

eipascope

25th Anniversary Special Issue

Anniversaire • 25 • Anniversary



Institut Européen
d'Administration Publique

European Institute
of Public Administration

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EIPA at Twenty-five

By **Henning Christophersen***, Chairman of EIPA's Board of Governors, 1997-present



When I became a member and Vice-President of the European Commission on 4 January 1985, I was asked by Jacques Delors to take over the responsibilities for quite a number of portfolios: the budget of the European Union, the financial control and – not the least – the administration and the staff policy of the Commission. I think he asked me to do so because I had been Minister of Finance of Denmark before I moved to Brussels. Among my many policy initiatives in Denmark, I had introduced a comprehensive modernisation of the staff policy of the central administration in Copenhagen. This had been one of the components of a much wider initiative called “The Modernisation of the Public Sector”. Important elements of that strategy were: decentralisation of public administration, privatisation of utilities, agencies, etc., introduction of wage systems based on productivity criteria, creation of public and private partnership concepts and so on.

When I came to Brussels in 1985 and was asked to take care of the European Commission's administrative structures, I tried of course to see how much I could use from what I had already been working with in Denmark. But I also knew that I had to draw on some much wider experiences. As a Commissioner you cannot simply rely on the experience of a single Member State. Fortunately, I had been very much involved in a lot of wider European undertakings: I had been Minister of Foreign Affairs, I had been working closely together with a number of international bodies like the IMF, OECD and the World Bank, and I also had experience from the private sector in Denmark. I decided to see how I could best use my experiences from so many quarters in order to develop a programme for the modernisation of the administration of the European Commission. The final concept contained a large number of initiatives but one of the most important ones concerned education and training of the staff of the services of the European Commission. In fact, we organised training and education programmes for all the staff members – more than 15,000 at that time – in a short period of time.

It is important to understand the distinction between education and training. As I see it, education has the purpose of improving the professional competence of staff. Training has the purpose of improving the use of competences. Perhaps I am wrong...but nevertheless.

When I was looking for people who could help us to implement this strategy my eyes fell on EIPA. EIPA had been established on the initiative of my good friend, Prime Minister Van Agt of the Netherlands, whom I first met in the European Council and whom I later convinced to become the Ambassador of the European Union first to Japan and later to the United States.

I thought that EIPA would be the perfect partner for a comprehensive training programme. Other bodies were of course also involved because we had to go through tendering procedures, but EIPA was a very good and shining example of how such things could be done.



The formal launching of EIPA at the European Council meeting in Maastricht on 23 March 1981. From left to right: Piet Houx, Director of the Council of European Municipalities; Andries van Agt, Dutch Prime Minister and President of the European Council; and Barend Biesheuvel, former Dutch Prime Minister and former Chairman of the Three Wise Men Committee (first chair of EIPA's Board of Governors). © Press Agency Widdershoven, 1981

Several years later, I became much more directly involved in EIPA's work because my good friend David Williamson, Secretary-General of the European Commission, asked me to succeed former Commissioner Peter Sutherland as Chairman of EIPA's Board of Governors. I accepted – albeit with some trepidation. My first task as Chairman was to initiate a comprehensive review process. The then Director-General, Isabel Corte-Real, was most competent and charming and had a lot of experience not only from Portugal but also from several other countries, and was moreover close to one of our common friends, the Portuguese Prime Minister at that time, Aníbal Cavaco Silva. Together, we changed the direction of the Institute. From being a body mainly relying on government contracts, EIPA began to focus more on open-market activities. Isabel Corte-Real continued to strengthen EIPA's presence in Member States other than the Netherlands and Luxembourg. The Antenna in Barcelona was established in 1996. EIPA's relationship with Latin America was further pursued, a sort of EIPA branch having been created in Montevideo, Uruguay, which provided services in support of regional integration in the framework of the agreement between the European Union and the Rio Group. New steps were taken involving Asia, leading to the Public Administration Programme in China. Moreover, at the end of the 1990s, a new task emerged for EIPA: the prospect of the accession of up to twelve new countries to the European Union became a major challenge.

It is very important to understand that the implementation of the “acquis communautaire” – the EU regulatory framework – is mainly the task of local and regional authorities. The national parliaments have to transpose EU legislation into national legislation but the day-to-day implementation is a matter for municipalities, regional administrative bodies and government agencies. If the implementation of EU legislation is to be successful, many thousands of local and regional officials and administrative bodies will have to be familiar with EU legislation and – even more importantly – with the second layer of legally binding instructions. EIPA has therefore been very active in the process of training officials from the new Member States to cope with all these challenges. We have not done it alone. Generally, we have been working together with a number of partners, notably schools of public administration in the Member States. This development has strengthened the contacts between EIPA and a large number of national and regional training institutes. One of the results has been the creation of a number of EIPA antennae. The first one was in Luxembourg, dealing with justice and legal matters. The next one was the centre in Barcelona, focusing on regional policy. Later, we established CEFASS in Milan, in cooperation with the Lombardy Government, as well as a new branch in Warsaw, in cooperation with the Polish Government.

At the same time, EIPA has concluded working agreements with a number of governments and is currently trying to establish a common platform in Copenhagen for training activities in European affairs for the Nordic countries.

The result of all these developments is that today EIPA is a much larger and more diversified institution than it was ten years ago. It is also a much more market-oriented institution and less dependent on grants and statutory contributions from Member States and the European Union. All this has been achieved without diminishing the Institute's role in the city of Maastricht itself, which is still hosting EIPA's headquarters that has excellent training facilities and organises a large number of activities. Because of these many developments EIPA has become a genuine European institute of public administration and is in a position to help the growing number of EU Member States to implement the growing number of EU policies. Justice and home affairs, legislation on financial services, completion of the internal market for services, and energy and transport are some examples of what will be on our agenda in the years to come.

These achievements would not have been possible without a very dedicated staff who come from many countries and who have been guided by highly professional Directors-General from the very beginning. The most important reason for EIPA's success is the simple fact that the European integration process can only move forward through the sort of work EIPA has been carrying out. This has been well understood by more and more Member States and by all institutions of the European Union. It is this unique combination of internal competences and external support which we are now celebrating 25 years after EIPA's foundation. ::



EIPA's original building on the Onze Lieve Vrouweplein, Maastricht.

Note

* Mr Christophersen held the positions of Minister of Foreign Affairs (1978-1979), Deputy Prime Minister and Minister of Finance (1982-1984) in the Danish Government. He became Vice-President of the European Commission (1985-1995) and later participated in the European Convention as a representative. Currently, he is a senior partner of the communication and public affairs agency Kreaab.

EIPA at Twenty-five



By Prof. Dr Gérard Druesne*, Director-General of EIPA, 2000-present

Is 25 the age of maturity? For a human being perhaps not, but for an institution it certainly is. It is no coincidence that since 1981 the European Institute of Public Administration has gone through an impressive development process, proof that the Dutch government (with the financial support of the Province of Limburg and the City of Maastricht) was truly inspired when it proposed creating an institution in charge of training public servants at European level to the other Member States and to the European Commission. It took no more than three years for all partners initially approached to confirm their participation, while other states became members of EIPA after their accession to the European Community. Thus, it is really this intergovernmental dimension that is the Institute's major characteristic and this should of course be duly considered when pondering over the aptness of its current legal status, i.e. a foundation governed by Dutch law. Whatever the case, it seems an established fact that EIPA's founders never planned to make the Institute into what today would be called a "Community agency", modelled on the European Training Foundation (ETF) in Turin or the European Centre for the Development of Vocational Training (Cedefop) in Thessaloniki. At the moment, 22 of the 25 Member States of the European Union are full members of EIPA; only three of the countries that joined the Union in 2004 (Latvia, Slovakia and Slovenia) are not yet members. In addition, EIPA has three associated countries (Bulgaria, Norway and Romania). This intergovernmental characteristic is fully reflected in the composition of the Board of Governors, where all countries are in principle represented by their Directors-General responsible for Public Administration and the Public Service.

Another significant element – which can also be attributed to the Dutch government of 25 years ago and the soundness of which has been proven in practice – lies in the fact that EIPA, unlike many other training establishments, has its own teaching staff: it has a permanent team of experts both in Maastricht and at its four Antennae (in Barcelona, Luxembourg, Milan and Warsaw). The team keeps daily track of the development of issues relating to European affairs and public management. This scientific staff, currently with around 50 members from 17 countries, organises activities together with the support staff and provides most of the training and research missions themselves, while also calling on the help of external specialists as necessary. Such permanent expertise at European level is undeniably a major asset of the Institute, and forms a component of this European added value that gives EIPA its special character and justifies its membership of the network of Directors-General responsible for Public Administration (European Public Administration Network – EPAN). It also explains why the country that holds the rotating six-month Presidency of the Council of the European Union usually asks EIPA to conduct one or more studies on subjects of common interest, the results of which are presented at the six-monthly meeting of the Directors-General.

With the passing years, the Institute's services and range of activities have



Laying the first stone of EIPA's new building, 2 October 1985. Norbert Schmelzer, Chairman of EIPA's Board of Governors (1984-1991) (left) and Philip Houben, Mayor of Maastricht (1985-2002).

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become highly diversified. For instance, EIPA offers many varied contract activities, usually after winning a tender.

These activities vary, as regards the European Union, from the training of officials from the European institutions themselves and particularly from the Commission (1,900 people in 2005, i.e. 20% of all participants in EIPA's training activities) to training for the administrations of ten Mediterranean countries in the framework of the MEDA programme, training negotiators from developing countries who take part in multilateral trade negotiations of the World Trade Organisation, the implementation of the European Community's Public Administration Programme in China, the management of the Commission initiative regarding innovation in the field of eGovernment (eEurope Awards for Innovation in eGovernment), and the restructuring of the police force in Bosnia Herzegovina (CARDS programme).

