institutions. The legislator mostly works on the development of generally binding regulations containing norms with an instrumental character and norms protecting citizens. The administration develops instrumental norms in regulations, including policy rules or internal directives which sometimes take the form of regulations or codes. The administration also develops norms in individual cases, for instance by requesting public participation in the

decision-making process. The judiciary applies the principles of good governance in concrete cases by using them as norms for review. That is similar to how the ombudsman mostly works, producing informal solutions or reports. The court of audit applies these principles as review norms in relation to more general budget questions.

These principles are partly unwritten, but more and more we find them in a written form. This is done by institutions belonging to the legislator, the administration, the judiciary, and the fourth power (the ombudsman, court of audit and the council of state). The legislator and the administration have a more instrumental character, and the judiciary and fourth powers are more related to the position of citizens. But they all produce good governance norms and they interact with each other. The good governance developments on the decentralized level are also very relevant in this context, as well as developments at the level of the European Union and international organisations.

Practices and principles of good governance in the member states

We must look at what means are employed to pursue good governance and how these means are understood against the background of the whole national legal system. It is exactly at this point that underlying domestic values come into play. This is why each country should be studied separately first.

In the country reports based on individual desk studies on regulations, policy reports, case law and literature, each country was the subject of research. In the introduction of report, attention was given to the geographical and historical development of the country, and the structure and the powers of the state. This information was relevant to finding out if and where the concept of good governance and its specification can be found in the country's system. The results of the government work were studied to find out how the principles of good governance are specified and how the instrumental and reviewing approaches of good governance interact. Not only these more general lines of specification of principles, but also concrete cases were described to understand more clearly how these principles were put into practice. These cases were related to each of the following combination of policy fields: 1. Health and/or social policy; 2. Economic and/or financial policy; 3. Environmental and infrastructure policy; 4. Education policy and/or policy on justice. An indication of good governance is formulated based on this information.

A substantial relation is that between the application and practices of good governance, in which understanding the concept of good governance is in the end most essential. Therefore, it is necessary to emphasize the bond between values and principles. Good governance is put into practice through the principles of good governance. These principles may differ in character from one country to another, through the different ways in which the principles are included in different means of legislation and judicial interpretation. Principles of good governance are usually laid down in policy documents, which are not generally binding, but can have a binding effect when such documents bear a sufficiently formal character. However, policy documents that have no direct legal effect may still be to a certain extent binding through the principles of proper administration. A different situation exists when a Code is meant to be exemplary to other governmental institutions.

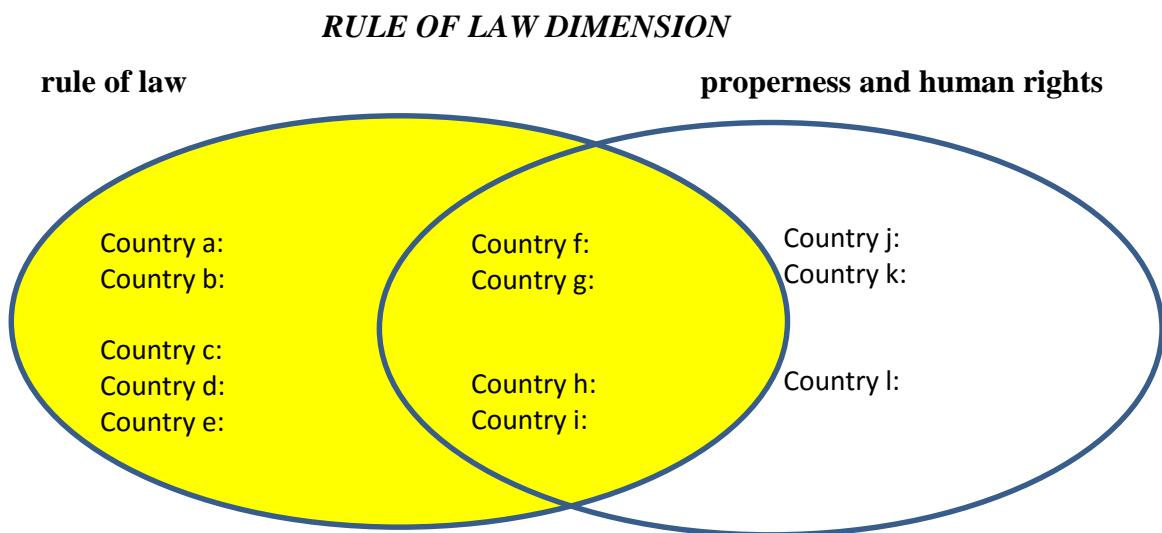
Let us look at some examples. We see the application of the principles of effectiveness and accountability to illustrate the negative effect of the different ways of regulating public healthcare insurance and hospitals in Austria. In Belgium the right to a healthy environment (art 23 Constitution) is according to the Court not a subjective right and can only work in practise by identifying provisions in a specific legislation settled to provide effectiveness to this right. In Bulgaria, a case concerning illegal landfills illustrates that EU law is not always appropriately applied and there was violation of the principles of properness (legal certainty,

carefulness), human rights (public health) and effectiveness (implementation of law, achieving aims).

We have seen that good governance entails values for public governance, especially related to institutions fulfilling a public task. This concept manifests itself in several principles in different fields of study: legal principles, policy principles, and economic principles. Legal principles are divided into general principles and other principles. General principles refer to fundamental ideas concerning order in society. Yet even when principles are vague, they represent underlying values of the national legal system. As a consequence, these can be looked at when interpreting the law. Some other principles are not really fundamental, but yet invaluable and therefore normative to the legal system.

9.6 *Outcome of the study for each country and region.*

For each of the three dimensions – rule of law / democracy / institutional – we made an illustration of two partly overlapping ovals or ellipses. As a result of the overlap we have three zones/options. In the left zone/option we have the original and more general concept of the dimension, in the right zone/option we have the specification by principles, and in the middle zone/option there is a mix of general concept and specified principles. The rule of law concept contains properness and human rights, democracy contains transparency and participation, and the institutional concept contains effectiveness and accountability.

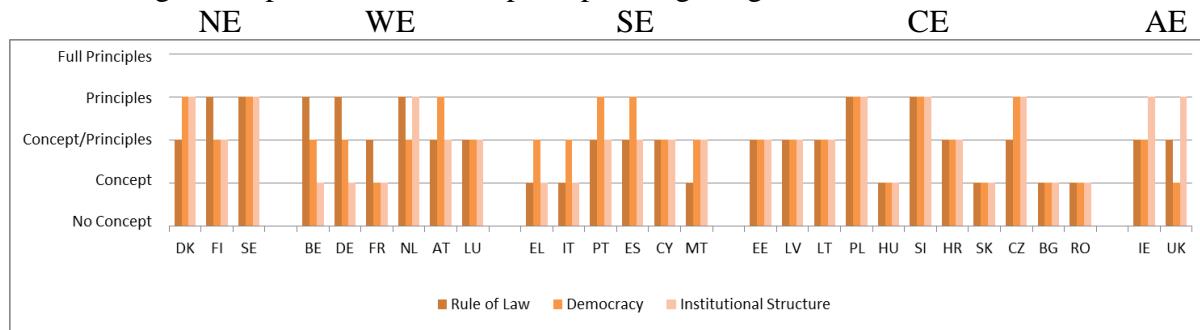


The next step was to find out based on the country reports and the remarks from the national specialists what could be the position of the country: 1: left- (countries a – e); 2: middle (countries f – i); and 3: right (countries j – l). For each of the groups we start with the first country in the group, so for the left-group is *country a* the first, for the middle-group countries is *country f* the first one and for the right-group is *country j* the first. This positioning will be done based on the information we received in the frame of this research and it is a theoretical position which may be subject to discussion. The idea of presenting the results in this way makes it possible to have a discussion within and between the member states on the developments and the shifts of the principles of good governance.

