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## The Concept of “Good Governance” in the Context of the European Integration Process

### Abstract

There are many influential studies relating to the phenomenon of “good governance” in legal, economic or political dimensions. The major purpose of this paper is to present an interdisciplinary approach that attempts to integrate legal, economic, and political fields to analyse the indicated concept. This article aims at illustrating the interactions and interdependences between “good governance” and the school of law and economics, especially within the European Integration process, founded on the said principles. Apart from legal and economic issues, the indicated areas form a specific field of politics which should be perceived through the prism of political science. The economic approach requires focusing attention on the process of profit maximisation, however, one should not ignore the element of classical political disputes. The hypothesis of this article is the following statement: the decomposition of the liberal idea of law and economy may translate into a downturn of the European supranational structures, leading to the modification of institutions relying on the principles of “good governance”.

**Keywords:** Good Governance, Law, Economics, European Integration Process

### Introduction

A number of valuable analyses of the phenomenon of “good governance” have been developed, concerning, *inter alia*, its legal, economic, and political aspects. The literature on this subject, both at the national and

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international levels, seems to be dominated by specific scientific disciplines with a rigorous delineation of boundaries between particular fields. However, the essence of “good governance” should encourage researchers to move beyond such rigidly defined areas by unifying efforts aimed at presenting the multidimensional nature of this concept. The premise of this article is to propose interdisciplinary research instrumentation to evaluate the legal and economic aspects of the presented issue.

Both the idea of “good governance”, and the school of law and economics raise a number of disputes and polemics, simply because their scope is rather unclear and brings together many opposing statements. A clear delimitation of those research fields by specifying their semantic meaning may create some difficulties, particularly in the context of multi-level management structures, linking local environments with national and/or global levels. This attempts to show mutual relations and interdependencies as well as interactions between the described phenomena, especially in the context of the EU supranationalisation process, the pillar of which is the implementation of “good governance” for the optimisation of economic cycles and the technocratic effectiveness of created regimes.

Foundations for the presented issues should be sought in liberal philosophy, referring to the desired structure of public authority, and be aimed at ensuring prosperity in the realities of the market economy. Despite evident legal and economic connotations, indicated research areas create a specific field of politics that should be explored using political-science apparatus. An economic perspective would require focusing attention on the maximisation of benefits in the management of the public sphere, formed within the multifaceted integration system of Europe. However, one should not ignore an element of classical politics, which – despite liberal aspirations to “non-political politics” – is an important component of “good governance”, referring to real conflicts of values as well as disputes over the common good.

It raises the question of whether the crisis of a liberal paradigm may be correlated with the disintegration of supranational structures. The hypothesis of this paper is as follows: a downturn of the liberal idea of law and economy may translate into decomposition within the European supranational project, resulting in the modification of institutions, composed according to the rules of “good governance”.

### **Considerations on the Concept of “Good Governance” – The European Dimensions**

It is worth noting that the dissemination of the rules of “good governance” is performed mainly through liberal, international institutions,

whose task is to rationally and effectively organise relations between various entities based on effective legal regulations (Wilkin, 2014). It develops in opposition to traditional hierarchies and methods of exercising power, relying on an institutionalised use of force. In contrast to the autocratic forms of management, the phenomenon of “good governance” promotes the relational functioning of various actors. They operate in an eclectic system resembling a network of diverse stakeholders, leading to a new division of competences and responsibilities. This phenomenon calls into question existing schemes and proposes a multiplicity of network interactions at all management levels (Berniak-Woźny, 2017). Its main assumption is the creation of an environment not dominated by a specific entity. Hence, an appropriate field to observe it seems to be the process of EU institutionalisation, perceived by theoreticians of multi-level governance as an amorphous network with many decision-making and execution centres.

This concept is a challenge to traditional thought due to its multidimensionality, which manifests itself in its functioning of non-hierarchical networks of interdependence, and bringing together public and non-public actors (Zirk-Sadowski, 2011). In these networks, none of the entities abuse a dominant position because no one has the power to unilaterally induce others to a specific activity. Due to the dispersion of decision-making, there is a change in the perception of the public sphere, where activities can be taken by entities operating in independent configurations. In this approach, public bodies are not able to control all resources, so in some areas they are inferior to private entities which use available capabilities more efficiently. It contributes to the discussion, conducted within the school of law and economics, on the relationship between the common good and particular interests in the face of an increasing combination of public and private resources.

“Good governance” is connected with a tendency to substantial institutionalisation, but at the same time it pushes to resist excessive formalisation and bureaucratisation. This prompts the consensus, allowing the selection of the most effective methods to build agreements that minimise the risk of unilateral strategies. It is worth mentioning that unilateral actions, paradoxically, do not lead to profit maximisation. Cooperative behaviours based on common institutions serve as a better guarantee of realising individual interests. Conducting permanent negotiations in this kind of format allows one to reduce the costs of mutual interactions and leads to an improvement of economic effectiveness of assumed obligations. It is related to the concept of sharing or jointly exercising power, where traditionally-perceived sovereignty is replaced by cooperation within network structures.