Agreements have been made for the training of staff with the governments of the Member States and with some regional governments, either for general purposes or to prepare officials who will have to chair Council working groups during the six-month Presidency to be held by their country. There is no doubt, however, that EIPA still has to make more progress in this field so that the Institute will be more systematically asked, and by all Member States, to play a part in the training of their public servants. In other words, the aim is for each government to consider EIPA as one of the instruments of its national vocational training policy, owing to its added European value.

Still, EIPA's role would be incomplete if it only responded to orders or requests from the European institutions and from governments. Precisely because of its permanent scientific staff, it should also take the lead in providing administrative training on the European scene and in anticipating the training needs of public administrations. To this end, EIPA organises "open activities" on its own initiative in which anyone may participate (whereas contract activities are by definition reserved for the target group determined by the co-contractor). These activities have also increased spectacularly in number: last year no less than 105 open activities took place, bringing in more than 3,500 officials (36% of the approximately 9,800 participants in EIPA's training activities). The Institute's capacity for initiative is vital and has allowed it to include in its catalogue seminars organised several times a year that have become real "flagship products". These concern such topics as the EU decision-making processes and comitology, public procurement, state aid, the management of structural funds, human resources management in public administration, equal opportunities and European company law. However, the flexibility of this type of training also makes it possible to closely follow European current events, for instance by offering activities focusing on the fight against money laundering, retirement pension schemes, food safety, the Lisbon Strategy and public-private partnerships (PPP).

Though the idea of creating EIPA was an excellent one and corresponds to a real need at European level, steering EIPA's development has not always been easy. Indeed, EIPA has to carry out what is definitely a public-service mission while having the status of a foundation governed by private law, and in an increasingly competitive environment. The contributions paid each year by the different governments, as well as the subsidy from the EU budget, represent on average between 25 and 30% of EIPA's gross income, which means that it has to find nearly three quarters of its financial means on the market, by marketing its training and research products.

This can only be done by relying on its competent and dedicated scientific and support staff, who are able to work in a completely multicultural setting, with the lasting support of the governments of the member countries, who are in a way the "owners" (stakeholders) of the establishment, and with the trust of the institutions of the European Union. Such balance is imperative and should be reinforced, which is what my three predecessors and I have ceaselessly worked for over the past 25 years.

However, the determination and continuity in the implementation of an institutional development strategy are dependent on the political context. In this respect I am obviously among those who regret that the Treaty establishing a



Official opening of EIPA's new building by Her Majesty Queen Beatrix of the Netherlands, 18 November 1986.
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Constitution for Europe, drawn up by the Convention on the Future of Europe and approved by the European Council in June 2004, has not entered into force. Part III of this Treaty does indeed contain an Article 285, which makes the effective implementation of Union law by the Member States a matter of common interest, and authorises the Union to support the improvement of the administrative capacity of the Member States to this end, particularly by supporting training programmes. This recognition of the prominent role that training should play is a key element. Whether it concerns the development of Community standards, the definition of detailed rules for their application or their implementation by the administrations of the Member States, the European Union as a whole can only function effectively and provide citizens with the services they may expect from the European construction if public servants at all levels – European, national, regional/local – are familiar with the applicable procedures and are capable of understanding the aims of the policies pursued, as well as the differences and even disparities that exist between the administrations of the Member States. This comparative dimension is too often disregarded in training systems. It is and it will continue to be EIPA's *raison d'être*. ::

Note

- * Before taking office as Director-General of EIPA, Prof. Dr Druesne held the positions of Dean of the Faculty of Law and Economic Sciences at the University of Nancy (1983-1986). He went on to become Rector of the University of Nancy II (1986-1991), after which he was Director of the Erasmus Bureau of the European Commission (1992-1994). Furthermore, he acted as Director of the Centre des études européennes Strasbourg (1994-2000) and was member of the governing Board of the Ecole nationale d'administration (ENA), for whom he coordinated European training (1996-2000).



Prof. Dr Gérard Druesne, welcomes the Dutch Minister of Education, Culture and Science, Mrs Maria van der Hoeven, at EIPA on 26 February 2003.



Mr Dimitar Kalchev, Bulgarian Minister of State Administration (left), visiting EIPA on 27 February 2003 for the official signing of the renewal of the cooperation agreement between Bulgaria and EIPA, and Prof. Dr Gérard Druesne (right).



The Rt. Hon. Neil Kinnock, Vice-President of the European Commission, receiving the 2003 Alexis de Tocqueville Prize on 11 December 2003, EIPA Maastricht.

Public Management and European Governance

Public Management and European Governance: *The Role of EIPA*



By **Peter D. Sutherland***, Chairman of EIPA's Board of Governors, 1991-1996

The dynamics of European integration are generally viewed in the context of the great political debates surrounding boundaries of the supranational and intergovernmental mechanisms in a complex process. In reality, a constructive working relationship between national civil services and EU institutions (particularly the Commission) is as important in practical terms as many of the great constitutional advances. Whilst the Treaties define the limits of supranational authority even within those limits, positive engagement is essential from national civil services for it all to work. Of course, there is still reluctance in some national administrations to cede to or even share power in policy formation with the institutions of the Union. The function of EIPA in facilitating constructive dialogue and understanding between European national authorities and with the EU institutions is an unsung but vitally important element in the construction of Europe. The mission of the Institute to provide relevant and high-quality services to develop the capacities of public officials dealing with EU affairs has to be seen in this light.

I have never believed in intergovernmentalism as an optimal mechanism to create a durable and sustainable European construction. The history of Europe since the creation of the Coal and Steel Community has had various phases. In some of these the intergovernmental processes have been dominant. That this should be the case is the consequence of the political strength of those who view Europe as a construction that depends mainly upon developing the relationship between sovereign states in a purely intergovernmental way. In other words, there are those in the public service, both in politics and national civil services, who only understand a concept of international dialogue where states interact in defence of their national interests but need to develop understanding of the EU dimension in all its complexity. In particular the crucial importance of the Commission, that is absolutely vital, is that it seeks to shape policies in the common interest.

The Luxembourg Compromise, and the two decades that followed 1966, were a high water mark for intergovernmentalism. The essence of that Compromise was to render the supranational character of the EU, as defined in the Treaty of Rome in some vital areas, virtually redundant. Whilst it would not be accurate to say that the economic malaise in the twenty years between 1966 and 1985 in Europe was the consequence of this intergovernmental phase, it certainly denied the possibilities of creating an effective growth strategy based upon a European market and true competition within it. The Commission was weakened during this time and its power of initiative was circumscribed substantially. Even its enforcement powers, for example in controlling state subsidies, were difficult to exercise. The fundamental reason for this was the legitimate fear, within the Commission particularly, that the rigorous application of EU law might result in national rejection of laws. If such were to occur, the whole construction would have been in peril.



Mr B.J.M. Baron van Voorst tot Voorst, the Queen's Commissioner to Limburg, unveiling the first stone of the extension to EIPA's building on the Hondstraat on 30 June 1994.

The change that took place in the mid-eighties which created a new momentum was the result of a number of political factors. In the first place, the condition of the European economy was very poor. The combination of high inflation and high unemployment clearly demanded new policies and not the knee-jerk protectionism that had often been adopted by governments to provide short-term fixes. In addition, a happy coincidence in vital areas of European leadership was provided by having three instinctive Europeans in key roles. Helmut Kohl, Francois Mitterrand and Jacques Delors all perceived Europe as the solution and not as the problem. With the launch of the "1992" project, which had been approved in principle during Delors' tour of capitals in late 1984 before he took office, everything was to change.

The White Paper issued by Lord Cockfield in June 1985 was a seminal moment in the development of relationships between the civil services of the Member States and the European Commission. It provided an important moment too in the negotiations by the Member States between themselves. Although the White Paper and the Single European Act were initially seen as less than inspiring for many integrationalists, they were to have a lasting political effect. In particular the Single European Market is now such that it is virtually unthinkable that it could be reversed. Furthermore, the existence of this market was the precursor to the single currency that was to follow.

The success of the project was in significant measure the consequence of the fact that the major Member States all found it difficult to obstruct. The British had always favoured a vision of European integration that was based upon the proposition that all they joined was a "Common Market" and that all they wished for was a functioning, liberalised and open economic space. Here, after all, was a project that appeared to deliver this vision. The concept of "deregulation" was also music to the case of the Thatcher government and the essential deregulatory nature of the process was badly needed by Europe as a whole.

After seven years of implementation of the White Paper on the Internal Market the legislative programme was largely completed by 1992. I was then asked to chair a group to prepare a report on how to make the Internal Market work, effectively ensuring that systems and structures were adapted to meet the new requirements. The Report (entitled "The Internal Market after 1992 – Meeting the Challenge") was submitted to the European Council meeting in Edinburgh in 1992. This Report underlines in many respects the essential cooperation required between market control authorities of the Member States and the Commission. It underlined directly the vocation of EIPA related to the risk of fragmentation of the market arising from divergent interpretation and enforcement of Community law or from the introduction of national rules which needlessly segment the market. This pointed to the need to develop and maintain a deeper partnership between the Commission and the Member States right across the Internal Market. It was made clear in that Report that a cooperative approach to the enforcement of internal market legislation should be extended and intensified urgently. There was a need for a permanent framework for administrative partnership, based on groups of contact points, between the Member States and the Commission to deal with the application of rules.

Since the early days of the Internal Market and its implementation, matters have proceeded in terms of cooperation between national administrations and the Commission in a large number of areas. This has been remarkably successful and EIPA has played a real role in creating the correct environment.