The theoretical positioning of countries is repeated for each of the five groups of countries. That was done because we saw within these groups of countries some level of cultural and social coherence and based on that idea we think that such a comparison will stimulate the

discussion in and between countries. The discussion in practice will be centred around the following points: the institutions which are applying good governance norms in relation to their functions, the developments of the concept by specification of principles of good governance, the form and binding effect of the specified principles (including the integrity principle), and the prevention of malgovernance (including corruption) by promoting good governance.

In the overall chart below, we distinguish phases of a gradual development of good governance; all the countries use the three dimensions of the concept of good governance, and we see differences as to which countries have developed and applied the principles in policy fields. These results of the chart should not be read as a ranking of good or bad, but as a higher or lower degree of specification of the principles of good governance.

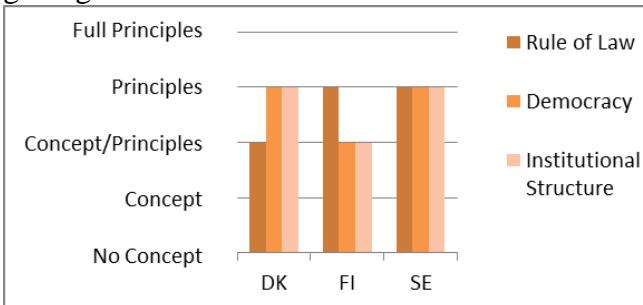


In the following paragraphs we present point by point the conclusions by region for each of the countries according to the same set-up. We start with the position and structure of the state, the main written sources of good governance, and the specification of how the different powers in the state interpreted and applied the concept and principles of good governance. After the conclusions of each region we present some examples. In para. 7 of this summary we describe by example four cases in which principles of good governance are applied.

9.6.1 Conclusions Region 1: Northern Europe

1. The good governance concept has been strongly implemented in the three Northern European countries, which are all unitary states.
2. In Finland we find the concept of good governance in the context of legal protection in the Constitution.
3. In general, some of the six principles of good governance have been explicitly codified in the Constitution or in a General Administrative Procedure Act, but most of the principles are developed in coordination, between two or more public institutions and probably by way of policy rules or case law.
4. There is also a strong influence related to these principles of good governance from the European to the national level.
5. There is a strong development of the principle of transparency, but the principle of participation seems to be less developed. However, both principles are relevant in creating trust for the citizens in their relation to the government.
6. Human rights also have a strong influence on the implementation of good governance norms.
7. The effectiveness principle is especially developed by the financial institutions, including the Court of Audit.
8. The principle of accountability has been the least developed and implemented in the Northern European countries.
9. For Denmark it is remarkable how trust has been created by an active government taking the initiative and listening to public concerns.

10. For Finland it is remarkable that all the principles are implemented in national regulations.
 11. For Sweden it is remarkable to see this country prove the effectiveness of the principles of good governance.



Below are some examples from Northern Europe on the application of the principles of effectiveness, accountability, participation, properness, and more specifically equality. The relevant policy fields are: environmental policy, economic policy and educational policy.

In the EU-Court case C-226/01 about the implementation of the bathing water quality directive in *Denmark* two principles of good governance were applied. The principle of effectiveness relates to whether Denmark has effectively implemented the EU directive into its domestic law and the principle of accountability relates to the Directive requirement that Denmark should give an account regarding how it has implemented the Directive to the Commission every year.

In *Finland* there is a Finnish Governance Code 2010 where we found the application of the principles of good corporate governance, which are linked to the principles of good governance and mainly based on the Companies Act⁴²⁵, other relevant national legislation and stock exchange rules⁴²⁶. An important part of corporate governance is regulated through binding regulations⁴²⁷. First of all, every year the General Meeting takes place, which gives strong powers to the shareholders, an application of the participation and accountability principles. Furthermore, there is strong protection of minority shareholders against major shareholders; the principle of equal treatment⁴²⁸. Decisions that advantage certain groups of shareholders are prohibited. The principle of transparency is applied toward shareholders, for example with regard to remuneration of the management. This has to be published and placed on the website of the company⁴²⁹.

In *Sweden* education is an aspect directly regulated by the municipalities, which guide themselves by the Education Act of 2011, which was enacted in order to try and counter the results of the PISA and TIMSS research, indicating lower knowledge levels among Swedish children⁴³⁰. This Education Act brought many reforms, such as developing the integration and concept of equality between those students with some sort of disability and the rest. Around a total of 70% of educational programs are financed by municipal taxes; it shows the application of both effectiveness and properness principles in the way the Swedish government deals with this specific field, further proven by the fact that over 6.3% of the total GDP is spent on education, above the OECD average, which is located on 5.7%⁴³¹.

9.6.2 Conclusions Region 2: Western Europe

- These countries are different not only when we look at the language: Dutch (Netherlands, Belgium I), French (Belgium II, Luxembourg and France), German (Germany and Austria). From the perspective of the structure of the state, three countries have a unitary system (Netherlands, Luxembourg and France), and the other three have a federal system.
- Looking at the legal basis for the principles of good governance, in some countries we find a rather broad codification: Netherlands, Germany and Austria; in Belgium, Luxembourg and France these are codified in the Constitution or in the Administrative Procedure Acts. There is less codification of the principles because in these countries the judiciary (and ombudsman-institutions) are more active in the developing of the principles of good governance. In all the countries, the Court of Audit is active in the development of the principles of accountability and effectiveness.
- We see in countries with a federal system a stronger development of the principles of good governance on local level, which is more independent from the central level. It seems that in smaller unitary states the central level is more active than in bigger states.

⁴²⁵ Limited Liability Companies Act (624/2006; amendments up to 981/2011 included)

⁴²⁶ Corporate Governance in the Nordic Countries 2009, pg. 4

⁴²⁷ Corporate Governance in the Nordic Countries 2009, pg. 5

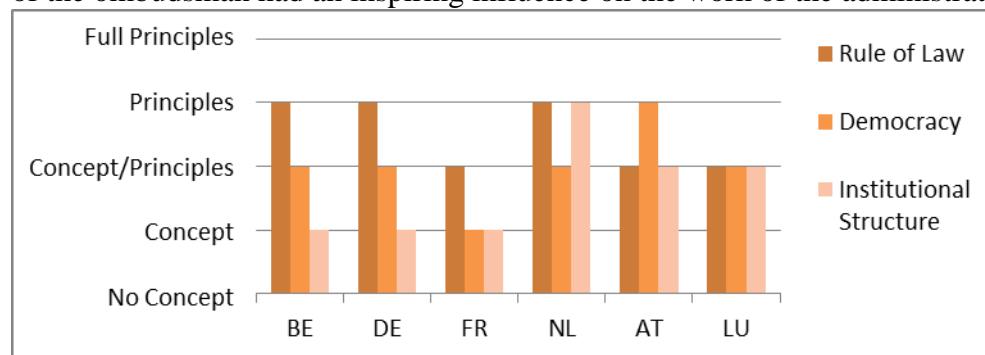
⁴²⁸ Equal treatment is a sub principle of the principle of properness.

⁴²⁹ Corporate Governance in the Nordic Countries 2009, pg. 11

⁴³⁰ "Education in Sweden." *Sweden.se*. N.p., n.d. Web. 01 Nov. 2014. <<https://sweden.se/society/education-in-sweden/>>.

⁴³¹ "Education in Sweden." *Sweden.se*. N.p., n.d. Web. 01 Nov. 2014. <<https://sweden.se/society/education-in-sweden/>>.

4. In all these countries the principles of human rights are very strongly developed, especially in countries with more than one language (like Belgium).
5. In most of the countries it seems that not too much attention is paid to the integrity aspects and their links to good governance; on the contrary, in the Netherlands there is a rather broad legal treatment of integrity aspects and the principle of integrity.
6. In France, the principle of good administration is used as an umbrella term, containing several sub-principles; interesting in this country is the special role of the principles of good governance in relation to independent administrative authorities.
7. In Austria we find the classical principles, like properness and human rights, in the Constitution, the democratic principles still being under development. The principles of effectiveness and accountability are especially used by the Federal Ombudsman and the Court of Audit.
8. In Luxembourg, the principles of good governance are also used but not so strongly. Special attention is paid to the principles of equality (as part of properness), participation and effectiveness.
9. In Belgium, human rights, also because of the Constitutional Court, have a special position in the development of good governance principles. A problem is that there are so many bodies within the government that it creates confusion for the citizens.
10. In Germany, on the state level, we see in some states an ombudsman; it seems that the work of the ombudsman had an inspiring influence on the work of the administration.



