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**Institutional development and harmonisation**

Introduction

This paper deals with the issue of institutional development and possible harmonisation of institutions in EU member- or candidate countries. The paper primarily aims at the Central and East European Countries (CEEC) that are candidates for EU membership, but looks at the issue from the viewpoint of general requirements and conditions for EU membership. The aim is to look at the demands on governments and authorities of EU members to examine if there is a need, based on the nature of the EU and its legal system, for Member States to have identical or more or less identical institutions, or if there are no demands at all of institutional harmonisation, or if even if there are such demands there is room for national differences. This underlying general question will provide part of the reply to the question whether the candidate CEEC's have to undertake major institutional reforms. The other part of the reply is found in general considerations of government institutions in CEEC's – are they in need of reform also regardless of EU requirements? The paper mainly deals with the first part of the question – the matter seen from the EU viewpoint – but also touches on general requirements for institutional reform.[2]

The paper examines different institutions at different levels and with varying tasks. The question of possible, necessary or superfluous harmonisation is of interest for the general governing structures of the country as well as for specific institutions having specialised tasks. The answer to the question may be different for different bodies.

Criteria for EU membership

At the Copenhagen European Council meeting in 1993, certain criteria were established for applicant countries, which they had to meet before being considered for accession negotiations with the EU.[3] The criteria may be summarised as follows:

- Stability of democratic institutions, which should guarantee the rule of law, and respect for minorities;

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[2] In popular writing the term European Union (EU) is often used also when only the European Community (EC) is referred to. The EC forms part of the EU, its first pillar, after the creation by the Maastricht Treaty of the EU with its three pillar structure. The first pillar consist of the "old" cooperation: the European Coal and Steal Community, what used to be called the European Economic Community, later renamed to the European Community and Euratom. The second pillar is cooperation on foreign and security policy and the third pillar – after the changes made in the Amsterdam Treaty – police and judicial cooperation. It is only in the first pillar that the "real" EC law is found, with the important role of the European Court of Justice and with binding legal acts adopted sometimes by majority decision. The differences between the pillars are getting smaller, but the distinctions are still true as a general rule. For the purposes of examining legal issues it is thus very important to make the distinction between the EC and the EU and to use the term EC law.

[3] These criteria are used as benchmarks in the reports of the European Commission assessing applicant countries and monitoring their progress.

- A working and sustainable market economy and the capacity to meet the pressure of economic competition from the internal market;
- Capacity to assume the rights and obligations of the *Acquis communautaire* and acceptance of the political, economic and monetary unions;
- Adjustment of administrative and judicial structures in order to implement the *Acquis communautaire.*

The Copenhagen criteria thus mention institutions explicitly in a few different contexts, but furthermore the importance of institutional development underlies all the Copenhagen criteria. It is not possible to ensure the rule of law, respect for human rights and minorities or the acceptance of the *aquis communautaire,* without well functioning institutions. But the criteria and the institution-building work aim at ensuring that institutions shall be well functioning – they do not say what the institutions must look like. Nor are there in EC law – and consequently not in the *acquis communautaire* either - any rules about the structure and tasks of institutions in Member States.

The Europe Agreements with CEEC's demand very far-reaching approximation of laws and from this may follow certain adaptation of institutions. Law approximation is also important in the accession negotiations. The work with law approximation, aided by e.g. the EU Phare programme, is very encompassing. To a large extent very detailed approximation issues in specific fields are dealt with, with detailed overviews of technical and specific legislation. National competition authorities, authorities in the agricultural field and technical supervisory bodies are examples of organs, which are influenced by law approximation. Competition law and agriculture are areas with a lot of EC law, but where the main responsibility for implementation lies with national authorities. These examples may illustrate how each Member State must have institutions capable of ensuring the implementation of EC law, also in very specific fields. Such bodies may have to be adapted and harmonised, even if EC law does not set out details of requirements on the institutions but rather on what they should achieve and in some cases how.

For states preparing for EU membership the issue of institutional reform will arise based on the Copenhagen criteria and more in detail as the state considers how it will be able to implement EC law in specific, concrete fields. Institution-building in different forms must form part of any accession strategy. The extent to which existing institutions have to be reformed obviously varies from country to country. In some cases existing institutions may be well placed to take on the new tasks created by EU membership, in some cases more important institutional reform may be necessary. The issue is linked to law approximation and the two cannot be seen as separate matters. For many of the CEEC's a process of institutional reform is ongoing, not just – or even primarily – due to EU accession negotiations, but to reform the Socialist era institutions to cope with demands of a modern, democratic market economy. In some states, there may be a need to reform the structure of institutions and such work may be ongoing. In other CEEC's there may be more a question of institutions not having been efficient and meeting democratic standards, but with an adequate basic structure. In any case, it is the basic requirement of well functioning institutions, which is the first element to be noted. Specific demands on

institutions, which may follow from EC law will be mentioned further on in this paper, but as said EC does not stipulate rules on the design of institutions in the Member States.