Thus there has been a whole raft of committees associated with the Internal Market Directorate. One long established example is that relating to diplomas and professional qualifications. This has resulted in the formation of committees, produced manuals and guidance texts. In the area of financial services, the so-called Lamfalussy process has created three different Committees which, in general are functioning well. First of all, there is CESR which brings together securities regulators around the EU. Then there is CEBS relating to banking supervisors and finally CEIOPS relating to capital insurance and pensions supervisors. Each of these now has a secretariat and constitutes a formal part of the EU legislative process with the necessary consultation rights. In the competition policy area, another more informal example is the European Competition

Network which again is working extremely well in preventing duplication of effort while ensuring that national and Commission decisions display the sort of consistency that a single system of competition law should provide. EU competition rules are applied by all national competition authority members of the ECN, who inform each other, pool their experience and identify best practices.

Another more general cooperation arrangement to deal with cross-border disputes is SOLVIT, which is a mechanism to bring about effective problem solving in the Internal Market. A couple of examples demonstrate how this can work. One related to a Czech citizen who wanted to set up in Germany as a self-employed construction worker. The local German authorities insisted that he needed a work permit in order to provide construction services but refused to give him such a permit. SOLVIT in Germany clarified that no work permit was needed for self-employed workers and arranged for the Czech worker to obtain an establishment licence. The solution was thus found in four weeks. Another example is that of a French importer of Austrian cheese. The cheese importer was instructed by the French authorities to send a consignment of cheese back to Austria, even though the same product had already been sold in France. The French authorities objected to the presence of starch in the cheese and to the addition of “*de montagne*” to the brand name. The decision was based on French national legislation which was in contradiction to EU law as “*de montagne*” is not a protected denomination nor did the starch in the cheese present a danger to public health. SOLVIT was able to convince the French authorities that they should give the product full market access. In this case the solution was provided within twelve weeks.

Building on the SOLVIT experience, the Commission is now constructing an Internal Market Information System which will enable national administrations to exchange information needed to apply Community legislation in a structured way through a closed IT network. A pilot will be undertaken in relation to diplomas and the system should be running in time for the implementation of the recently agreed Services Directive. In addition, steps are being taken to make more use of national authorities in order to improve the regulatory environment. Work here is most advanced for competition matters but something similar is being undertaken in the Internal Market area in respect of the screening of national legislation to improve its single market “friendliness”. Again, a similar obligation is imposed on the Member States through the Services Directive.

The foregoing are merely examples of the numerous areas where national authorities and the EU institutions are working together in a more constructive way. The complexity of the interlinkages between supranational authorities of the EU and the Member States are such that the demand for the type of support that EIPA provides is certainly going to increase. This is particularly the case in the acceding countries. It is undoubtedly true to say that the benefits of the Internal Market would not flow unless its rules and processes are applied effectively and consistently throughout the EU. At the same time the importance of retaining local, regional and national diversity is not to be understated. So it remains important to apply the concept of subsidiarity where possible to reconcile conflicts that might arise. In particular the principle of mutual recognition and the necessary limitations to that principle such as the protection of health, safety, the environment or consumers and a national legislation that is not equivalent also require constant interaction between national authorities and the Commission.

While I have focused in this article on one aspect only of the cooperation between Member States and the EU which EIPA exists to facilitate, there are many others running across the whole range of policies touched upon by the integration of Europe. It is an unsung hero of the integration process but will need to continue as such because the advances in cooperation in Europe cannot entirely mask its failures. These remain a challenge where EIPA can make some real contribution. There continue to be flagrant breaches of obligations by Member States. The Commission has stated that Member States “persistently fail” to implement directives and regulations that are essential for the operation of the Single Market. It estimates that approximately one quarter of the roughly

1600 rules governing the operation of the Single Market have not been put into effect in at least one Member State. As Professor Anand Menon of the University of Birmingham has pointed out this issue goes to the heart of the European construction and has the potential to do great damage to it. EIPA has a real part to play in dealing with issues such as these particularly, as often the case, when they are not the result of malign intent. The failures are more likely to be caused by lack of understanding or deficiencies in organisation than any other cause and EIPA's vocation is to be found precisely in these areas. ::

Note

- * Having been Attorney General of Ireland, Mr Sutherland went on to become EC Commissioner for Competition and Relations with the European Parliament. After completing his service in the Commission, he was Director-General of the General Agreement on Tariffs and Trade (GATT). Currently, he is Chairman of Goldman Sachs International and Chairman of BP plc.

“Implementing Europe”

Introduction: “Learning to Build Europe”



By **Dr Edward Best***, EIPA 1988-present

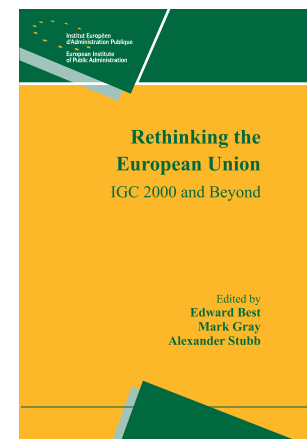
“Those who are engaged in the work of the European Community know how much they need to understand each other’s perspectives and their way of doing business. Through the activities of the European Institute of Public Administration, senior civil servants are able to share their experience and increase their understanding of both the national and Community setting for their work. In this way we can achieve a more effective European Community to the benefit of all its citizens.”

Thus wrote Margaret Thatcher 20 years ago in EIPA’s 1987 Programme of Activities, published in 1986 when she was chairing the European Council. It is an assessment worth recalling today. It rightly highlights the importance of mutual understanding and learning in European integration. It also demonstrates that EIPA’s mission to support that process does not rest on any ideological basis. Our commitment is simply to help make Europe work – and that requires a sustained effort on the part of public administrations at all levels of European government.

For its 25th anniversary, EIPA has adopted a motto – “Learning to build Europe”. This is intended in the first place to capture two aspects of the core mission of the Institute. EIPA directly provides training courses which can assist the process of learning about how to manage European policy processes. And EIPA aims to be a European centre of learning about the management of integration, in the sense of knowledge and experience, thus providing an added value to the work of organisations at national and regional level.

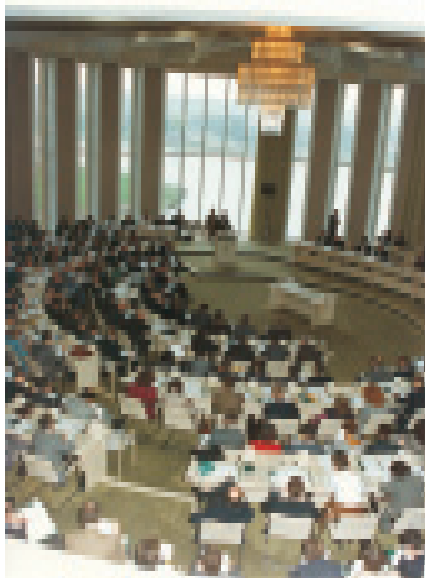
Yet the phrase also reflects a belief that integration is itself a process of learning, at all levels. The notion of the “construction of Europe” has often seemed to imply that the integration process is, or at least should “properly” be, a matter of following an original architectural blueprint laid down by the founding fathers of the Community. While laying down basic principles and procedures, however, the original agreement was primarily a commitment to ongoing negotiation. And, to the extent that the creation of some sort of European “polity” was accepted, it was clear from the beginning that there was incomplete agreement between Member States as to what the resulting edifice should look like. This diversity in preferences has constantly increased with the successive enlargements. The constitutional structure of the Union has thus emerged in “bits and pieces”. Parts have been altered and elements added in package deals between the particular interests and pressures of the historical moment, or as a gradual adaptation of arrangements to changing demands. The system, so to speak, learns in order to survive.

EIPA has always tried to contribute to thinking about the big choices and challenges at this level. It has, in addition to publications, organised numerous top-level colloquia, beginning with the “Erenstein” conferences held between





Jacques Delors
© FotoPersBuroWiddershoven, 1991.



Jacques Delors Colloquium on subsidiarity, organised by EIPA and held at the Provincial Government House in Maastricht on 21-22 March 1991.
From left to right: Lord Mackenzie-Stuart, Chair of the Colloquium, former President of the European Court of Justice; Jacques Santer, Prime Minister of Luxembourg and President of the European Council; Jacques Delors, President of the European Commission; and Norbert Schmelzer, Chairman of the Board of Governors of EIPA.

1982 and 1989. In 1991, EIPA held a Colloquium at which Jacques Delors, then President of the European Commission, made one of his major statements about the principle of *subsidiarity* which would later be formally introduced by the Maastricht Treaty. In 1999, the Institute organised a conference on *institutional reform* in association with the European Commission and the Finnish Presidency, in the run-up to the 2000 Intergovernmental Conference. Between 1998 and 2002 EIPA organised five annual conferences on *enlargement* with the participation of speakers including the Commissioner responsible for enlargement Günter Verheugen as well as lead negotiators from the acceding countries. And in 2004, EIPA hosted a Forum on the *constitutional treaty*, introduced by the Vice-President of the European Convention, Giuliano Amato.

Yet the main role of the Institute, when it comes to integration, has been to contribute to learning about the formulation and the implementation of European policies. It concerns how to make things work on the ground – as indeed called for by Schuman in May 1950:

“Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.”

What matters to most people is not the political nature of the Union. If one asks them, indeed, then Europeans seem manifestly to disagree about the “*finalité politique*” of the Union. What matters is that policy choices which affect peoples’ lives are made in ways which are felt to be legitimate, and that practical arrangements for implementing those policies are seen to be understandable, effective and fair.