Below are some examples from Western Europe; application of the principles effectiveness, properness, non-retroactivity (legal certainty), public participation. The relevant policy fields are: economic and environmental policy, social policy, environmental policy.

Austria's government has aimed to establish a policy to balance economic growth and environmental protection. This was found to be a contradiction; however, this was very appealing since the majority of political parties strive to increasingly protect the environment and promotion of environmental policies is encouraged. Yet the government added to this statement that environmental policy is unwanted from the point where this becomes economically disadvantageous. In fact the economic sector is thus still considered a priority over environmental protection.⁴³² This makes the environment policy and essentially the execution and effectiveness thereof very weak. In the light of the application of the principles of effectiveness and properness there is thus need for improvement.

In *Belgium* the employer of a woman contests the existence of a work agreement, qualifying it according to a 27 December 2006 law characterizing a work agreement which came into force after the end of the collaboration between them. Can the law apply to a situation which occurred before the law comes into force? The Court of Cassation rests upon the general principle of non-retroactivity of the law (an aspect of the principle of legal certainty): the law can't be used to qualify the nature of the agreement which ended before the law came into force.

In *France* Article 7 of the Charter of the Environment states: "Everyone has the right, under the conditions and limitations established by law to access information relating to the environment held by public authorities and to participate in the development of public decisions that affect the environment". Those provisions are among the rights and freedoms guaranteed by the Constitution. The judicial interpretation of Article 7 of the Charter of the environment will allow the judge to clarify the scope of the requirement of the principle of participation. The Constitutional Council⁴³³ has ruled that the mere publication of a project, if done without collecting public comments, did not allow the project to satisfy the requirement of the participation principle. Article L.511-1 of the environmental code define the classified facilities. The implementing regulations

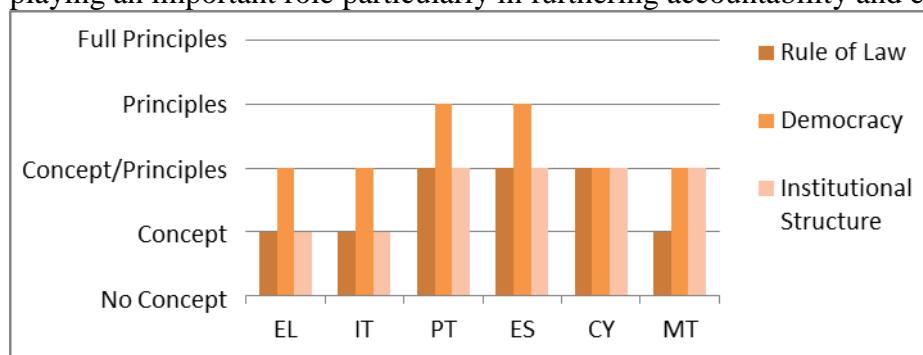
⁴³² http://www.sgi-network.org/2014/Austria/Environmental_Policies

⁴³³ Environmental policy; Case No. 1: Environment/Principle of Participation of the public. Constitutional Council, decision No.2011-183 / 184 QPC of the 14th of October 2011, France Nature Environnement.

(“décret d’application”) for these facilities are public decisions that affect the environment and must therefore meet the requirement of public participation. Or, given the fact that no statutory provision ensures the application of the principle of public participation in the public decision-making provisions in question, the legislative body, by adopting the contested provision without providing public participation provisions, has violated the extent of its competence.

9.6.3 Conclusions Region 3: Southern Europe

1. All these states are unitary states, which means that most of the powers of the state are on the central level and that the principles of good governance start at the central level and move on to the decentralised level from there. The histories of each of the countries are rather different.
2. Comparing Spain to Portugal, we see relevant differences. In Spain we find some principles in the Constitution, and especially by judicial interpretation these principles of good governance are developed. We see in practice that not all the principles are respected and also the more democratic principles like transparency and participation are not very well developed in Spain. There is also the problem of corruption. In Portugal, these principles of good governance have been strongly developed during the recent years, also under the influence of international organisations - the principle of effectiveness especially should be developed more.
3. Italy and Malta also have big differences, including geographically. In Italy we see big differences between the public institutions in the application of the principles of good governance. Rather recently, a law on administrative procedures has been developed, in which several of the classic principles have been developed. We see that the executive power and the judiciary are working on the developing of the principles of good governance, both from a general and from an individual perspective. The doctrine plays a major role in the development of the principles. In Malta we see, especially with regards to the violation of human rights, a connection drawn with the principles of good governance (which play an important role).
4. Greece and Cyprus are in different positions from a good governance perspective. In Greece we find several principles of good governance worked out in the Greek Code of Administrative Procedure, and their interpretation and application is determined by the courts. There is less participation of citizens and a lot of corruption, which is also called a lack of integrity, but rather recently, in the Greek Action Plan 2012, we see several initiatives to establish a new social contract between the state and the citizens, to develop citizens' initiatives, panels and referenda. Also, the participation of Greece in the Open Government Partnership strives to provide a more effective public administration on all levels.
5. Cyprus is a divided country. Its Constitution includes the classical elements of the rule of law. Especially the ombudsman is important in developing the principles of good governance, playing an important role particularly in furthering accountability and effectiveness.



Here we have some examples from Southern Europe, with regards to the application of the principles integrity, transparency, human right, public participation. The relevant policy fields are: financial policy, environmental policy and education policy.

In Italy the policy line of preventing corruption has now been taken over by the Court of Auditors. From 2006 a program has been elaborated to promote integrity. In 2006 an Ethics Code was adopted for the judges of the Court of Audit. In 2013 they developed a Code of Behavior for public servants, that is fully binding as it was adopted as a decree of the President of Republic. In 2013 a Code of behavior for the civil servants working in the structure of the Court of Audit was also released. Other rules for public managers and civil servants are also established in the collective contracts for their categories. In 2013 a plan for the prevention of corruption for 2013-2016 was established. In this document the Court of Auditors underlines the

importance of a transparent administration and appoints a person to promote the publicity of the acts of the Court. This is an application of the transparency principle.

In the Supreme Court case of *Kypros Kyprianou v. Despo Kyprianou*⁴³⁴ in Cyprus, a man sought to overturn a trial court decision ordering him to submit to involuntary medical examination in order to assess whether he would be involuntarily committed or not. The trial court decision was issued following the application from the appellant's estranged wife who alleged that he was suitable for commitment. The Supreme Court ruled in the appellant's favor on the grounds that the appellant's mental condition did not prove a mental disorder that can be found in article 3 of the law and the mental behavior of the appellant does not prove that he has a mental disorder that is subjected to involuntary examination. The trial court's decision was therefore overturned because although they followed the correct protocol to persons with mental disorders, because fundamental rights are at stake, the substantial aspect of the matter must be looked at more closely. Therefore, the Court prioritises the protection of inherent human rights over the following of a legal procedure to the tee. In conclusion, the application of human rights is emphasized as the most important principle in regards to the health sector in addition to a continual check of effectiveness on the policies and laws set to govern and regulate the procedures of both the public and private sectors.