The nature of EC law

The importance of functioning state institutions for EU membership follows from the character of the legal system of the European Community. EC law is a legal system, which is integrated into the legal systems of the Member States. It is binding for citizens as well as for the states and it has supremacy over the law of Member States. The Member States must ensure that EC law is implemented at all levels of the state. In fact, it is in many cases up to the national authorities to make sure EC law is implemented and has full effect. The nature of EC law and what makes it special from international law was famously described in the Costa v. ENEL case in 1964:[4] "*By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.*
*The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity.* "

The way EC law is an integral part of the legal systems of the Member States and binds also its nationals as individuals, make it different from international law, and means that Member States must work with this body of law in a totally different manner than with most international law. It is not possible to have certain bodies only to deal with EC law – EC law influences all areas of society and the legal system and must be taken into account at all levels. EC law contains a system for how this should take place, with the concepts of direct effect and direct applicability.

Secondary EC legislation in the form of directives, which are binding as to the goal to be achieved, but must be transposed and implemented by the Member States in the manner they chose, require that states have a legislative system whereby they can ensure this. This very basic element of EC law is also a very basic way in which it is seen that EC law poses requirements on the organs of the Member States, even if it does not set out in detail these requirements as such. The requirement on the legislature is one element, but in the event the directives are not properly transposed into national law, administrative institutions must ensure that they are nevertheless implemented. The demands on Member State bodies to give effect to EC law thus follow the legal act all the way down to the benefits of the act in question for the individual.

[4] Case 6/64 *Costa v. ENEL* [1964] ECR 585 at pp. 593-594.

The direct effect of directives is an important element of EC law. When reading Article 249 (former Article 189) it appears as if only regulations have such effect, as the Article e.g. states that "*A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*" However, the European Court of Justice established the direct effect of directives already more than 25 years ago, in 1974 in the *Van Duyn* case.[5] The fact that directives, legal instruments, which are not supposed to have direct effect, are nevertheless given such effect means that a burden is put on authorities. Instead of relying on a national law, which is written in a way with which the authorities are familiar, they must rely directly on a piece of EC legislation, which, unlike a regulation, is not written to be directly applied.

The European Court of Justice has by the theory of direct effect of directives and by other means, supplemented the system set up by the treaties, in such a way that the failure of a Member State to fulfil the demands put on it by EC law must never mean that the full impact of EC law is hindered. Administrative and executive organs may thus have to "make up for" failures of the legislative organs in Member States.

As said, this puts high demands on different institutions, as they may even be faced with the situation where they have to apply EC law instead of a national legal act, if the latter is incompatible with EC law. The European Court of Justice has made it clear that EC law must have immediate effect in Member States. There must not be any procedure or system to implement EC law, i.e. an administrative authority may not refrain from applying EC law by referring to national legislative or superior administrative authorities not having undertaken measures to implement EC law.[6] It must be whichever body it is that deals with a certain matter in which EC law is relevant that makes sure it is taken into account. This can be a low-level administrative body. Naturally, it is not easy to ensure that the officials in all such bodies especially in a new Member State have the necessary knowledge of EC law. But the recognised difficulty with this is no excuse from the viewpoint of community law. It is for the Member State to ensure that they can fulfil their commitments following from EC law.

There is quite extensive jurisprudence from the European Court of Justice on the liability of Member States or the Community organs for damages caused to individuals by the application of EC law. One issue the Court has had to rule on is whether it is the Community or the Member State which is liable, when the organs of the Member State have caused the damage when implementing EC law. To give a very brief explanation of this complicated issue, it can be said that what the Court looks at is how much discretion the Member State had in the case at hand. If they were just carrying out a task directly based on EC law without any possibility to influence the matter or its execution, or if the damage was directly caused by a fault in the underlying rules, the Community organs

[5] Case 41/74 *Van Duyn v. Home Office*, [1974] ECR 1337.
[6] The Simmenthal case is known in this context. This case dealt with the different roles of courts at different levels, but the principle is the same not just for courts. Case 106/77 *Amministrazione delle Finanze dello Stato v. Simmenthal* [1978] ECR 629.