It is at this level that integration is felt on a day-to-day basis. It is here that public administrations play a key role, and this is the kind of European construction work to which EIPA has tried to make a contribution. EIPA can perhaps help to build *consensus* regarding policy options. It can certainly help to build *confidence* and *capacities*. Happily, the kind of confidence-building measures involved are not those of arms limitations and military exercises. Indeed, the Community has had the historical privilege of achieving a “security community” in what was essentially a “security vacuum” (and it remains to be seen how Europe will live up to its new challenges and responsibilities since the end of the Cold War). Yet confidence between the public administrations of the Community/Union Member States is essential for the operation of the internal market which is the basis of the integration process. In a customs union, each country assumes the important responsibility of managing the external customs border on behalf of the whole Union. In a common market which foresees mutual recognition of products and of national certification bodies, the need for confidence increases further. In an area without internal frontiers – as agreed in the Single European Act in 1986 – each country with an external border effectively becomes the frontier of the Union. Mutual confidence in each others’ administrative capacity is a matter of essential common concern, and this concern only increases with each enlargement.

European policies are formulated through permanent negotiation. The Member States and other actors involved thus participate in a constant process of learning, about the interests of others, about the acceptable limits of agreement, or about the broader consequences of different policy options. It is not easy to learn how to evaluate jointly possible new approaches in the face of changed circumstances – and it may be even harder to learn to undo some of the less successful results from the past.

Even more learning has been demanded when it comes to thinking about how to make European policies work on the ground. There has been a tendency in the European integration process to fix ambitious objectives and then sort out how to manage things. One could even say that this was part of the very essence of the original Community approach: commitments would be made (if they were made at all) on the basis of political will and vision, precisely with the idea of forcing change. Yet this “top-down” approach, while proving rather successful in pressing ahead with formal integration commitments, tended to go ahead often of both administrative capacities and public understanding.

The period between 1985 and 1992 – sometimes referred to as the “second relaunch” of European integration – marked the high point in this process, culminating in the negotiation of the Treaty on European Union in Maastricht at the end of 1991. The legislative framework for the single European market was now largely in place, together with a considerable legislative acquis in important areas such as the environment. The challenge now was to ensure good implementation of the law – while also addressing broader concerns of economic competitiveness and social coherence – all in the perspective of successive enlargements bringing in countries which had not in recent decades enjoyed the same circumstances for economic and administrative development.

The contributions which have been invited to this special issue of EIPASCOPE do not reflect the whole range of activities carried out by the Institute so much as this theme of “implementing Europe”. How has EIPA offered new services to help the public administrations of Europe to meet the challenges of making it all work?

Implementation of European law

The first section recalls some of the ways in which EIPA has tried to help ensure a good implementation of European law. From the beginning, EIPA and members of its Faculty contributed to thinking about the requirements for completion of the internal market. Jacques Pelkmans was a member of the steering committee of the research carried out in the mid-1980s for the Commission on the “Cost of Non-Europe” (the Cecchini Report) which analysed the content and consequences of the measures to be adopted. Yet the problems of implementation had begun to be addressed by EIPA already in 1983. Jacques Ziller thus looks back to the pioneering study which EIPA produced in 1988 on the challenges of implementation – *Making European Policies Work*, by Heinrich Siedentopf and Jacques Ziller – as well as reflecting on the continuing relevance of comparative studies of implementation in the context of the recent initiatives on Better Regulation. In order to offer support in managing the legal dimensions of implementation, EIPA in 1992 created an antenna in Luxembourg, the European Centre for Judges and Lawyers, whose mission is discussed by Peter Goldschmidt and Véronique Chappelart.

Since the “1992” programme was completed, EIPA has become increasingly involved in activities aimed at capacity building, especially in the perspective of enlargements. The challenges involved are reviewed by Phedon Nicolaidis in his contribution. A series of studies were carried out in the late 1990s on capacity building in the perspective of enlargement. On a practical level, EIPA was entrusted by the Commission with the management of the Karolus programme, which provided for exchanges of national officials and the systematic comparative study of the obstacles which were seen to exist for the achievement of integration in particular sectors. EIPA has offered several series of regular open seminars on key European policies, such as the eleven annual Colloquia on Schengen, or the continuing open activities on state aid or public procurement. These aim to update officials on developments in the field, and also to provide a regular forum for an exchange of experiences about the practical challenges of implementation of these policies in each Member State. Specific projects have been carried out in acceding countries in order to help strengthen their ability to manage the acquis.

Participation in policy processes

In the same period, EIPA developed a series of activities to address the challenges which were posed for national administrations in terms of their effective participation in European policy processes. These processes, it came to be realised, were not just business as usual. They require specific preparation at the level both of the national system and of the individuals who are called on to participate directly in European fora.

At the level of the system, work has focused on national policy coordination. A first comparative study was undertaken already in the 1980s with the project

on “Action or Reaction” led by Les Metcalfe. A second study on “National Administrative Procedures for the Preparation and Implementation of Community Decisions” was published in 1995, followed by a detailed work by Adriaan Schout on coordination in the Dutch Government. Seminars are regularly offered which both compare national arrangements and consider practical measures for improving coordination.

At the level of individuals, it was increasingly felt in the Member States that national officials needed to understand the particular norms and practices involved in European negotiations in the Council framework; the special challenges involved in management of the Council Presidency; or the peculiarities of “comitology” – that is, the committees composed of representatives of the Member States which assist the European Commission in the elaboration of implementing measures at European level. *Alain Guggenbühl*, who has led EIPA’s programme on negotiations in recent years, thus looks back at how the Institute has developed its activities in this field since the 1980s, and highlights some of the special characteristics of the European process. *Guenther Schaefer* then recalls how he initiated a new seminar on “committees and comitology” in the 1990s. Open seminars are now regularly held which bring together officials from across the Union (and often from across levels of government) on these topics, as well as on European information and documentation and on European decision making.



Mr Günter Verheugen, Commissioner for Enlargement, speaking at the Fifth European Conference “Enlargement of the EU: Last Lap or Last Chance?” held in Maastricht, 4-5 March 2002.

Comparative public administration and public management

“Implementing Europe” effectively also requires broader forms of administrative cooperation and of public-management capacity development to which EIPA has likewise tried to respond over the years.

Integration demands new forms of administrative cooperation between public administrations and new forms of interaction between the national and European levels of administration, as well as mutual understanding and learning between public administrations more generally. *Christoph Demmke* and *Danielle Bossaert* review these demands and look back at how EIPA’s role has evolved in the context of the European Public Administration Network (EPAN), providing comparative studies on particular dimensions of public management and other inputs for this evolving European network.

Robert Polet discusses EIPA’s role in the development of the Common Assessment Framework (CAF), as a simple tool to help public administrations across the EU to understand and employ Total Quality Management (TQM) techniques.

Looking beyond the Member States

The final section considers EIPA’s role with regard to external relations. *Jacques Pelkmans* and *Rita Beuter* look at the development of EIPA’s services in the light of the evolution of EU trade policy, stressing the enormous difference between the defensive trade policy responses of the early 1980s and EU trade policy in 2006, in which industrial tariff protection is largely gone. *Simon Duke* and *Sophie Vanhoonacker* focus on the evolving challenges of foreign policy. They highlight the changing nature of the agenda – from European Political Cooperation when EIPA was founded to a Common Foreign and Security Policy including crisis-management operations involving military capabilities – and reflect on the questions for effectiveness in EU external action.

Both contributions also draw attention to the role directly played by EIPA in the conduct of external cooperation. EIPA has been called upon by the European Commission to share experience and knowledge about the management of regional integration with other parts of the world. These programmes began with the Association of South-East Nations (ASEAN), were then developed in Central America and eventually all of Latin America. More recently, as *Eduardo Sánchez Monjo* describes in his piece, EIPA has played an important role, through its Antenna in Barcelona, in the MEDA programmes of cooperation between the EU and its partners around the Mediterranean.

Looking to the future

What will be the challenges posed by integration for the public administrations of Europe in the coming years? There is no shortage of big issues to deal with: enlargement, demographic trends, the continuing challenges of economic competitiveness and the "European social model", and crises in neighbouring areas, to name but a few.

The implementation challenge which is the theme of this issue will remain considerable, especially in the context of enlargements of the Union. Priority seems likely to continue to be given also to the process of rethinking and reviewing European legislation known as "Better Regulation" and "Better Lawmaking". In addition to simplification of laws, this will involve a continuing effort to learn about the potential – and the limits – of non-legislative approaches to cooperation and "alternative methods of regulation".

New demands will also arise with regard to the way in which the EU manages its external relations. The constitutional treaty foresaw the creation of a European external action service as one means to address the needs for greater coherence and effectiveness in the EU's external relations. Whatever happens next in the formal "constitutional" debate, the pressures for change and innovation in this respect are probably irresistible.

The "constitutional" debate is being picked up again. The big questions may prove to be even more difficult this time round if they are not handled with care, since the debate about the kind of European edifice we want to build is now openly associated with debate about defining who is part of "we". Whatever the form and the ambition of the process this time round, public administrations can and must play an active role in broadening political and public consensus as to the nature and needs of the Union. In addition to supporting sustained and targeted educational campaigns, this means continuing to strengthen the participation of stakeholders in the formulation as well as the implementation of European policies – learning by doing, so to speak. The key challenge in the next years may in fact still be the pursuit of that "de facto solidarity" of which Schuman spoke – learning to build citizens into the construction of Europe. ::

Note

- * Dr Edward Best, Professor; Head of Unit "European Decision-Making", EIPA.



Colloquium "Rethinking Europe for the New Millennium: A New Institutional Framework for an Enlarged Union", organised by EIPA in association with the European Commission and the Finnish Presidency, held in the "Statenzaal" of the Provincial Government House in Maastricht on 5-6 November 1999.