In Greece there was public participation by first Citizens' Initiative⁴³⁵. The Greek think tank "DIKTYO" (Network for Reform in Greece and Europe) presented the European Citizens' Initiative (ECI) called "Education is worth any cost!" on the 16th of December 2013. Since the outset of the crisis, the education sector has been severely hit by austerity measures and budget cuts, especially in debt-ridden countries, such as Greece, Spain and Portugal. The European Citizens' Initiative (ECI), as introduced by the Lisbon Treaty, allows citizens to request new EU legislation once one million signatures from seven member states have been collected and asking the European Commission to do so. The Citizens' Initiative was launched in cooperation with a seven-person European Committee and its main objective is to ensure that education remains a priority in times of crisis. It was warned that one of the worst effects of the crisis is under-investment in education, which is the source of inequalities in this(???) country and at the European level. European citizens have to bring the "Education issue" to the heart of the European politics." DIKTYO proposes to exempt from the measurement of each country's public deficit, that part of government spending for education that is lower than the last five-year Eurozone average. In addition it aims to ensure that resources will be available to be invested in education. This will allow for combating inequality by providing equal opportunities for education and training to all young people in Europe and to ensure adequate and appropriate infrastructures and tools for high quality education in times of crisis. The Citizens' Initiative is an example of the application of the participation principle.

9.6.4 Conclusions Region 4: Central Europe

1. Looking at the three Baltic states – Estonia, Latvia and Lithuania – we can conclude there is a development of their constitutional systems, characterised by single chamber parliaments elected by the people. The three constitutional powers in these unitary states – legislative, executive and judicial – are strictly separated. We see in these three countries a very strong influence from the EU (including in the area of the principles of good governance), but also from other international organisations. The countries have a monistic system in relation to international law, meaning it can be applied immediately. The peoples themselves do not have much trust in their governments, which also has to do with the history. The implementation of democratic principles of good governance, like transparency and participation, is rather weak. Nevertheless, in some countries these principles have been codified (for instance, Latvia). In relation to this last point, it is relevant that the Russian minorities do not have by default the nationality of the countries where they reside, and that creates separation within the countries. The principle of properness has been codified in all three countries. The ombudsman plays an important role in the development of the human rights principles.

2. Poland and Hungary are the countries where we find most of the principles of properness and human rights in the constitution or in the administrative laws. In Poland, where the codification of the human rights in the Constitution is noteworthy, the Constitutional court plays an important role in the development of good governance elements through constitutional human rights. Hungary has developed legislation in relation to the democracy principles – transparency and participation – and these regulations are enforced by different controlling institutions.

3. Slovakia recognises the three classical powers in the state and each of these powers are implementing the principles of good governance. We find many of the principles in the Administrative Code, but not all the institutions have the same interpretation of the principles.

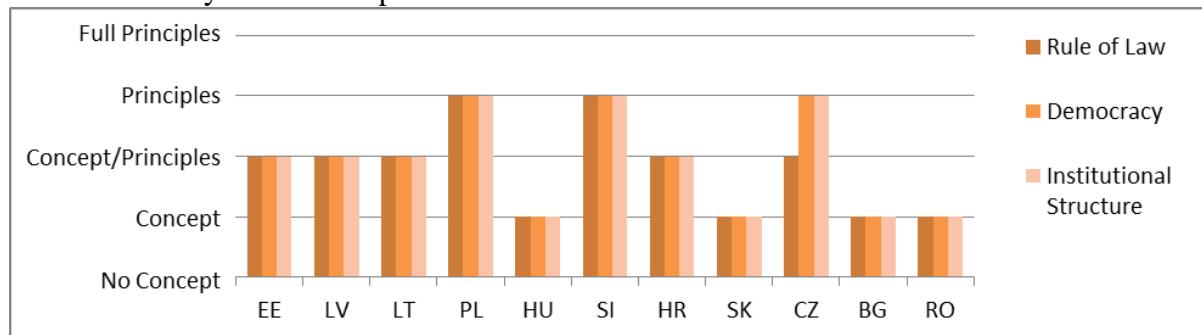
⁴³⁴ Kypros Kyprianou v. Despo Kyprianou (2003)

⁴³⁵ This is a shortened version of the article. The full version is available at: <http://www.euractiv.com/pa/citizens-initiative-launched-gre-news-532425>

The democratic principles are fully developed and effectiveness and accountability are also in development. The human rights protection is on an adequate level. The Czech Republic has had a slow start, due in part to the political change of public management: after each change there is sometimes a loss of institutional memory. The Czech Republic has a lot of catching up to do, but is making good progress in the development of the principles.

4. Slovenia and Croatia have rather similar constitutional institutions and instruments, but there are two important differences. In Slovenia there are several Codes of Ethics in addition to the classical regulations, and the constitutional institutions are active in working with the principles of good governance. Croatia still has a long way to go, especially for the implementation of the principles of good governance, because the codification and the regulations have been developed, but the application in practice gives a lot of difficulties.

5. Bulgaria is a unitary state with local self-governance and Romania is a decentralised unitary state. In both countries, we find the classical three powers of the state. In Bulgaria there was regulation on these principles, but there was no awareness at the level of public institutions. Since 2007 that has changed, also under the EU-influence. We find also more policy papers in Bulgaria about the implementation of the principles of good governance, but in daily practise there still has a long way to go. In Romania there is already a further application of principles of good governance in practice. Interesting is the conflict between principles like transparency versus right to privacy. Also in the new international regulations like the Aarhus convention, Romania is very active in implementation.



Below we have some examples from Central Europe, concerning the application of the principles of properness, human rights, effectiveness, transparency, accountability. The relevant policy fields are: environmental policy, agricultural and education policy.

In *Bulgaria* there is the case concerning illegal landfills⁴³⁶ which illustrates that EU law is not always appropriately applied by the Bulgarian authorities. This is not only a judicial problem, but in this case it is also a serious risk for human and environmental health. In the context of good governance the principles of properness (legal certainty, carefulness), human rights (health) and effectiveness (implementation of law, achieving aims) have been violated in this case.

In *Croatia* the case of *Bistrovic v. Croatia*, Application no. 25774/05, concerns agricultural policy.

The applicants, as husband and wife, owned a house and a surrounding plot of land in Gojanec. On an unspecified date the ‘Croatian Roads’, a public company based in Zagreb, instituted expropriation proceedings before the County State Administration, requesting that part of the applicants’ ground be expropriated with the view of building a motor way. The applicant opposed this request, asking that their estate would be expropriated entirely, which would be both the house and the surrounding ground. The applicants were farmers and would have no use for only the house. The house and the surrounding agricultural land represented as an inseparable unity. There also wouldn’t be vehicle access to the courtyard, which they needed for their agricultural activities. If the motorway would be built as planned, it would be in close proximity to the house, causing significant noise pollution. The possibility of a sound protection wall wouldn’t be sufficient to prevent the noise pollution and it would transform their surrounding into a cage. After unsuccessful judicial procedures, they filed a constitutional complaint arguing that their right to equality before the law, their right to a fair trial and their right to appeal had been violated, for they had not been able to submit new evidence and the court had come to a decision without even having any evidence presented to it. The relevant principles in this case were those of proper administration, more specifically carefulness and legal certainty. The principle of carefulness was not applied properly in this case because there was not sufficient investigation into the facts and circumstances of the house of the parties. Article 6 of the General Administrative Procedure act, which codifies the balance of parties’ interests, was not applied properly. They did not go for the most favourable option and they did not properly establish the substantive truth as codified in article 8 of the General Administrative Procedure Act. The court ruled that there had been a violation of their right to a fair trial which is a specification of the principle of carefulness.

⁴³⁶ European Commission, Press Release, Brussels, 23 January 2014.

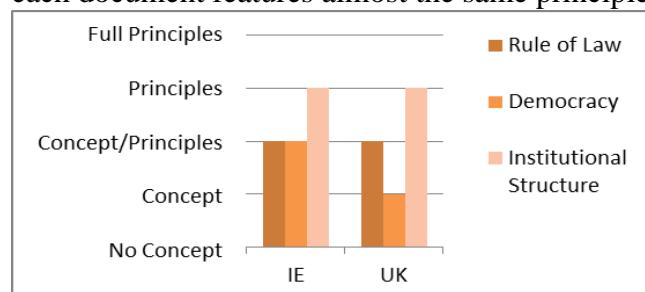
Education is also a constitutional value in Poland. In accordance with the article 70 of the Constitution, “*Everyone shall have the right to education. Education to 18 years of age shall be compulsory (...) Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education. (...) Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute (...)*” The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute. This provision also provides an example of the standard “program norm” which does not arise with the individuals’ specific rights. Schools in Poland are, in the vast majority, public. The organization of education in Poland is regulated by the Law on the Education System⁴³⁷. Schools, even though most of them are publicly funded (usually by the local government), have a high degree of independence, and therefore the application of the principles of good governance is very limited. This does not mean that these principles cannot find a practical use. On the contrary, especially the requirement of efficiency (understood as the proper level of school’s graduates) plays a very significant role. Also, the principle of transparency should be given great importance.