The aim of disseminating “good governance” is to provide an optimal environment for an individual perceived as a selfish *homo oeconomicus*, who strives to maximise their interest. It multiplies solutions based on multi-level management with the citizen’s welfare as the central point of reference. Different levels of “governance” are being penetrated, ranging from “local” through “European” to “global”, leading to a hyperpluralist reality with blurred boundaries (Schneider, Cederman, 1994). It becomes indispensable because of many actors with opposing interests in situations of the dispersion of resources and demonopolisation of state power. In the analysed approach, cooperation, interdependence and competition are intertwined and social order is not organised around one decision-making centre.

This paradigm conceptualises power as a phenomenon driven by the “ruled”, with a subsidiary role of the “rulers” who perform tasks entrusted to them for the benefit of the whole. Shaping the environment through the principles of “good governance” leads to a “no formal government” policy, which is a dynamic, interactive, and continuous socio-political process that transforms the traditional decision centre. At the root of “good governance” lies the issue of providing public services in a non-hierarchical environment in which no one has the resources to independently pursue their own assignments (Rutkowski, 2009). It has been noticed that the implementation of the discussed principles increases the probability of economic growth, leading to a well-being of the majority of system participants. The equal treatment of economic and environmental reasons, sometimes perceived in terms of the postulate or ideal, means social development and the improvement of the well-being of citizens. Indeed, individuals are at the centre of this concept, as the pursuit of their interests is one of the main aims of implementing the principles of “good governance”. It is to foster greater participation of citizens in public affairs, which potentially leads to an efficiency of public institutions that will provide better quality services to their clients. The implementation of those principles also allows one to minimise the risk of anti-development threats, such as corruption or unstable law, by ensuring a proper functioning of the judiciary (Wegner-Kowalska, 2017).

According to the presented theory, bureaucratic institutions should be as transparent to the public as possible in order to guarantee the participation of society at all stages of policy execution. Instruments for providing public services should be commensurate with assumed goals and implemented in an adequate manner. The performance of higher-level offices should be auxiliary to the activities carried out at lower-management layers. Authorities are expected to cooperate with each other loyally and

coherently, both in the national and European dimensions. “Good governance” is monitored and assessed on the basis of policy coherence and effectiveness to increase citizens’ trust in institutions as well as to facilitate the interaction of individuals with public administration.

It is worth referring to transnational institutionalisation as a set of decision-making bodies that exercise power at regional, national, and European levels. For this supranational structure, citizens remain the source of the legitimacy of activities. EU “governance” is a kind of “subjectless” scheme that “happens” itself, so there is no single entity that controls it (Pawłowska, 2016). Power is realised without a clear division between the “rulers” and the “ruled”, which integrates state actors with private organisations, markets, and societies. An interpenetration of the above-mentioned fields leads to a blurring of the boundaries between them. Original hierarchy is weakened by the autonomous self-regulation of citizens who are in favour of the neoliberal limitation of a state’s functions to private entities, which leads to the privatisation and commercialisation of some public services. The concept of “good governance” promotes the idea of an “invisible hand of the market”, which is a more effective tool for meeting the needs of individuals by limiting nation state interventionism.

The abovementioned paradigm is designed to generate “win-win” interactions. Non-political and technocratic management should improve the efficiency of public institutions by replacing coercive measures with transparent deliberation, discourse, and communication. Institutional capacity to execute policies in an efficient, impartial, and accountable manner can be ensured. Those network structures should be democratic, leading to an alternation of power through free elections, and guarantee public participation. Democratically functioning societies rely on the following principles: the accountability of public authorities, respect for minority rights, ensuring social consensus, and economic security. This is complemented by a well-functioning market economy favouring private business. Private entities have the possibility of pan-European expansion thanks to the institutions of the common market. Neoliberal deregulation is conducive to maximising the profit of private companies.

### **Law & Economics and the Problem of “Good Governance”**

When debating on “good governance” through the prism of an economic analysis of law, it is worth pointing out that the essence of this formula is to shape various regimes in a regular, predictable, and stable manner (Jones, 2018). This idea seems to be saturated with liberal thought,

according to which state actors are transmission belts of the preferences of social groups. A democratic regime creates a framework for execution of their will. Therefore, the most valued political system is democracy, which makes it possible to materialise the views of individuals. The essential policy tool remains the institutionalisation of internal and external relations, because network bodies facilitate the fulfilment of citizens' needs. The emphasis on local, regional and/or global cooperation comes from societies seeking to obtain economic benefits. By focusing on the well-being of the individual as a selfish *homo oeconomicus*, the concept of "good governance" corresponds to the principles of law and economics (Brożek, Stelmach, Załuski, 2017).