may be liable. But in many cases, although performing functions based on EC law, it is still the Member State, which is responsible for the actions as such, as the primary responsibility for implementing EC law rests with the Member States. [7]

The EU in constituted around the understanding that Member States share certain common values. Apart from the market economic system, common values and respect for human rights are prerequisites for membership. This is seen clearly after the treaty amendments of Maastricht and Amsterdam, with explicit mention of the European Convention on Human Rights, but was true even before this. The Common Foreign and Security Policy also clearly reflects the importance of common values.[8] The fact that political demands are now put on candidate countries is explainable not just from the starting point of looking at the candidates as such (where a certain hesitation from some countries to letting the "East" in may well be at hand) but also from the viewpoint of the EU itself, which today encompasses so many more issues and where it consequently is more important that there really is a common value basis of the Member States.

Common values are of relevance and importance in many different contexts. Human rights form part of the general principles of EC law and are protected by the European Court of Justice. Human rights have often been examined in relation to ownership rights and the right to enjoyment of property, but other issues such as freedom of expression or the right to fair procedure may also be relevant. Rights such as the right to professional privilege for lawyers and other procedural rights have also been recognised by the Court as forming part of the principles of community law.[9] Common values and principles can thus also have an impact on institutions, in that demands following from such principles are put on institutions even if these are not explicitly stated in EC law. The sharing of common values does not only refer to human rights. Also in more down-to-earth matters like technical standards to ensure safety or environmental protection, the commonness of values is an underpinning.

It may be asked if it is possible, necessary or maybe inevitable, (and if in any of these cases it is positive), to "import" laws and rules from the outside into a national legal system. This issue is relevant not just in the EC/EU context, but also more generally with increasing globalisation. Do national cultures and traditions have any relevance for modern law-making (or are most issues determined by international rules)?[10] To have a comprehensive discussion on this question would be too encompassing for this paper. However, it may be remarked that on the one hand, an increasing number of issues depend on international rules in different forms and the close interaction between countries means that no state can act in isolation. On the other hand popular acceptance of norms is as important as it has always been for the success of a legal system, maybe

[7] See e.g. Paul Craig and Grainne de Burca *EU Law*, 2nd edition, 1998, (Oxford University Press), pp. 516-544.

[8] In the Amsterdam treaty amendments, one novelty is the possibility of suspension of a member for serious violation of requirements of members, including human rights, Article 7 TEU.

[9] See Case 155/79 *AM&S Europe Ltd v. the Commission* [1982] ECR 1575 on professional privilege.

[10] These issues are of relevance also for the debate of whether there is popular acceptance and understanding of the EU in the accession states and how such acceptance can be ensured.

even more important with a more “global” society and less of direct social control. The short answer is thus that nothing can be imported from the outside without any adaptation, but that reality is such that imports are made all the time. The common values of EU Member States makes the fundamental values of this system natural parts of the legal systems of the Member States, but this does not absolve from a need to accompany the importation of new norms with information and education so that they do not appear as aliens in the national legal system.

Institutional development

Institutions of EU Member States have to fulfil certain criteria in order to meet the demands that membership of the EU puts on a country. These demands occur in the general sense of adapting the legal system to EC law and making sure EC law has full impact in the country, but also in very specific areas of practical application. EC law does not demand, explicitly or implicitly, that institutions have to look exactly alike in all EU countries. On the contrary, respect for national characteristics and tradition is important. At the same time, there is not unlimited scope for different models, as the institutions have to be capable of fulfilling criteria and reaching objectives that are the same for all EU members. Institutions must be able to fulfil tasks in various and specific fields such as competition, customs, police, judicial cooperation, etc., touching upon almost all functions of a state. When fulfilling the same function, it is natural that the bodies doing this may come to resemble one-another. As the EU reaches into more and more fields and as cooperation becomes deeper and deeper, this approximation through daily action is likely to become more significant.

Functioning institutions in all fields are essential for the principle of subsidiarity to be viable. The principle of subsidiarity in the EU context means that in areas which is not the exclusive competence of the EC, the EC shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member State and by reason of the scale or effects of the proposed action can be better achieved by the EC (Article 5, former Article 3b of the EC Treaty). For something to be achieved by the Member States, they must through their institutions function well. A certain similarity in how and by whom certain tasks are undertaken may facilitate the evaluation of the capacity of Member States to achieve a task, but is not necessary in itself.