Rules about being a teacher are regulated by the Act of Teacher’s Charter⁴³⁸. Organization of the higher education is governed by the Law on Higher Education⁴³⁹. Higher education in Poland is built in the dualistic way- alongside the state universities (where studying, as a rule, is free) there is also a significant number of private universities. Higher education institutions have legally guaranteed independence as legal entities, as well as financial independence. For this reason, despite the fact that public universities are subsidized by public funds, their control is very limited. This arises also from the fact that any interference with the self-governing universities is considered to be an attack on their sovereignty. For this reason the functioning of the universities in Poland is far from meeting the requirements of the principles of transparency and accountability.

9.6.5 Conclusions Region 5: Anglo-Saxon Europe

1. In Ireland there is a noticeable fragmentation in the application of good governance, and not in the concept as such or in the regulations specifying the principles of good governance. There is a variation in form and degree in their application by the relevant bodies. Important for the enforcement are the codes of conduct which are backed by the legislation. Especially where there are merely good governance values or guidelines, the situation is weakest. The courts are consequently applying principles of proper administration, but the departments and local authorities exhibit a generally inconsistent approach to the application of the principles. Accountancy and transparency receive inadequate attention. But there are also positive developments in which we find more about the principles, like in the Local Government Reform Act 2014 and the creation of the Referendum Commissions. As a whole, the application of the principle of human rights is adequate.

2. For the UK the right to good governance is a step too far. The reason is that the Parliament does not want this codification because of the fear of complications or abuse of procedures. Therefore, in general there is a preference for secondary regulations and soft law, like codes and regulations. We see that various bodies and professional organisations have created their own codes or regulations. So perhaps there are less generally binding norms for the principles of good governance, but in practice each government body or profession tends to follow its code as if it were law. It is complex because of the fragmented approach, but the members of each institution follow the norms. In that way, the British display relative uniformity because each document features almost the same principles, even if differently named or phrased.



Two examples from Anglo Saxon Europe are presented below, regarding the application of the principles of properness, effectiveness and accountability. The relevant policy fields are: environmental policy and education policy.

⁴³⁷ The Law on the Education System of 7 of September, 1991. Published in *Dziennik Ustaw*, No. 95, item 425 with amendments

⁴³⁸ The Act of Teacher Charter of 26 of January, 1982. Published in *Dziennik Ustaw*, No. 3, item 19 with amendments

⁴³⁹ The Law on Higher Education of 27 of July, 2005. Published in *Dziennik Ustaw*, No. 164, item 1365 with amendments

In *Ireland* it is about the case Duffy v. Environmental Protection Agency [2014]⁴⁴⁰. The applicant brought this case seeking judicial review against the respondent, the Environmental Protection Agency (EPA), arising from what he alleged were failures by the EPA to properly perform its function under the (in Irish law transposed) European Communities Environmental Objectives (Surface Water) Regulations 2009⁴⁴¹. Thus the applicant claimed that the EPA failed to review the authorization already granted by it and that the agency has acted unlawfully. Thus the good governance principles raised in the case are properness (namely abuse of power) and legal certainty. What the applicant sought in his application was a declaration that the EPA had failed in the relevant statutory duties and was thus guilty of "lack of action" in regard to Clare County Council. This could be considered an inconsistent use of power. In its judgement, the court held that the Agency had engaged with Clare County Council, although it was arguable that the County Council has been tardy in its responses. However, insofar as the applicant sought to ask the Court to step into the shoes of the enforcement agencies identified in the statutory regime as being responsible for such enforcement, the Court held that it may not do this and that the Court's power did not in this instance include a power to take enforcement proceedings. Furthermore, the applicant had not sought mandatory relief against the EPA, but insofar as the substance of the application before the Court was for mandatory relief requiring the EPA to make a decision with regard to the Clare County Council application, such an order was not available to the applicant in circumstances where he has not joined Clare County Council, and where more particularly evidence suggested Clare County Council and not the EPA had failed to engage fully with the process. In addition, the applicant had brought a case before the courts the previous year concerning broadly similar complaints⁴⁴² but was held by the court on a procedural ground to be out of time for making the application, and was subsequently refused an application for an extension of time. Significantly, the judgement from that case by Peart J was upheld in *Duffy v EPA* that the High Court had no power to direct a body, person or authority which is statutorily charged with prosecuting offenders under the Regulations, to so prosecute.⁴⁴³ Interestingly, the principles of abuse of power and legal certainty via inconsistent use raised in the case were explored albeit in an unforeseen outcome. The only criticism with any real basis was that of an accusation of tardiness on the part of Clare County Council, who were not the respondents in the case in question. It would have been beyond the court's remit to direct a statutory body such as the EPA to prosecute Clare County Council, as such a decision would have been detrimental to the very judicial principles of good governance, i.e. would be a blatant judicial abuse of power, lacking legal certainty.

In *England* it is an education policy case. Ofsted (the Office for Standards in Education) is an independent administrative body, accountable to Parliament, which inspects and regulates services dedicated to young people and those in the field of education. It publishes yearly reports of its work⁴⁴⁴. It also performs reviews of governance in schools. The focus here is on the effectiveness principle. In the guidance document on reviews of governance⁴⁴⁵, we again notice that there is no clear delimitation between the principles of good governance, the principles of proper administration and the elements of organisational structure. Another independent administrative body, the Wellcome Trust, has produced its own Recommended Code of Good Governance, which is currently piloted in 21 schools across England⁴⁴⁶. But again, this is mostly a guideline document on how a school should be run, focusing on the organisation structure and long-term vision. Scotland has its own draft Code of Good Governance for its colleges⁴⁴⁷. Its structure is much clearer, not including practical advice which relate to the day-to-day running of schools. It has five sections, one of which is titled "effectiveness" (which details the way boards should function) and another "accountability"(which also includes elements of transparency and financial soundness). Out of the three, Ofsted is the only body which can enforce its reports and the principles which are part of it. However, Ofsted inspections have been widely criticised in recent years, for creating unnecessary work for school managers which is not related to the actual process of teaching, and thus diverting precious resources. We also notice that the shift towards some forms of accountability is stronger in higher forms of education (colleges, universities), suggesting that said accountability is directed more towards the student than the parents (in the case of younger pupils).

9.7 Summaries of cases about application good governance principles

In the study, we paid attention to cases in different policy fields in the 28 EU member states: public health, the economy, the environment, and education. Here we present summaries – so not including all the details - of four cases about application of good governance principles.

An example of *good governance and the public health policy* is found in Austria. The aim of the Austrian Federal Ministry of Health is to create a high level of transparency and solve issues concerning health insurance.⁴⁴⁸ The SGI Network - an institution that reports and advises countries internationally on their good governance status in the core policies of the state⁴⁴⁹ - has drawn up a report on the good governance status in Austria and concluded that

⁴⁴⁰ *Duffy -v- Environmental Protection Agency [2014] IEHC 405*

⁴⁴¹ European Communities Environmental Objectives (Surface Water) Regulations 2009

⁴⁴² *Duffy -v- Clare County Council & Ors [2013] IEHC 51*

⁴⁴³ *Ibid* 32.

⁴⁴⁴ <http://www.ofsted.gov.uk/about-us>

⁴⁴⁵ <https://www.gov.uk/reviews-of-school-governance>

⁴⁴⁶ http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh_peda/documents/web_document/wtp041389.pdf

⁴⁴⁷ <http://www.scottishcollegegovernance.ac.uk/code/consultation-process>

⁴⁴⁸ <http://www.bmg.gv.at/cms/home/thema.html?channel=CH1013>.