Left to right: Paavo Lipponen, Finnish Prime Minister; Henning Christophersen, Chairman of EIPA's Board of Governors; Michel Barnier, Member of the European Commission; Carlo Trojan, Secretary-General of the European Commission and Vice-Chairman of EIPA's Board of Governors; Isabel Corte-Real, Director-General of EIPA.



Paavo Lipponen, Finnish Prime Minister.



Photograph taken on the occasion of the signing of the agreement setting up EIPA's Antenna in Barcelona, the "European Centre for the Regions (ECR)", on 25 January 1996. Far right Jordi Pujol, President of the Generalitat of Catalonia.

Making European Policies Work:

Research into the Implementation of EU Law in the 21st Century

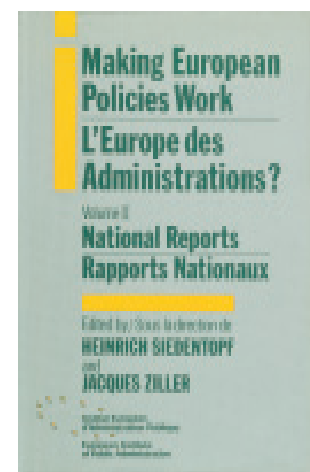
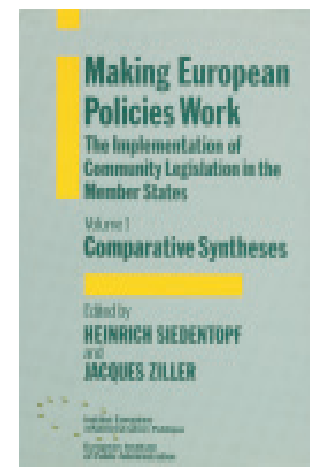


By Prof. Dr Jacques Ziller*, EIPA 1986-1989

Introduction: From Eurobore to Euroscores

When I arrived in Maastricht from France in March 1986, I had long known Professor Heinrich Siedentopf to be an excellent specialist in comparative public service law and administrative science. What I did not know was that he had also developed a keen interest in the implementation of Community law, leading him to conduct the first systematic, in-depth comparative study on this subject commissioned by EIPA. We subsequently published this study together.¹ I should emphasise here that my own contribution to this work was modest. It involved organising the conference at which its results were first discussed and being responsible for the work required to publish a series of texts which had not initially been intended for publication by their authors. But it was really Professor Siedentopf, a distinguished member of EIPA's Scientific Council, who conceived and coordinated the research, which was a follow-up to an initial work published by EIPA under the direction of Giuseppe Ciavarini Azzi,² who was at that time an official of the Secretariat-General of the European Commission. The book was a great success and is still considered as the pioneering work on the subject. However, among the reviews published at the time, a British author – in the context of “Euro scepticism” and “Euro enthusiasm” which were much discussed in the United Kingdom – invented the term “Eurobore” to describe this book, not so much to criticise its contents but to highlight its sheer size: two volumes, the second of which, at over 700 pages, contained some chapters in English and others in French ... I was to blame because I had insisted on publishing the ten national studies relating to the implementation of sixteen directives and two regulations which provided the material for the comparative and general chapters published in the first volume in both an English and a French version.

The diversity of the sectoral policies permitted by the study of these eighteen Community legislative texts and the systematic nature of the comparative study have not been reproduced since then. This is a great pity when we consider that twenty years have passed and sixteen new Member States have since been added to those that were examined in this book. In my opinion, the comparative conclusions amply developed by Professor Siedentopf – and by Professor Butt Philip with regard to the two regulations – are still very broadly valid today but deserve to be re-tested by studies of a similar size. Studies of implementation continue to be conducted, but to a more limited extent with regard both to the sectors covered and to the countries studied and also because they are to a great extent limited to the issue of transposing directives. Over twenty years we have therefore moved from “Eurobore” to “Euroscores” as the research too often tends to use, quite uncritically, the “scoreboards” published regularly by the European Commission. These documents, which do not always go by the name of “scoreboard” – a term apparently considered likely to overcome reader



boredom – content themselves with a highly formalistic inventory of the transposition work. This is most often arranged in a ranking designed to show who is at the top and bottom of the Community class. Too often they merely compare the speed of the work involved in transposing Community texts and more rarely the way in which the pre-established formal standards are attained, without however seeking answers to the essential questions which should be the *raison d'être* of studies concerning the implementation of EU policies: why are there difficulties in implementing these policies and texts and why do these difficulties differ, in terms of both quantity and quality, from one Member State to another.

I am convinced that research into the implementation of EU policies is useful and deserves to be updated and expanded by exploiting new sources of information and new resources which did not exist when EIPA was a pioneer in terms of research twenty years ago.

Why conduct studies on implementation?

Why would it be useful to repeat studies on implementation today? On the one hand, we could of course say, to give work to social science researchers as a plea for our own cause, but more importantly to gain a better understanding of the daily practice of the European Union's law and policies and to contribute to the ongoing effort to improve the EU's legislative role.

Understanding

Studies on implementation are undeniably relevant to sectoral policies. Within the Commission there have been periods and directorates-general in which considerable attention has been focused on Community legislation despite the natural tendency of most departments to develop new texts, an activity perceived to be more gratifying than difficult ex-post impact studies for which resources are much more scarce and cooperation with national governments is not so easy to achieve as for the discussion of new texts.

In fact, a number of university studies on the subject of implementation have concerned EU environmental policy as it is one of the policy areas in which the poor transposition of EU directives has an impact which is particularly easy to observe and because it also involves a discipline in which interdisciplinary research is particularly well developed. Yet other areas of Community and EU legislation remain unexplored or have not been studied very systematically, whether in terms of the internal market, social policy or the area of freedom, security and justice which since the Amsterdam Treaty has replaced Justice and Home Affairs in the third pillar of the Maastricht Treaty.

I believe that the time has come to open up a new chapter in research by conducting studies with regard to the enlargement after 1 May 2004. It is a matter of urgency that we make a substantial investment in this area. Not so that we can say for example that the Estonians are top and the Poles are bottom of some league table or other but to get to the heart of the problems that arise. It is sufficient to remember that over two years have elapsed since the enlargement to 25 and that in some of the new Member States a larger or smaller part of the *acquis communautaire* has not yet even been transformed into laws or regulations, to say nothing of their translation into action by the administrations concerned. No doubt legal practitioners have not sufficiently focused on Articles 38 and 39 of the final Act of Accession of 2003 which gives the Commission the power to take any appropriate measures in response to actual or potential failures by new Member States to fulfil their obligations. Without independent scientific work it will be particularly difficult to assess the position of the Commission in the years immediately following the enlargement and therefore to form an opinion on the effectiveness or at least the usefulness of clauses which could also be perceived as discriminating between new and old Member States.

Reform

Although particularly useful in gaining an understanding of the situation in Europe in terms of the implementation of public policies and the effectiveness of legislation, the studies of implementation also have a role to play assisting in the reform of such policies and legislation and, at first sight, the European context favours the development of this role.

The slogan “better legislation” has become one of the key topics in EU institutions, particularly since the publication in 2004 of a Report from the Commission on European Governance³ which sets out the lessons it has learned from the responses to its 2001 White Paper on Governance and states its intentions for implementing it. Besides a series of topics such as “Better involvement”, “Contribution of the EU to global governance” and “Refocused policies and institutions”, the report also contains a chapter devoted to “Better policies, regulation and delivery”.

The issues involved in improving regulation and lawmaking therefore appear to be closely linked to the issue of improving the implementation of policies, as Heinrich Siedentopf pointed out twenty years ago. And it is true that some changes in this direction can now be observed. However, the results are not immediately apparent as it was only in 2005 that the Commission began to establish new procedures to achieve “better legislation”. These involve widening the participation of different levels of administration, particularly regional and local levels, as well as what is usually referred to as civil society. I believe that these new procedures in themselves are sufficient justification for reviving the implementation studies, if only to find out whether this “better legislation” is merely a new fad or is really a change which is likely to improve the operation of the European Union and its policies.

Recently, a new issue has arisen: it seems to me that research into implementation could also help us to understand whether and, if so, to what extent the two protocols appended to the Treaty Establishing a Constitution for Europe which deal with the role of national parliaments and the application of the principles of subsidiarity and proportionality will be able to contribute to the improved application of Community legislation. The sceptics who argue that these two protocols only contain changes of a formal nature and that the national parliaments are already overflowing with the mass of information they receive from the European Union, which would explain their lack of attention to EU policies, can be countered with the pilot project developed at the COSAC meeting in early 2005. This experiment, focusing on the “railway package” has, I believe, already clearly demonstrated, despite the limitations imposed by the fact that all the practical conclusions of enlargement had not yet been drawn at the time – especially in terms of translations – that the national parliaments can play an effective part in terms of legislation, which should lead to improved implementation.

The extent of the work still to be done in the Member States must also be emphasised. One of the questions to be asked in this context is whether we can afford to wait to ascertain the ultimate fate of the constitutional treaty. It should be noted that two Member States have already taken the necessary measures with regard to the texts relating to the application of the two protocols: the constitutional review of February 2005 in France and, in Germany, the law of 17 November 2005 on the strengthening of the rights of the Bundestag and Bundesrat with regard to EU matters. In both cases this involved putting in place the procedures necessary to implement the early warning system with regard to subsidiarity and referral to the Court of Justice on behalf of the parliaments. And in both cases it was laid down that these internal statutory provisions would enter into force at the same time as the Treaty Establishing a Constitution for Europe. But it will be observed that, from a legal point of view, the constitutional treaty contains hardly anything more than an invitation to the Member States, and not an obligation on them, to establish a mechanism which could actually be put in place immediately to cover the main points. In this context we may wonder whether implementation studies could assist in asking the right questions at the right time. If it is indeed true that the participation of national and regional



parliaments will result in better implementation of Community and EU legislation, it would certainly be worthwhile to test the mechanisms designed to allow them to participate within the framework of the Member States without waiting for the constitutional treaty to be ratified by all the Member States and to enter into force. If it is not ratified, the implementation studies could be a useful contribution to reformulating the solutions into an alternative treaty.