Another aspect of relevance in the institutional context is the role of civil servants and adequate civil service legislation, which is important for EU members even if it is not an area in which there are any EC rules. The civil service must have conditions of work that ensure its independence, professionality and competence. There may be a need to reform and recreate civil service legislation in CEEC’s or to ensure the proper implementation of the legislation. This is obviously relevant not just in the EU context but generally, but the close interaction with other states in the EU highlights the importance of the quality of the civil service. Also purely from a professional point of view, the demands of individuals are in many respects higher in an EU Member State and this raises the demands on the persons employed in the civil service. It may also raise the status and

attractiveness of the positions; something which may be positive for CEEC's, as the status of civil service positions is in many cases rather low with an ensuring difficulty of recruiting the best people.

The work and structure of the EU itself also puts special demands on the institutions of Member States. Although the primary responsibility for implementing EC law lies on the Member States, the members must also be able to carry out certain duties within the EU system. The way the institutions of Member States and institutions of the EU interact is indeed one of many special characteristics of the EC legal system. The ability to perform the tasks related to the Presidency of the EU is just one example. The support given to the Council, e.g. by the number of staff supporting COREPER, is another example where it is up to the state to decide how to organise matters, but where the strength of the work will be important for the influence and respect of the state in the EU. In this context, the ongoing inter-governmental conference, which is overseeing the institutional structure of the EU, may entail some modifications. But even if there are changes in the detail of the current institutional set-up, concerning e.g. the Presidency of the Council, the Member States will still have an important role to play, as any such structure will build on the Member States. In performing the specific EU functions, a certain approximation of the administrative system of Member States, or at least of the civil service system, may be necessary or at least may follow as a natural consequence.

In existing members, some differences between institutions have been evened out – some still exist. As an example, the Swedish system with very independent authorities differs from most other Member States, but as the authorities can carry out their tasks in a manner, which is compatible with EC law, this institutional characteristic is not affected by EU membership. The Scandinavian openness tradition is an area where a tradition of some countries is influencing others and the EU itself. Not only can differences and special characteristics exist between members but also different systems can influence each other. There is nothing prohibiting Member States influencing one-another and the EU, or the EU influencing institutions in Member States in a more or less direct way, as institutional systems are not and should not be static.

Institutions at different levels

When talking about institutions, a distinction may be made between different levels in the Member States, although much of the discussion is relevant for all levels. As for the highest governing bodies of a state, there is no EC law or any other EU rules on how a parliament or government should be organised. It is up to the Member State to determine how many and what ministries to have and how to regulate this. In some countries the number and tasks of ministries is very stable, whereas in other countries (Sweden is an example) there are relatively frequent changes in the number and name of ministries. There is no EU requirement of having a special European Affairs ministry or minister, and whether this exists or not varies. All ministries will have to be involved in EU related matters, including participation in the Council.

The fact that the composition and name of ministries varies should not pose any immediate problems from the EU viewpoint, but can lead to some unclarity, if it entails

that it is hard to understand the equivalence of ministries in different countries. The Member States must ensure that the correct minister takes part in Council meetings and that the necessary inter-ministerial cooperation takes place. How this is done is another matter left up to the Member States, but a lack in such coordination may never be an excuse for failure to live up to obligations as an EU member. In practice, this has so far not lead to any problems.

What is definitely clear is that it is never possible to just have one or a few bodies solely responsible for EC law or EU matters, as all state bodies must take EC law and EU requirements into account. The relationship between government and parliament is also for the Member State itself to determine and many different models exist. EU membership does not affect the federal, semi-federal, regional or other set-up of states either – at least not in a direct manner. EU Member States show examples of many different models of state structure.

One special field where the institutional issue surfaces is that of harmonisation of technical standards. The more modern way of dealing with this in EC law is that instead of having detailed regulation at the EC level, there is a policy of mutual recognition of certification, etc, done by Member States. In 1989 a resolution was adopted on the so-called global approach to technical certification. This resolution established the principles of mutual recognition of tests and certificates, having regard both to the rules imposed on goods and the mechanisms for control of such rules being obeyed. The resolution is complemented by more specific resolutions in different fields. The mutual recognition approach allows for free movement of goods without the need for detailed harmonisation rules, which may be difficult to achieve and which may soon become obsolete. It also permits national differences based on varying customs and traditions, while still eliminating the negative effect this might otherwise have on free movement. Another effect of this approach is that the availability of different goods may actually be greater, thus providing the consumers with more choice.[11] For a system where the ability to control is replaced by an acceptance that somebody else performs this control, mutual trust is very important. Member States must feel that the organ appointed by the other state will do a good job so that there is no danger of any state anyway having its own controls and double-checking the product in question, in which case the whole idea of the mutual recognition as a means of achieving free movement would be lost.