⁴⁴⁹ <http://www.sgi-network.org>.

Austrian health policies are one of the best in the world. The Network noted, however, that the health care system creates major inequalities for the population who cannot afford additional private health insurance. Another problem found is the division of responsibilities between the Federation (regulation on public health care insurance) and the (decentralized) Länder governments (funding hospitals), which created a disadvantage for both public and private hospitals.⁴⁵⁰ This complexity causes higher expenditures, for both the state and the population, while the efficiency and effectiveness of the cooperation between the Federation and Länder decreases. The principles of effectiveness and accountability are thus significantly disadvantaged by this conflict.

The next case is about a court decision on *good governance and education policy* in Belgium.⁴⁵¹ Since France put in place numerous clauses for medical students, Belgium had to face an increasing number of students coming in the French part of Belgium to study. The parliament of the French community in Belgium adopted in 2006 a decree limiting the number of foreign students allowed to stay and study in Belgium, making a distinction between inhabitants and non-inhabitants. Some French students asked the Constitutional court to cancel this decree, and the Constitutional court referred asked a preliminary question about the interpretation of some provisions to the European Court – relating to the easy access to education and prohibiting discrimination- of international treaties. The Community argues that their students are a burden for the public finances. This is the point of the case law, and substantively the answer of the Court: different treatment can be justified in the light of the goal set for it. So long as discrimination can be justified, it is not an illegality. This establishes the principle of proportionality: human rights are not absolute, they have to be balanced against other considerations. Thus, the European Court says that the provisions of the European law conflict with the 2006 decree, unless the Constitutional court considers it as proportionate in relation to the goal of protecting public health.

The third case is about *good governance and environmental policy* related to the Deep Geological Repository case.⁴⁵² The Czech Radioactive Waste Repository Authority (RAWRA) has been trying to find sites for high level nuclear waste for some years now, but has failed due to very strong resistance of the people in the villages chosen as possible sites. Upon the finding of a suitable site which is deemed safe for storing waste and spent fuel by geological assessment, the acceptance for the solution by the public (the affected villages) will be tested. Local level "yes or no" referenda (a sub-principle of the good governance principle of participation) took place. All of the villages were heavily against hosting the Deep Geological Repository. This public participation prevents a misuse of power and allows the decision to be made by the communities. The group running the project, SURAO, will incentivise participation by financial contributions. There is also community level participation through the use of 'working groups', consisting of two representatives of the possible site, one representative of an environmental NGO, and two representatives with nationwide activities. These working groups are meant to strengthen transparent processes for the site search and take into account the interests of the public, which also helps to uphold human rights. These working groups also fulfil legal requirements: general principles for public participation based on the international Aarhus Convention on Access to Information, and rules for providing information on the state of the environment and natural resources according to the national and regional legislation. Thus, it can be seen that this case study implements a method of effective transparency and participation by clearly laying out their process and methodology concerning such a contentious area. This shows a vast cross section of administration and society working together and negotiating to achieve a common aim.

⁴⁵⁰ http://www.sgi-network.org/2014/Austria/Social_Policies.

⁴⁵¹ CJEU case C-73/08 13 April 2010, Bressol, Chaverot and Others / Cour constitutionnelle (Belgium).

⁴⁵² Nuclear Risk and Public Control, 'Questions of call to nuclear regulation SUJB Aarhus in the Nuclear Field in the Czech Republic', accessed online: <http://www.joint-project.org/experience_aarhus_cz.htm>, (last consulted 5 October 2014).

The last example is a case⁴⁵³ on *good governance and economic policy* in Denmark. For a number of years, exporting companies have purchased large quantities of ground beef from a slaughter house and exported it to Arab countries. Pursuant to Community regulations, the exporter undertakings received approximately DKR 100 million by way of refunds. According to the relevant legislation, the amount of funds depended on the proportion of beef included in the composition of the product, namely 60% in the present case. After investigations it was revealed that the beef content was in fact only 28%. The Ministry sought to recover the refunds, but the exporters contended that they could not be held liable for the reprehensible conduct of the slaughter house, and it was in fact the responsibility of the Ministry and the customs to check the quality of the goods. The Eastern Regional Court upheld the exporters' point of view. The Ministry decided to refer several questions to the European Court of Justice. The findings of the ECJ were respected and followed by the Danish domestic court. The ECJ found that it would not be proportionate to make the exporter surrender his right to plead his good faith as regards the conformity of the goods with the description that was given in the declaration submitted. The Court upheld its decision that Community law does not preclude grounds for excluding repayment from being taken into account where these are related to the administration's own conduct. Therefore the negligence of the state authorities with respect to the quality checks should be taken into account and this should preclude the repayment of the funds. Finally, the Court held that Community law does not preclude the national courts from taking into account the period of time that has elapsed since the payment of the aid. The principles of good governance developed in this case are the principle of proportionality, and the principle of legitimate expectation.

These concrete summarized examples illustrate the application and specification of the principles of good governance for the government and the citizens in different policy fields.

9.8 Answering research questions and conclusions

In this part we will answer the general research question and the six specified sub-questions. The answers to the sub-questions will be drawn from answering the general research question, in the form of conclusions and recommendations. The general research question is:

What interpretations and applications of good governance exist in the member states, taking into account different functions of the governmental bodies?

9.8.1 Introduction

The issue of good governance receives the attention of the EU-member states, as supported by the fact that elements of history and culture relating to good governance can be found already a long time ago. In the literature it is said that the cultural dynamics led to several shared philosophical principles and that these principles should be the foundation of a European-wide dialogue on good governance. The results of this study contain the instruments for this dialogue.

Good governance is part of the modern state not only in Europe, but also in other parts of the world; not only on national and local levels, but also on the regional and international level. This concept has been developed through its six principles. Good governance has a dual nature, comprising both a real or factual dimension, and an ideal or critical one and has to be studied based on an interdisciplinary view. There are several reasons to work on good governance: the prevention of maladministration (including corruption), the fragmentation of legal norms, the need for good governance norms for new independent administrative

⁴⁵³ Case C-366/95 -*Landbrugsministeriet v Steff-Houlberg Export and Others*.

authorities, the needs of a highly qualified administration, the proper control of the administration and legal protection by courts, the good control by fourth power institutions like ombudsmen and courts of audit.

In this study, the theme was developed through a theoretical framework and research questions. We have looked for interpretations and practices of good governance and underlying values. Attention was also paid to cases where, in applying these norms, different governmental institutions reveal differences in interpretation and application in the countries examined and which also influence countries' EU-attitudes. We distinguished three dimensions of good governance in the practice of the member states and noted that there are differences between the use of the terms *values* and *principles*, and also the term *integrity*. It is interesting to notice that there are not only shifts in the different dimensions of good governance but also a shift in thinking about situations of violation of integrity norms.

From a theoretical perspective, two elements are very relevant for the concepts and the definitions in this research: the concepts of good governance and the concept of states - the latter being linked to government and (good) governance. We defined government and governance, governance and administration, principles of good governance and of proper administration, good governance and integrity.

We have developed an interdisciplinary approach of good governance and distinguished a factual and a normative line of good governance, and the interrelation between the two lines. Based on this normative framework we described the good governance situation in the 28 EU member states, which we have divided in five regional groups.

We made a distinction between three dimensions of good governance: rule of law, democracy, and institutions. Within each of the three dimensions we distinguished between the following three developments: the general development, the specification, and the intermediate position. For example, in relation to the rule of law dimension: the general development in which there is a strong focus on legality, and the specific development by the properness and the human rights principles. The intermediate position is a mix of the general and specific development. Within each development we can distinguish between a written development in the constitution, the law or the regulations, and a development of (un)written principles by case law and/or in the literature.

9.8.2 Answering the research questions

The first sub question is: What interpretations of good governance exist in the member states of the EU and what are the underlying values (suitability, integrity, and transparency)?