To these topical elements must be added the ongoing and general issue of the “Europeanisation of public administration”. I believe that everything that can be brought together within the concept of a “European administrative space” is directly linked to the issues surrounding implementation: not only the transposition of directives into parliamentary bills but increasingly the day-to-day application of EU legislation, as it appears in national laws which transpose directives or framework decisions (Article 34, Treaty on the European Union) but also in the Community regulations which do not need to be transposed to be immediately applicable. One of the aspects of this issue which is receiving an increasing amount of attention in some Member States is what is referred to in Italy as “horizontal subsidiarity”, i.e. the formal involvement of private individuals or composite public/private entities in the actual implementation of EU legislation.

Finally, it should be emphasised that EU policy is developing more and more rapidly into a new area which certainly requires implementation studies, i.e. cooperation between police forces and courts in criminal and civil matters. The difficulties which arose in 2005 with regard to the implementation of the European arrest warrant after negative decisions were taken in respect of this provision by the constitutional or supreme courts of Poland, Germany, Belgium, Spain and Cyprus reveal the lack of solid preparatory work on EU legislation in this area and measures for enacting it. Cooperation in civil matters is also worthy of particular attention, mainly because it depends to a large extent on the efficient operation of networks. Although supported by the European Commission, they are ultimately dependent on the voluntary cooperation of administrations which are unused to looking beyond their borders.

How are studies of implementation to be conducted?

How are studies of implementation to be further developed? Examination of published research shows that there are only a few studies that have any great value in terms of both quantity and quality. It should be emphasised that most of these studies originate from Germany or the German-speaking area. This is to the credit of the German doctrine but worrying if we consider that studies of implementation must be comparative if they are to have an added value in the context of EU policies.

Quantitative research

The first problem revealed by studies of implementation is that their qualitative nature is underdeveloped, to the detriment of considerations which have been deduced from quantitative data, and hardly go beyond these data. What is more, even though quantitative research on the subject of implementation seems relatively simple at first sight, it remains limited, perhaps precisely because the Commission’s “scoreboards” are available. What purpose can these data actually serve? Exactly what data are available on the transposition of directives and framework decisions? The data which are readily available to us relate to the percentage of directives transposed over time. What is important is not so much that the transposition is completed within the time limit laid down in the text but the fact that they are transposed at all, even if six months or a year late. This is a phenomenon that we had already identified twenty years ago. Yet the studies give less importance to actual transposition in the course of time than to keeping within the time limits for transposition.

This question is inseparable from the more general issue of implementing directives or framework decisions. Is their effect felt from the time of their transposition into legislation and regulations in all the Member States, as is often the case with regard to negative integration in the context of the internal market,

or is it necessary to create an area of regulation in which EU policy can demonstrate its impact even when confronted with major differences between one Member State and another? The issue of the European arrest warrant seems particularly interesting in this regard, even though little studied to date.

What is more, the readily accessible quantitative data do not allow us to form an opinion on the quality of the transposition in relation to Community legislative requirements. The *scoreboards* are essentially based on information supplied by Member States who have been asked whether they have effected the transposition and the instrument they have used. However, the Commission only rarely has the resources necessary to verify whether the contents of the transposing acts really meet the objectives set and are actually in harmony with Community legislation. To this end, studies of implementation limited to specific cases, or indeed specific countries, but thorough and critical, are a particularly valuable tool for determining the effectiveness of European integration and evaluating the usefulness of existing *scoreboards*.

Besides the Commission's *scoreboards* there is no doubt that case law should be used more systematically as a tool for implementation studies. To my knowledge, there has only been one study to date, twenty years ago now, which dealt with all preliminary rulings and sought to learn lessons from their geographical origin, not to mention the role of lawyers, judges and the parties involved in bringing the action. How has it come about that there have not been other studies of this kind despite the fact the data are easy to collect as everything can be found in the Official Journal of the European Union or at least in the judgments of the Court of Justice? That said, all the preliminary proceedings for the whole of the European Union are so few in number – compared with the enormous mass of actions being heard before the courts of the Member States – that it is only possible to draw a limited number of generally applicable conclusions. If the number of preliminary rulings reflected the number of problems with implementing Community legislation in the Member States, the EU would no doubt be an almost perfect legal system from the point of view of its implementation!

Even more interesting than the data resulting from preliminary rulings would be the data relating to court proceedings implicating Community legislation in Member States, whether or not they gave rise to a preliminary ruling. The courts in the Member States often have to confront matters relating to the application of Community legislation but I know of few studies that focus on this aspect, unless in a single Member State. There is one valuable source for implementation studies which has undoubtedly been insufficiently exploited: complaints made to the Commission. In its Communication of 2002 on improving the implementation of Community legislation, the Commission also noted that the complaints procedure was being used more and more often. The central complaints register established at the Secretariat-General of the Commission is particularly useful from this point of view. This is a source – very little used in research – which allows work to be done on particularly significant qualitative and quantitative data.

A thorough exploitation of the data in the central register could produce particularly interesting conclusions with regard to implementation. Obviously, complaints are no more than a scaled-down reflection of the actual situation but I know of no publication which is based on the systematic exploitation of this information to identify the areas and countries in which difficulties arise with the implementation of Community legislation.

A source which may be more difficult to exploit but which could produce significant results takes the form of the complaints made to the European Ombudsman. In theory, these complaints do not relate to any action by the governments of the Member States but solely to actions by the EU institutions. But in reality the European Ombudsman receives a consistent number of complaints which he is not competent to deal with. He therefore has to refer the complainants to his counterparts in the Member States who for this reason also hold very valuable information on the implementation of EU legislation and policies in the Member States. It includes important statistical and qualitative data which could be used in research.

Qualitative research

While it is true that quantitative research into the implementation of the European Union's legislation and policies is difficult but useful, it is even more true in the case of qualitative research. Legal practitioners know how to exploit case law in their research but their analysis only relates to implementation to a minor extent as it is more centred on the content of Community legislation. This is an area in which much more could be done. It is true, as I observed above, that there are sectoral case studies. But many of these case studies suffer from a methodology which is insufficiently precise and developed and in particular from the fact that they are often not led by multidisciplinary teams in which legal practitioners, sociologists and economists join forces. With regard to overall studies covering a wide range of sectors and all the Member States, we should not deceive ourselves: the resources required to conduct them simply do not exist, either in the budgets of universities and research institutes or in the budget of the European Union itself.

Conclusions

Research into the implementation of the European Union's legislation and policies has a fine future before it. It will be up to the social science research centres to develop precise and rigorous methodologies which will enable them to respond to the needs that are certain to be generated by the Commission: with increasing frequency EU legislation imposes an obligation on the Commission to report to the European Parliament on the implementation of texts. It often turns to consultancy firms.⁴ If there were more research centres equipped with a good methodology and a multidisciplinary team, they could offer guarantees of seriousness and impartiality, which are difficult for profit-making enterprises to produce. They could even kill two birds with one stone, replenishing their own research budgets with income from consultancy activities for the Commission – or indeed for the European Parliament – and making a useful contribution to improving EU legislation and policies and their implementation. ::

Notes

- * Prof. Dr Jacques Ziller, Professor at the European University Institute in Florence on secondment to the University of Paris I Panthéon-Sorbonne.
- ¹ Heinrich Siedentopf and Jacques Ziller (eds) *L'Europe des administrations? – la mise en oeuvre de la législation communautaire dans les Etats membres*. Brussels, Bruylant – European Institute of Public Administration, 2 Vols., 345 and 752 pp., 1988, also published in English under the title *Making European Policies Work – The Implementation of Community Legislation in the Member States*. (London: Sage, 1988).
- ² Giuseppe Ciavarini Azzi, and Joël de Bry, *L'Application du droit communautaire par les états membres = The Implementation of the E.C. law by the member states*. (Maastricht: EIPA, 1985).
- ³ European Commission, *Report from the Commission on European Governance*. (Luxembourg: Office for Official Publications of the European Communities, 2003). http://ec.europa.eu/governance/docs/comm_rapport_en.pdf
- ⁴ For example the study commissioned to MainStrat for the preparation of the *Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Regulation (EC) 1348/2000 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters {SEC(2004)1145} / COM/2004/0603 final*.

Improving the Application of Community Law: *Legal Dimensions and Challenges Faced*



By **Véronique Chappelart***, EIPA 2004-present and **Peter Goldschmidt****, EIPA 1997-present

Introduction

Improving the quality of application of Community law is a major challenge, the visible part of the iceberg known as “European governance”, improvements in the operation of which are currently being looked at with a view, among other things, to achieving the aims of the Lisbon Strategy.

So how do we achieve this objective? Do we improve the quality of Community legislation? This could be one avenue to explore. By providing quality training in Community law? This might be another possibility. The last option is the pet subject and the *raison d’être* of the “antenna” that the European Institute for Public Administration set up in Luxembourg in 1992, namely the *European Centre for Judges and Lawyers* (referred to in the following as the Centre) which was originally intended to fulfil this role with the cooperation of the Government of the Grand Duchy of Luxembourg.

The Centre was created in response to the objectives sought by the White Paper on the completion of the internal market.¹ Although this White Paper encouraged the use of new harmonisation instruments such as mutual recognition or the principle of the State of origin, the application of Community law by the Member States is no less incomplete or unsatisfactory for all that.