The dissemination of those rules is motivated by a desire to increase the utility of public institutions and private entities. Permanent network-building behaviours – within local, national and/or supranational bodies – are the rational option for actors seeking stabilisation in cooperation structures. These institutions lead to a modification of criteria of rational action in the spirit of collective problem solving. Taking into account economic calculation, entities guided by their own interests come to the conclusion that in a decentralised environment, maintaining cooperative behaviour will bring them more benefits. The theory of rational choice arising from an economic analysis of law proposes to resolve the dilemma of unilateralism/multilateralism in favour of the postulate of establishing common institutions. Losses caused by staying outside of such organisms tend to be higher than the costs incurred for functioning in the above-mentioned bodies (Cooter, Ulen, 2011). Cooperation in a polyarchical environment without one supervising entity is not the result of courtesy or good will. Entities pursuing their own interests initiate mutually profitable cooperation and distance themselves from unilateral activity perceived as being ineffective.

It is worth asking how institutions founded on the principles of "good governance" change the criteria of rational activity of their participants. In response, it can be pointed out that these regimes ensure access to information for all parties and uphold the observance of common values. They facilitate an atmosphere of trust and loyal cooperation which, in turn, reduces transaction costs. Their main task is to create lasting relationships and long-term cooperation by resolving disputes in an economically-effective manner. It becomes a field of repetitive behaviours, which guarantees their continuation in the future and discourages violations of established rules of cooperation (Martin, Simmons, 2013). One can come to the conclusion that regimes of "good governance" change the structure of payments achieved by entities, by increasing them compared to

unilateral activities. The will to create network structures is motivated by selfishly-defined interests and these institutions change the environment of the public sphere, making cooperation more profitable (Baier, Bergstrand, 2004). In this sense, individuals support the creation of economically effective laws at the local level and then – in the conditions of globalisation – they want to export these regulations in the supranational sphere, so that the actions of other groups do not limit their preferences. According to the school of law and economics, entities are inclined to create self-limiting communities using instruments of rational law and the principles of “good governance” to limit risks, reduce costs, and facilitate convergence.

Analysing the issue of “good governance” from an economic point of view, the demand for enhanced cooperation should lead to integration as an inevitable and irreversible phenomenon. The economic growth resulting from unification processes results in strengthening prosperity as well as fostering greater caution when carrying out more risky activities. The abovementioned creates an appetite for generating supranational structures to meet the expectations of democratic societies.

### **A Crisis of European “Good Governance”?**

The issue of circulation of principles of “good governance” in the event of a crisis, with particular emphasis on the symptoms of downturn in the processes of supranational institutionalisation in Europe, seems to be problematic. There is a temptation to temporarily suspend or withdraw from the rigours of “good governance” in favour of the direct management of public services (Webber, 2014). In the face of crisis situations, traditional hierarchies and dependencies based on national institutions often prove greater in usefulness in restoring order and a sense of security. It may, however, herald a decline in integration processes, and a weakening importance of the rules of “good governance” by returning to more rigid, homogeneous hierarchies and limiting multi-level management models (Bookmann, 1992).

“Good governance” is often not followed by the proper placement of responsibility for activities carried out, which seems necessary to ensure the accountability of democratic authorities. The issue of holding authorities accountable for decisions taken is of key importance and cannot be easily resolved. The functioning of public authorities in the conditions of hyperpluralism and polycentricity may weaken capabilities and blunts the sense of responsibility. “Governance without government” can be a tempting proposition within economic prosperity by providing a direc-

tive for decision-making in times of economic, social, and political stabilisation. However, in situations of crisis, it is difficult to find systemic balance, and threats arise where sovereign power is divided between various levels of management. The concept of state agendas as one of many players in decision-making networks highlights some shortcomings in defining legal or political accountability and in allocating the resources necessary to cope with emergencies. The usefulness of such structures, especially within a crisis, may be questioned when there is a need for traditional political power to act with its clearly defined responsibility (Börzel, 2018).

The rules of “good governance” may be considered a source of threats in crisis situations, because their implementation leads to a dispersion of resources and a delay in the response to various challenges. It turns out that the implementation of these principles in eclectic structures does not improve the position of citizens and is not a tool for the realization of the common good. It becomes the environment’s responsibility to introduce rule of the “strongest” (for example global corporations or the wealthiest individuals). This paradox is difficult to reconcile with the postulate of democratic and transparent management processes within amorphous networks bringing together various entities. It also becomes noticeable to strive for two opposing values, namely the unlimited freedom and right to the self-realisation of individuals on one hand, and their unconditional social and economic security on the other hand (Kurrild-Klitgaard, 2002).