The way the mutual recognition is carried out in practice is that Member States must – normally following a specific rule in secondary legislation - make known certain criteria of the certification process and what body will deal with e.g. certain technical certification, so that consumers in all Member States can rely on certification from any Member State. Whether the state chooses to entrust certain tasks to a private or a state body is up to the state, but it is the Member State that in the eyes of the EU is responsible for the proper fulfilment of the task at hand. Any shortcomings in the system, which may result in other states not recognising certificates from one state, are the responsibility of

[11] Nicolas Moussis, *Manuel de l'Union Européenne*, 3rd ed 1996 (European Study Service, Edit-Eur), pp. 63-64.

the Member State and failures of the national bodies do not provide an excuse for not following EC law.

Sharing of values and mutual trust come into the picture also in such down to earth matters as technical standards. If a state is required to give up its right to check on others and must accept their judgement in the controlling of requirements, it is important that everybody feels sufficient trust that the requirements for which the test exists in the first place are sufficiently protected.

Article 295 (former 222) of the EC Treaty states that "*This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.*" The background to the Article is to be found e.g. in the circumstance that the amount of state ownership varied between the EC Member States when EC was formed. Article 86 (former 90) on public undertakings also shows that there is a possibility for states to have different principles on state or private ownership, although this must not disturb the functioning of the internal market. There are also other articles as well as case law in connection with different articles that show that the existence of public undertakings or undertakings given special tasks is not incompatible with EC law, but that the Member State must ensure that the existence of such undertakings does not negatively affect the functioning of EC law.

Telecommunications is an example of an area where public undertakings and undertakings given special rights have been the norm in Europe. The Commission has been instrumental in promoting liberalisation of the telecommunications market by using its powers under Article 86.3 (former 90.3) to ensure the application of the rules on public undertakings and has issued a large number of directives. These stipulate rules on licensing, on terminal equipment and type approvals, etc. In reality, not just a liberalisation of the market but also a certain harmonisation has taken place or at least is in the process. The detailed directives do not leave much room for varying rules in the Member States even if the directives do not as such prescribe exactly what the relevant bodies in the Member States should look like.

Apart from authorities at different levels, the judicial system must equally be capable of handling EC law, given the very important role of national courts in implementation of EC law.[12] Also here, there is nothing preventing national differences. Some countries have organs not called courts and not forming part of the normal court system, which fulfil functions and perform tasks normally handled by courts. The European Court of Justice (ECJ) has in connection with the question of which courts may request preliminary rulings taken a generous view to what is to be considered a court. In line with its usual method of interpretation, the ECJ finds the function of the body more important than its name and designation.

Despite what has been said about EC law permitting differences in the institutional structure and set-up in the Member States, it is not true to say that there is no influence of

[12] This paper will not deal in any detail with the judicial system of Member States and the influence of EU membership on it.

EU membership on the institutions of a country. On the contrary, this influence is quite important, but it is exercised in an indirect manner – not based on direct legal requirement of one or other institutional structure or set-up. The influence is seen in different ways. A certain technical requirement may in reality mean that the organs performing an activity have to be similar, as this is inherent in the task. Organs of different states must also be able to communicate with one-another. The development of the EU to cover more and more different fields and going towards an ever-deeper cooperation may also mean a movement to more harmonisation of institutions.

Democracy in the EU and the Member States

Another angle from which to examine institutional development is that of democracy and the guarantee of it within the EU. The issue of whether there is a democratic deficit in the EU is not only dependent on the structure of the EU institutions and the institutional balance between EU institutions, but is also closely linked to the institutional systems and their mechanisms for ensuring democracy in the Member States. In this context, the important question of how to organise the relationship between the government and the parliament in the Member States is illustrated. In case there is a deficiency in this contact and a resulting lack of parliamentary control over government activities e.g. in the Council of the EU, a democratic deficit may occur at the level of the Member State. If however the democracy functions in each Member State, the decision-making system of the EC and EU does not necessarily suffer from a democratic deficit, even if it does differ from parliamentary systems known in democratic states. This difference together with the impossibility of applying normal division of power models to the EU is one explanation for the opinion that there is a democratic deficit in the EU. This is not to say that there are no real problems with democracy in the EU itself (and hopefully some of these can be overcome with institutional reform), but just to underline that functioning democracy on the Member State level is at least as important for the overall democracy of the EU. To ensure a well functioning democracy is of special importance in recent democracies.