What is more, the White Paper on European Governance² underlined this point. Now, according to the Lisbon Agenda, effective application of Community law is also a factor in improving competitiveness and cross-border cooperation.

So the Centre offers training programmes on the interpretation and application of Community law that are intended to provide working tools and food for thought for magistrates, lawyers, officials at the European institutions and central, regional or local government in the Member States. The Centre’s activities take place in Luxembourg and in the other Member States, as well as in the accession states benefiting from bilateral technical assistance programmes.

The Centre is thus trying to do its bit for European integration both in the context of the enlargement of the European Union and that of the Lisbon objectives, by providing training courses on the principles of Community law, internal market law, the law on the area of freedom, security and justice, the application of Community legislation and Community litigation.

In the training provided for national government officials, particular stress is placed on the legal dimensions and the challenges that these face in improving the application of Community law (I), and the risks involved in failure (II).

The legal dimensions and the challenges faced by Member States in improving the application of Community law

As the European Community is a “Community based on law”,³ it relies on a set of legal standards⁴ that must be followed and applied by the Member States.

With regard to secondary legislation, Article 249 EC⁵ mentions in particular regulations, directives and decisions that are legally binding acts. As regulations and decisions are mandatory in all their elements and are directly applicable in the Member States, they have not generated as much litigation as the directive which for its part is supposed to be transformed into national law. The theme that follows will be limited to this last point.

The legal dimensions

What is original about the European structure is that the European Community is an integration organisation, unlike the conventional international organisations⁶ which are inter-state organisations.

European integration has mainly been achieved through legislation. The process of integration is in fact largely guided by the specificities of Community law, which takes precedence over national law and which can be invoked directly by individuals in support of an appeal to a national judge.

The Van Gend en Loos judgment of 5 February 1963⁷ established that the European Community is an “*independent inter-state*” organisation, meaning that the Community legal system is separate from both the international legal system and the national legal systems.

Since the Community is designed to be an integration organisation, with the States having pooled some of their competences and left it up to independent institutions to take care of the interests pooled in this way, rather than being content with cooperating or coordinating their activity, it is thus invested with its own appropriate bodies and specific procedures, legal or not, for ensuring adherence to and application of Community law by the Member States and their nationals.

The predominant position of the economy in European integration must not lead us to forget the determining role of the law which has to some extent “blockaded” the *acquis*: Europe as conceived by its founding fathers has proven to be a Community based on law, having a Court of Justice as the guardian of Community law, which has a precious ally in the Commission that provides, by application of Article 211 of the EC, monitoring of the application of Community law in the Member States.⁸

The way in which the monitoring of the application of Community law operates is a source of great interest for the national officials that the Centre trains. It has therefore designed tailored training programmes focusing on the challenges that these officials face in the application of Community law.

The challenges faced

As the directive is the preferred instrument for the creation of the internal market, its vocation is to intervene in areas where there are substantial differences between the national legislations. It aims to encourage Member States to approximate their legislation and to transfer to the national level the fundamental principles of the internal market.

Despite the wording of Article 249 paragraph 3 EC⁹ it has not always been easy for the States to make a clear distinction between the result to be obtained and the means to be employed to achieve this, such that numerous cases of flawed transposition have occurred.

As a result, the normative intensity of the directives has been progressively reinforced. The States have been favourable towards this, even if the result was to reduce their room for manoeuvre.¹⁰

This practice then declined when recourse to the “new approach” directives was preferred in order to promote the mutual recognition as affirmed by the Court in the “Cassis de Dijon” case law of 1979.¹¹

It is still the case that a flawed or partial transposition, or one that introduces exceptions or derogations not provided for by the directive, or which is late, constitutes a breach by the State of its Community obligations. Furthermore, during the transposition period, the States must refrain from passing measures that are likely to seriously compromise the outcome laid down by the directive.¹²

The national formal review judge and the Court of Justice have a very important role to play here as it is up to them to check if the internal measures concerned constitute a definitive and complete transposition of the directive.

Furthermore, the transposition measures must have a legally binding effect¹³ and the failure to notify transposition measures also constitutes a non-fulfilment.

Moreover, the Member State should not claim internal difficulties or particular provisions in its national legal system to escape from its obligation to correctly transpose the directives. Neither are the shortness of the periods of transposition, the dissolution of a national assembly, or an overloaded parliamentary timetable valid justifications. Nor should the direct effect of the directives be an admissible argument to justify transposition failure.¹⁴

Non-fulfilment of these obligations renders the Member State liable to infringement proceedings brought by the Commission.

Risks faced by the Member State in the event of flawed application of Community law

During the pre-litigation phase

The Court has acknowledged that the European Commission is invested with a “general task of supervision” allowing it to ensure that the Member States act in accordance with their competences.¹⁵

The Centre used this statement as a starting point in raising public awareness among the audience for its training of the fact that the Commission has preventive powers such as the right of information drawn from several provisions of the Treaty,¹⁶ supplemented by wide-ranging or even repressive investigative powers such as those of competition law.

The Centre has frequently had the opportunity to train officials from the central administrations of the “new Member States” and the accession States on the operation of the procedure for establishing a non-fulfilment known as the “infringement procedure” provided for by Articles 226, 227 and 228 EC, and to allow them to develop a culture of cooperation with the departments of the Commission; the aim being to make them aware of the fact that instituting an infringement procedure does not necessarily signify the referral of a case to the Court and of their responsibilities in terms of the quality of the application of Community law.

As the infringement procedure takes place in two successive phases, one administrative known as “pre-litigation” and another for the litigation proper, it is essential that the national administrations understand their role during the pre-litigation phase, since this is the opportunity for the Member State being prosecuted to justify its position or even regularise the situation by complying with its Community obligations.

A period of exchanges may begin between the Commission and the Member State before the formal infringement proceedings are actually opened, and the Commission¹⁷ may decide to inform the State that its departments are assuming the existence of a non-fulfilment and send it an invitation to make a statement on the veracity of these presumptions referring to the obligation of cooperation provided for by Article 10 EC.

The Commission may then proceed with the formal opening of the pre-litigation phase of the infringement procedure, which takes place in two stages: the formal notice and the reasoned opinion.

In the first stage, the Commission formally instructs the State to provide its observations on the facts for which it is being criticised.¹⁸ This letter is a kind of succinct notification of the grievances, constituting a substantial formality that determines the correctness of the procedure.¹⁹

Then the Commission may send the State a reasoned opinion which is a



European Court of Justice.
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coherent and detailed account of the reasons leading “to the conviction that the State concerned failed to fulfil an obligation under the Treaty”.²⁰

During the pre-litigation phase, there is still time for the State to convince the Commission of the unfounded nature of the grievances. If it succeeds, the case is dismissed. The various pre-litigation steps and referral of the case to the Court are therefore not automatic.

The Centre places special emphasis on this fact in the training that it provides to the officials of the Member States, in order that they take cognisance of the fact that the aim of the infringement proceedings is to arrive at a situation where the State concerned regularises its position in relation to its Community obligations and that by cooperating with the Commission they can actually contribute towards improving the quality of the application of Community law in their State.²¹

During the litigation phase

If the Court considers that the State is in breach of its obligations, it issues a declaratory judgment recording the breach.

In the event that after it has been sentenced for a first time by the Court by application of Article 226 EC, the State continues not to fulfil its Community obligations, the Commission may open a new infringement procedure, this time by application of Article 228 CE, which may lead the Court to find that the State has committed a “breach on breach” and to impose upon it a lump sum and/or a penalty payment.

The Republic of Greece was the first Member State to be ordered to pay a penalty under Article 228 EC. The amount was €20,000 per day of delay in discharging the obligations incumbent upon it.

The Republic of France was, for its part, the first Member State to be sentenced to pay both a lump sum AND a penalty by application of Article 228 EC in the “undersize fish” case. The lump sum was €20,000,000 and the periodic penalty €57,761,250 for each period of six months counting from delivery of the judgment.²²

The Court statistics show that huge numbers of cases are the result of actions for failure to fulfil obligations brought by the Commission,²³ which shows that the States are still experiencing difficulties in correctly applying Community law.

Would not one possible solution for improving the quality of application of Community law, be to deal with the problem at its source by simplifying the *acquis* and by legislating better?

Conclusion

The message issued by the Centre stresses the various aspects (organisational, functional, etc.) of the obligation of Member States to correctly apply Community law. Here, the will and the capacity of the national authorities have a particular role to play, as the Commission noted in 2005 in connection with the transposition of directives.²⁴ Hot on the heels of this statement, the Centre is ensuring that the officials that it trains, both from institutions and Member States, are made aware of the need to develop among them a mutual understanding and better working methods.

Furthermore, in order to satisfy the increasing demands of its main “clients”, more and more activities relating to the operation and management of courts, such as the management of relations between courts and the press, are currently being offered.

Training workshops on the drawing up of preliminary rulings, legal documents, pleadings before the Court of Justice, and on the practice of infringement procedures brought by the Commission are also provided by the Centre.

The training offered has traditionally been centred on an analytical and interpretive approach to new developments in Community legislation and case law. Whilst retaining this preferred approach, in recent years the Centre has been using modern training methods combining an interactive and open approach, in the context of workshops and discussion fora, with the aim of

transferring and/or exchanging specific tools for practitioners of Community law.

Moreover, could not the simplification of the Community acquis and improved legislation be the keys to making the task of the Member States in the application of Community law easier?

This has not escaped the Commission which has made the simplification of the acquis an absolute priority for achieving the objectives of the Lisbon Strategy and “reforming” the governance of the European Union. This realisation could work to the advantage of the Member States. In fact, cases of lack of or flawed transposition cannot be explained solely by their unwillingness or lack of coordination on European matters.