We can conclude that in all EU member states the concept of good governance is used as a norm for the activities of the administration, by the administration. It is mostly not applied as a norm for the other powers of the state: the legislator or the judiciary. Nevertheless, the two other powers are increasingly using and developing these norms for the administration. For that reason we can speak about good governance here, but in a strict sense it is about good administration. In countries where corruption is an issue (which in a strict sense can be seen as a violation of the principle of prohibition on misuse of power) a link is also made with the principle of integrity. In the Netherlands, the violation of integrity has a broader application than only for corruption situations, and we find there some links with the principles of good governance. In this research we distinguished ten forms of violation of the integrity principle, which are directly related to the principles of properness, the human rights, transparency and accountability.

The second sub question is: How are the principles of good governance applied in the member states?

In general we conclude that in all the countries the concept of good governance by way of its principles is known and applied. In almost all the countries we find the three dimensions of the principles of good governance: rule of law, democracy and institutions. For the rule of law dimension, in the Northern Europe countries there is a strong focus on the principles of properness and human rights (two of the three countries; one country was intermediate). In the Western Europe countries, three countries focused on properness and human rights principles, while three were intermediate. In the Southern Europe countries, the focus was more on the general line of the rule of law for three counties, while three other countries were intermediate. For the Central Europe countries there was a mix in which five countries were intermediate, four countries more focused on the general rule of law line, and two countries more on the specification of properness and human rights. The fifth group, the Anglo-Saxon Europe countries, had both countries in the intermediate bracket.

For the democracy dimension, in the Northern Europe counties we found that two of the three countries had specified transparency and participation, while one country was intermediate. For the Western Europe countries, most of the countries (four) were intermediate and one country was more focused on the general development of democracy, while another country was focused on the specification of transparency and participation. For the Southern Europe countries, four of them were intermediate and two countries had a specification of transparency and participation. In the Central Europe countries, four countries were intermediate, two focused on the general aspects of democracy and three on the specification of transparency and participation. In the Anglo-Saxon Europe countries, one country focuses on the general aspects of democracy, while the other is intermediate.

For the institutional dimension, in the Northern Europe countries, one is intermediate, while one focuses on effectiveness and accountability. In the Western Europe countries, three focus on the general aspects of the institutions and one country on the principles of effectiveness and accountability, while two are intermediate. In the Southern Europe, most of the countries (four) are intermediate and two focus on the general aspects of the institutions. For Central Europe, we found four countries to be intermediate, four countries focusing on the general aspects of the institutions and three countries on the specific aspects of effectiveness and accountability. In the Anglo-Saxon Europe countries we found that both are focusing on the specification of effectiveness and accountability.

The third sub question is: What differences exist as to the interpretation and application of good governance as to the different functions of government (policy development, implementation, supervision)?

In relation to the three dimensions of good governance, we see that general aspects are often worked out in the constitution and general laws and regulation; this means there is an important role for the policy development and implementation components of the government. The specification of the dimensions by the development of principles is mostly initiated by the supervisory and controlling bodies of the government. After some time we will find codification of the specified principles in the general laws.

It is interesting to see that there are some differences in relation to each of the three dimensions. We find more often specification of the human rights, transparency and participation principles; the specification of the properness sub principles is lagging a little behind. The specification of the accountability and effectiveness principles is behind the properness principles. These differences can be applied mutatis mutandis for the five groups of Europe countries.

The fourth sub question is: How are conflicting values balanced? It concerns choices in member states, but sometimes it also concerns cooperating countries weighing in differently on these values.

Sometimes the legislator has already prevented the conflict in two ways: first by codifying one principle and not the other, or by giving priority to one principle over the other principles; the executive power is also doing that by making political priorities related to principles. So the question is: how should apparent conflicts of principles be dealt with? Given the fact that there is no hierarchy whatsoever, other factors are decisive in balancing the principles. According to the Dutch legal system, principles could be more important – on a case by case basis – depending on their legal status. For example, principles that are laid down in international treaties or formal law need to be applied in several countries. Also, principles can be laid down in policy documents and may therefore be more important than principles that have no formal status. The rule is: the more a principle has a legal basis, the more likely it is that this principle outweighs other principles. Thereby, two other rules stem from case law. The first is that of specialty. In case law often a special rule has priority to a general rule, but that can be regulated differently in the law. The second rule is less explicit, but not less important. When a court voids a decision on the basis of so-called principles of procedure, a governmental body may come to the same decision, as long as it follows the correct procedure. This is not the fact if the decision was made void on the basis of a principle affecting the merits. Therefore, it may be that the latter may prevail over procedural principles. But this balance is made on a case to case basis. Apart from these rules, might certain principles be more successful in certain situations? It should be assessed whether a certain conflict is general or particular in nature and if these conflicts can be solved according to the previously mentioned rules of the legal system. Also the courts are doing this in two ways: by specifying a principle or by translating the principle in terms of a human right.

The fifth sub question is: What is the influence of interpretations and applications of good governance in member states on their attitudes at the European level?

It is important whether the countries have a monistic or a dualistic system. In a monistic system internationally binding norms are also directly enforceable in the national legal system; in a dualistic system, there is always a need for national transformation of international law into national norms before these norms have legal effect on national level. In countries with a dualistic system there is a more explicit discussion about the relation between the national and international norms and principles. We see a growing attention for the national norms from the countries, in their position on a regional or international level.

The sixth sub question is: What are the main differences in the interpretation and application of the principles of good governance? How could these be explained and what are the chances and problems with regard to European politics?

We see at the EU level a strong development by the Fundamental Rights Charter, in which we find a fundamental right of good administration. Also, the EU Court of Justice is strongly developing the principles of EU law, of which the principles of good administration are a part. In the literature there is a strong emphasis on the development of a European administrative act. The EU executive level is very fragmented: the European Parliament is strongly focused on a more integrative approach of the principles of good governance.

9.8.3 Conclusions

General conclusion

The general conclusion is that in the EU member states there is unity in diversity. Coherence is found in the contents of principles, while there is variety in the factual application. Differences are found in

the focus on each of the three general abstract norms (rule of law, democracy and institutional development) and to the extent to which principles have been developed (more focus on human rights and transparency than on accountability and effectiveness).

Specific conclusions

Based on our investigations in the frame of this research we conclude:

- consensus on concepts and dimensions of good governance;
- coherence in principles qualification, variety in contexts and differences in binding effect;
- context variation of principles like transparency: information, publication and manifestation;
- different focus on three dimensions: rule of law, democracy and institutional functioning;
- application of principles instrumentally, protectionally or a mix and different binding effect;
- good governance regulations in constitutions but often in general administrative acts;
- application also by informal codes which have an indirect binding effect;
- judicial good governance application by rule-interpretation and non-written principles;
- innovative good governance application in ombudsmen and audit institutions reports;
- differences conflict-solving good governance principles: legislator, judiciary, administration;
- bottom-up good governance discussion creates trust among member states and on EU level.

These conclusions are based on the following summarized considerations and arguments which have been detailed in the different chapters of this report.

Conclusion 1: *there is a general consensus on all the concepts and dimensions of good governance, but not yet about the specification of the principles.*

This conclusion is about the question whether there is consensus on all the concepts, dimensions and principles of good governance. About the concept and about the general aspects of the three dimensions there is a consensus in the 28 countries. Real differences can be found between the specifications of all the three groups of principles. Perhaps not so many differences exist for the principles of properness and human rights, but more for the principles of transparency and participation, and most for the principles of accountability and effectiveness. There is a more or less broad interpretation of the principles of good governance, due to social or historical reasons, but it can also be a consequence of the legal system.

(consensus on concepts and dimensions of good governance)

Conclusion 2: *when countries developed principles of good governance, we see a rather similar content to the six principles of good governance: properness, human rights, transparency, participation, effectiveness and accountability. Differences are found in the concrete application of the principles.*

The conclusion brings us to a situation where the three types of principles have the same direction and the qualification of the six principles of good governance are rather similar in the member states. Differences can be seen in the concrete contextual application of the principles which also influences the interpretation of the principles of good governance.