As there are differences between all existing Member States on the matter of parliamentary – governmental relations, it is worth asking how - if at all- the EU itself can help new members to design adequate systems and if such help would be welcome. There is no one model to be applied, as the system must fit with the general system of the country. This does not prevent existing systems to serve as models – or even as examples of how not to do it. The Scandinavian countries have a strong parliamentary control, which may be an attractive model for recent democracies, where the parliaments very understandably are reluctant to see any limitations in their powers. Relatively basic and simple issues, such as how to practically organise the contact between the parliament and the government to discuss EC related issues should be given careful consideration, as it may be on these practical matters as well as deeper ideological differences that the relationship has failings.

The constitutional systems of existing Member States as well as of candidate states vary. The EU does not require a certain constitutional or legal system, which is why the question of internal relations between organs of the state remains an issue for the state,

even in relation to EU matters. However, this like many other fields, may require more harmonisation as the EU integration gets deeper and deeper and reaches into more fields.

Transparency and access to information are aspects of democracy as well as prerequisites for functioning democracy. To have access to information about the activities of state authorities is essential to monitor the implementation of EC law, which is essential for people to be able to be better informed and through that take a more active role also in the EU context. Transparency and access to information within the EU itself is equally important. In this area there may be less room for national differences as certain requirements are objectively necessary, based on democracy and human rights considerations, and there may be a positive effect in reducing national differences in the sense of promoting greater openness everywhere. This said, certain differences might be necessary for a while, as it is not possible to impose new systems too rapidly if one wants them to be properly implemented. The Swedish openness model, which has a long history and is accepted in Sweden, may not be possible to impose fully on other countries, (at least not in a short time) but it can serve as an inspiration for openness and transparency.

Information and education about the EU is crucial also from the perspective of democracy. Lack of information is probably one reason for the lack of interest in e.g. the European elections, where voter turnout is very low. The issue of low voter participation in the elections to the European Parliament is in a way a chicken and egg issue – some commentators would say that the Parliament cannot be given greater powers, as it is not representative as only such a small proportion of the European citizens vote for it, whereas many think the reason for the low voting figures is that people are not very interested because the Parliament has so little power. Whatever the real answer to this, greater transparency and more information should help to make citizens more interested and capable of exerting greater influence.

Concluding remarks

The legal system of the EC is an integral part of the legal system of the Member States. It is the authorities of the Member States that are normally responsible for the implementation of EC law and EC law must be taken into account at all levels in the Member States.

Institutions of EU Member States have to, as has been shown, fulfil certain criteria in order to meet the demands that membership of the EU puts on a country. The criteria vary from the more general ability to transpose directives, ensure application of EC law by courts and administrative bodies, to specific technical work in the field of achieving mutually acceptable standards to enable free movement. None of these criteria however mean that institutions have to look exactly alike in all EU countries. EC law does not stipulate any rules on what Member State institutions should look like. On the contrary, respect for national characteristics and tradition is important. The national differences, e.g. in which body it is that does what, may mean a certain lack of overview or problems for other states (or the EU) to monitor and observe the implementation of EC law. This is a small disadvantage though, and it can be overcome by states providing information. It is not sufficient reason to advocate a disappearance of national differences, which normally

are based on national traditions, culture and as a consequence of this, constitutional requirements.

At the same time, there is not unlimited scope for different models, as the institutions have to be capable of fulfilling criteria and reaching objectives, which are the same for all EU members. Institutions must be able to fulfil tasks in various and specific fields such as competition, customs, police, judicial cooperation, etc., touching upon almost all functions of a state. When performing the same functions, a certain harmonisation of the institution may follow even if not explicitly required. Mutual trust is important, as the special character of EC law means that it is an integral system of law and an integrated part of the law of Member States and it relies on implementation by Member State organs. Institutions at different levels must be such as to inspire such trust.

In conclusion, not only is there room for certain national differences in institutions, but such differences are necessary to take into account national characteristics, different constitutional systems and other differences. At the same time, safeguards for common values as well as the practical ability to perform certain tasks are essential. This is an underpinning of the EU system. Institution-building support must therefore be part of the integration work and of any aid for integration, but it must not be used to impose ready-made institutional solutions on countries. With greater harmonisation and increased cooperation in ever more fields, the indirect harmonisation of institutions is likely to grow.