Economics remains entangled in cultural and ethical values and *L&E* research seems to be lacking reflection on the meaning of the non-economic aspects of the governance model. Treating the school of law and economics as the only method of assessing the management phenomenon might be unreasonable due to its noticeable selectivity. It lacks a clear universalising dimension, which calls into question the possibility of examining the multifaceted phenomenon of “good governance”. There is an opinion that the postulates of an economic analysis of law are feasible only among liberal democracies during their economic prosperity (Ikenberry, 2018). Crisis situations challenge the diffusion and institutionalisation of these types of rules. According to the school of law and economics, regimes run by the principles of “good governance” should be effective in an economic sense. Nevertheless, the process of EU institutionalisation shows that even economically efficient institutions may erode in the conditions of a downturn. The supranational community – for decades – generated profits for participants, but, after a series of crises, the organisation began to be perceived as a source of potential risk. Scepticism emerged,



resulting in the conclusion that it is safer outside supranational institutions, so the centrifugal tendencies in bodies adhering to the principles of “good governance” have intensified. Under certain conditions, liberal projects may contribute to the spread of crises and undermine the rationale of the entire system.

The currently observed crisis of the Euro-integration process may, however, be a temporary slowdown and, after a period of regression, cooperation will return to its former effectiveness. Despite the impression of a downturn, many levels of cooperation work satisfactorily and, at the same time, new initiatives are emerging that respond to the needs of individuals (Vollaard, 2014). The tools of supranational institutions are designed to solve problems, so proposals to re-nationalise and strengthen the intergovernmental component may be economically ineffective. The phenomenon of de-institutionalisation can be perceived as a periodic increase in the flexibility of existing cooperation formulas, resulting from a temporary divergence of interests of their participants. Differentiation understood in this manner may consist in creating derogations in specific areas of cooperation or transferring selected competences back to the national level in order to obtain short-term benefits. Disintegration may also result in the replacement of the current principles of cooperation with other rules in the form of modified “good governance”. Organisms such as EU structures achieve a significant level of sustainability by supporting state actors in facing collective problems and achieving goals. If these actors decide to use unilateral methods, then interest in joint organisations will diminish, but it is long-term process that can be reversed through a new integration impulse (Pepinsky, 2017).

Sovereign actors of world politics, essentially those with the power to leave organisations, are resistant of such scenarios, especially with regard to membership in the most integrated regimes. Due to institutionalisation, a serious crisis does not result in a sudden decomposition of institutions, but in the modification of the rules governing them. In this approach, the disintegration of supranational structures is rather unlikely, as it would require the accumulation of various factors. Moreover, its institutions anchored in the principles of “good governance” may prove to be economically effective in combating common threats. It is difficult to imagine the process of the disintegration of bodies because it would have to be associated with the loss of existing benefits (Berglund, 2006). It would create barriers to cooperation that network institutions have so far removed and would therefore be financially costly. The necessity to adapt to the new conditions would bring a significant increase in transaction expenditure (Alexandrakis, Jones, 2006).

## **Conclusions**

Integrating research on the phenomenon of “good governance” with such areas as legal, economic or political science may lead to a more accurate elucidation of the multi-faceted nature of this issue. Although, it should be noted that it does not necessarily guarantee obtaining a clear and unambiguous view on scientific problems that were included in this text. The concept of “good governance” and the rules of an economic analysis of law will continue to cause numerous academic disputes, serving as a field for clashing various statements. This may be particularly visible in research on mutual relations and interactions between the indicated phenomena in relation to the processes of transnational institutionalisation, creating a platform for multi-level governance. This issue should become the subject of more in-depth studies and analyses, especially in the face of crises that may affect the network organisms of supranational cooperation in the future.

As indicated in the content of this article, the decomposition of the liberal idea of law and economy may translate into disintegrative tendencies within the European unification project, leading to a modification of its central institutions relying on “good governance”. The results of such a process are not yet certain. However, the temptation to temporarily suspend or withdraw from these standards in favour of authoritative management of public institutions is visible. In the face of crises, traditional dependencies based on national components are perceived as being useful in restoring order and a sense of security, which underlines the problem of the re-nationalisation of the supranational sphere. This process heralds a crisis of integration phenomena and a weakening of the impact of the principles of “good governance” by returning to rigid hierarchies that supersede multi-level management structures. On the other hand, national remedies, in terms of economic calculations, may occur to be more expensive than functioning in the amorphous networks of EU institutions. Threats triggering states of emergency are global in nature, so the school of law and economics, pragmatic in its meaning, seems to postulate a shift towards supranational institutionalisation based on the principles of “good governance” in those areas where network organisms can achieve desired effects. Taking into account the above, it needs to be stressed that a comprehensible analysis of the directions of the development of European Union bodies, with regard to the governance phenomenon, ought to be the subject of a separate scientific paper.

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