(coherence in principles qualification, variety in contexts and differences in binding effect)

Conclusion 3: *we found application of the six principles not only in the different policy fields but also in different contexts.*

In general good governance principles not only applied in the context of public institutions, but also in the context of specific corporations. We found the following specifications of the principles: properness (legal certainty, legitimate expectation, equality, proportionality, carefulness, reasonableness), transparency (access to information, publication, open meetings), participation (citizen's initiative, citizens panel, community level participation, referendum),

effectiveness (implementation higher regulation, aim-realization, civil protection), accountability (political, legal, economic) and human rights (civil, social, economic and political rights; subjective right, instruction norm).

(contexts variation of principles like transparency: information, publication and manifestation)

Conclusion 4: *the focus of the three dimensions of good governance - rule of law, democracy and institutional structure – are applied differently in countries and the structure of the State can influence this process.*

We conclude that the interpretation of good governance (and good administration) is done through the three dimensions of good governance – rule of law/democracy/institutions. Sometimes this focuses on the general aspects, sometimes on the specific aspects, and sometimes on a mix of these general and specific aspects. In each of the five groups of countries we see that some have more general aspects, and others more specific aspects. We have to conclude that there is diversity in the application of the good governance concept. It is important to realize that the structure of the State can also have a certain influence on the diversity and development of good governance norms, especially on the decentralised level. In a unitary state, the good governance norms will come more often from the central level than in a federal system, where on state level these norms will be developed almost automatically.

(different focus three dimensions: rule of law, democracy and institutional functioning)

Conclusion 5: *the institutional principles (effectiveness/accountability) are often applied in the instrumental context, the democracy principles (transparency/participation) are applied for the citizens' protection, and the rule of law principles (properness/human rights) in both situations.*

The conclusion is that the starting point of these principles can be the legislator, the administration, the court, or the fourth power institutions. Often we see the fourth power institutions or the courts developing a principle of good governance. The rule of law principles are often used or developed in the instrumental or in the protection context, the democracy principles mostly in the protection context and the institution principles frequently in the instrumental context. Differences in binding effect: sometimes as subjective rights for citizens, often obligations for the government and mostly policy indications.

(application principles instrumentally, protectionally or a mix and different binding effect)

Conclusion 6: *general principles of good governance are sometimes codified in the Constitution, but more often we found specific principles herein, and even when not in the Constitution, the legislator has developed these principles mostly in general laws.*

The conclusion is related to the public institutions which are applying these aspects of good governance from different sources. We sometimes find in constitutions some general norms in relation to the concept of good governance, but more frequently specific aspects of good governance can be found in constitutions. In the first situation the legislator has to specify these constitutional norms of good governance which will create legal certainty and equality. That is also useful from the perspective of enforcement of these aspects of good governance. It will also create trust in the civil society. We can also have situations where there are no specific constitutional norms of good governance, but the legislator has developed these norms by law, resulting in the same situation as with constitutional good governance norms. Finally, the administrative authorities can specify good governance norms in policy rules and internal directives sometimes qualified as codes. In that case, there is a more indirect binding effect of the good governance norms, by way of the principles of proper administration. This conclusion can be seen as the instrumental approach of the good governance norms.

(good governance norms sometimes in constitutions, mostly in general administrative acts but application also by informal codes which have an indirect binding effect)

Conclusion 7: *the courts also have developed principles of good governance, often by interpretation of regulations but also several times by developing non-written principles.*

The conclusion is about the courts developing good governance norms by interpretation. This interpretation can be done based on the written legal norms, but it is also possible that the Court develops unwritten (legal) principles of good governance. It is important to mention here that the Court acts in individual cases, meaning that only in individual situations these norms can be applied. But when that is done more frequently, we see a line of cases developing a principle. We notice here the protection approach in the development of good governance norms. It is important to realize that these norms create a form of continuity.

(judicial good governance application by rule-interpretation and non-written principles)

Conclusion 8: *the ombudsmen and the courts of audit, the fourth power institutions, develop and apply innovative principles of good governance in their advising activities.*

This conclusion is related to the fourth power institutions, such as the Ombudsman and the Court of Audit. When these institutions develop and apply norms of good governance from a broader more modern principle and not a classical strict legality perspective, in general or in specific cases, the outcome is an advice to the public administration. But in practice we see that the good governance norms developed by these institutions are enforced de facto. So we see that also these fourth power institutions are important sources of good governance norms.

(innovative good governance application in ombudsmen and audit institutions reports)

Conclusion 9: *when there are conflicts between principles, there are four ways in which these conflicts are solved: a. by the legislator, b. the judiciary, c. by the administration in policy papers, and d. by the administration ad hoc.*

This conclusion is about the situation where principles with a more instrumental function could easily have another direction than the principles with a protection function. Then we have a situation of conflict of principles. Such a conflict has to be solved by the legislator, the administration, the Court, or the fourth power institutions. If there is discretion, each institution can use its own instruments, using a clear motivation as to why one principle has priority over another principle(s). Thus, each of the institutions can have instruments to give one principle priority over another.

(differences conflict-solving good governance principles: legislator, judiciary, administration)

Conclusion 10: *further gains can be expected from a bottom-up discussion amongst the member states regarding similarities and dissimilarities in good governance. It will create more trust among member states, also enabling the states to shape the discussion on good governance in the context of the European Union.*

The ReNEUAL Model Rules can serve as a convenient framework for the discourse. The confidence of all EU citizens and national authorities in the functioning of good governance is particularly vital for the further economic, social and cultural development of the member states. Based on the findings a further discussion is needed for the different applications of the principles in countries and regions. It would be appropriate to develop together a practical informal policy related framework for the application of good governance principles. It is advisable to work on a further codification and harmonisation of good governance on the national level, to bring unity in the good governance policies of the countries.

(bottom-up good governance discussion creates trust among member states and on EU level)

Final conclusion

Good governance: vital for further economic, social and cultural development in the EU. The final conclusion of the research is that further gains can be expected from the active good governance development and application. It will create more trust among member states and citizens and will improve *a bottom-up discussion* within the member states regarding similarities and dissimilarities in the discussion on good governance in the EU. The ReNEUAL Model Rules can serve as a convenient framework. Further *the development of a practical policy related framework for the application of good governance principles* is necessary, besides *working on a further codification and harmonisation of good governance principles on national level*.

Annex 1: names good governance student's country reports and contact persons

Country	Student	Contactperson(s)
Austria	Bachasingh, Dalina	U. Grieshofer
Romania	Barbura, Madalina	A. Baicoianu
Portugal	Colmonero, Isabel	C. Ventura
Croatia	Blom, Marisse	M. Gogic
Cyprus	Chamberlin, Nicole	n.a.
Italy	Ciccarelli, Claudio	V. Gasparini
Malta	Eizenga, Pierina	N. Attard
Netherlands	Graauw, Jens de	M. Blaakman
Estonia	Ham, Iza	K. Pilvik; N. Parrest
Finland	Hilbrands, Marijn	R. Lansisyrja; T. Moilanen
Greece	Karssemeijer, Linny	I. Monioudi-Pikrou; E. Benekou,
Germany	Kruger, Thijs	n.a.
France	Manoury, Charles	n.a.
Hungary	Martínez I Carrasco, Jordi	Z. Scente
Ireland	Mc Call, Tim	T. Morgan
Czech Republic	Mcmullen, Gabrielle	n.a.
Latvia	Mentink, Wout	L. Bagata
Lithuania	Mustert, Lisette	Luxembourg
United Kingdom	Necsa-Damacus, George	P. Mende
Sweden	Orrico Santamaria, Arturo	C. De Geer Fallman
Denmark	Parashkevov, Alan	J. Andersen
Belgium	Poulain, Roxane	n.a.
Spain	Roel, Rosalia	C. Comas Mata-Mira
Bulgaria	Voorde, Frank ten	E. Ivanova
Poland	Wenski, Piotr	M. Wróblewski
Slovak Republic	Whitehead, Oliver	Juraj Jando
Slovenia	Willem, Anna	n.a.
Luxembourg	Willinge, Cas	J.P. Hoffmann

n.a.= not available