The Centre is also active in this area, training officials from the accession States in the various techniques and methods of coordinating their work on European issues:²⁵ it has designed training programmes focused on a comparative analysis of the national methods of coordination for existing European matters and practical role play exercises.

Should not the Commission put itself in the place of the recipient of the legislation when drafting new directive proposals? Better legislation, the fight against legislative inflation and simplification of the acquis would benefit from a move in this direction.

So, an impact analysis performed before the production of legislation allowing an assessment of how the legislation can be correctly received into national law, and prior identification of the difficulties of application that could arise, should not be overlooked.

This is moreover the method that the Commission is currently trying to apply²⁶ in order to bring into effect the White Paper on European Governance:²⁷ *“proposals must be prepared on the basis of an effective analysis of whether it is appropriate to intervene at EU level and whether regulatory intervention is needed. If so, the analysis must also assess the potential economic, social and environmental impact, as well as the costs and benefits of that particular approach.”*

For their part, if the States were also to improve their evaluation tools,²⁸ the application of Community law would be improved and facilitated as a result. The Centre plans to develop training activities on this subject, either in cooperation with its general management in Maastricht or the other “antennae” of the European Institute of Public Administration, based in Barcelona, Milan and Warsaw, or individually by concentrating on a legal approach to the question. ::

Notes

- * Véronique Chappelart, Lecturer, European Centre for Judges and Lawyers, Antenna Luxembourg.
- ** Peter Goldschmidt, Senior Lecturer; Director of the European Centre for Judges and Lawyers, Antenna Luxembourg.
- ¹ White Paper on the completion of the internal market, 28-29 June 1985 COM (1985) 310.
- ² White Paper on European Governance 25 July 2001 COM (2001) 428 final.
- ³ As Advocate-General Darmon mentioned in his conclusions in the case 222/84, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary*, [1986] ECR p. 01651.
- ⁴ Primary, secondary, conventional and case law.
- ⁵ Article 249 paragraph 1 EC provides that: *“In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.”*
- ⁶ OECD, UN, NATO, WHO, ILO, etc.
- ⁷ ECJ 5 February 1963, case 26/62, *Van Gend en Loos v. Nederlandse Administratie der Belastingen*, [1963] ECR p. 00003, paragraph 23.
- ⁸ Article 211 paragraph 1 EC provides that: *“In order to ensure the proper functioning and development of the common market, the Commission shall: ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied.”*
- ⁹ *“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”.

- ¹⁰ Once an initial period of opposition had passed, they in fact called for very precise directives for evident reasons of legal security and also in order to avoid possible “mistakes” by the national members of parliament at the national transposition stage.
- ¹¹ ECJ 20 February 1979, case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, [1979] ECR p. 00649.
- ¹² ECJ 7 December 1993, C-83/92, *Pierrel SpA and others v Ministero della Sanità*, [1993] ECR p. I-06419 and ECJ 18 December 1997, case C-129/96, *Inter-Environnement Wallonie ASBL v Région wallonne*, [1997] ECR p. I-07411, paragraphs 43 to 46.
- ¹³ Which is not the case with simple administrative practices or circulars, ECJ 25 May 1982, case C-96/81 *Commission v the Netherlands*, [1982] ECR p. 01791, ECJ 6 May 1980, case 102/79, *Commission v Belgium*, [1980] ECR p. 01473 and ECJ 2 December 1986, case 239/85, *Commission v Belgium*, [1986] ECR p. 3645.
- ¹⁴ ECJ 14 March 2006, case C-177/04, *Commission v France*, [2006] ECR I-02461 and ECJ 6 May 1980, case 102/79, *Commission v Belgium*, [1980] ECR p. 01473.
- ¹⁵ ECJ 5 May 1981, case 804/79, *Commission v the Netherlands*, [1981] ECR p. 01045.
- ¹⁶ In particular, Article 88(3) EC (notification of planned state aid to the Commission); Article 95(4) EC requiring Member States to notify the deviating measures that they intend to adopt to the harmonisation regulations adopted by the Council; the obligation of the Member States to notify the Commission of the national measures for transposition of directives, etc.. Articles 81 to 89 EC (monitoring on the basis of evidence and in situ performed by agents duly authorised by the Commission whom the companies must obey).
- ¹⁷ In practice, the competent Directorate General of the Commission charged with instituting the infringement procedure.
- ¹⁸ The Member State is generally allowed a period of 2 months for submission of its observations to the Commission.
- ¹⁹ ECJ 27 May 1981, Joined cases 142/80 and 143/80, *Essevi and Salengo*, [1981] ECR p. 1413.
- ²⁰ ECJ 19 December 1961, case 7/61, *Commission v Italy*, [1961] ECR p. 00635.
- ²¹ And thereby avoid being brought before the Court of Justice.
- ²² ECJ 4 July 2000, case C-387/97, *Commission v the Republic of Greece*, [2000] ECR p. I-05047 and ECJ 12 July 2005, case C-304/02, *Commission v France*, [2005] ECR p. I-06263.
- ²³ 97.97% of direct appeals to the Court are actions for failure to fulfil an obligation, see legal statistics of the Court of Justice for the year 2005.
- ²⁴ Communication from the Commission of 16 March 2005 “Better regulation for growth and jobs in the European Union” COM (2005) 97 final and its annex SEC (2005) 175.
- ²⁵ Whether in the legislation preparation phase or in the implementation phase of the Community legislation.
- ²⁶ Impact analysis guidelines 15 June 2005, updated 15 March 2006 SEC (2005) 791. “Commission objectives for the period 2005-2009” COM (2005) 12.
- ²⁷ White Paper on European Governance 2001, COM (2001) 428 final.
- ²⁸ Dossiers and studies on the legal, budgetary or administrative impact of proposed directives, networks of correspondents charged with coordinating and providing monitoring of legislative preparation and transposition activities, etc.

Building Capacity for Policy Implementation



By **Dr Phedon Nicolaides***, EIPA 1996-present

The importance of capacity for policy implementation

The Single European Act, which reformed the EC Treaty, set 31 December 1992 as the date for the completion of the internal market. When the day eventually arrived, it was celebrated with fireworks across the EU. It represented the high point of confidence in the ability of the EU to deliver prosperity and stability.

Yet, just a couple of months earlier, in October 1992, the European Commission had published a report titled “The Internal Market after 1992: Meeting the Challenge”. The report warned about the risks of faulty or non-implementation of the legislative measures aimed at removing the remaining technical, physical and fiscal barriers to the movement of goods, services, capital and labour. The report had been prepared by a high-level group chaired by Peter Sutherland, a former member of the European Commission and former Chairman of EIPA’s Board of Governors.

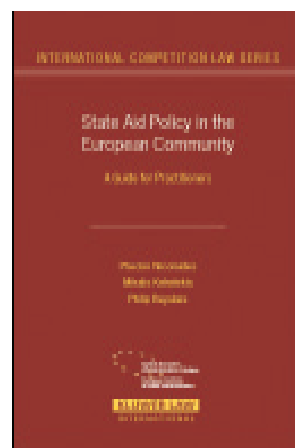
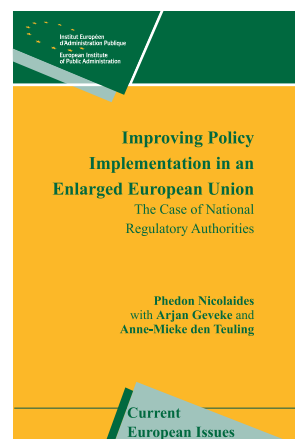
Even in those days of optimism, there was concern whether Member States had the administrative capacity to implement Community legislation and comply with the obligations that arise from that legislation. The Sutherland Report in particular, highlighted the responsibility of national authorities to cooperate with each other, because their actions (or instances of inaction) directly affect the citizens and businesses of other Member States. Quite simply, national administrative practices are a matter of common concern.

Cooperation between national authorities is important. It helps them to learn from each other’s experiences. This mutual learning was institutionalised in the “Karolus programme” of exchanges of civil servants, which was launched in 1993. Towards the end of the 1990s, exchanges of civil servants were expanded to a significantly larger scale with the establishment of twinning programmes that assisted the then candidate countries to develop administrative capacity for the implementation of Community rules and policies.

EIPA was intimately involved in both programmes. From the inception of the Karolus programme until its completion in 1999, EIPA managed close to 700 exchanges of civil servants and organised many debriefing and assessment sessions, which were held in Maastricht after the end of each round of exchanges. EIPA also provided input in a large number of twinning projects and ran seminars and training activities in all the past and present candidate countries.

Since its establishment, EIPA has been active in a number of initiatives for the improvement of public administrations. More recently, EIPA has been instrumental in developing and applying the Common Assessment Framework and contributing to the functioning of the EU Public Administration Network.

The common feature of all these programmes, networks and frameworks is the strengthening of the ability of national authorities to implement EU policies



and laws through the identification of good practices and the design of efficient institutional structures.

The study of institutional structures and processes and of ways of improving administrative capacity has been a central point of research undertaken at EIPA. This research has not only focused on generic issues of public management but has also examined specific problems in a number of policy fields. The results have been published in a series of books and reports.¹

The obligations of Member States

As mentioned, the formal completion of the internal market at the end of 1992 also marked the start of increasing concern about the ability of national authorities to apply EU law. To some extent it was natural that once the EU reached the end of its legislative programme, it would turn its attention to issues of policy application and enforcement. But with the benefit of hindsight, it is clear that the relative neglect of how the law was supposed to be implemented was the result not of excessive optimism but of not realising the significance of well-structured and well-functioning administrative systems in effective policy implementation.

The situation now is radically different. The importance of properly functioning public administrations is widely and frequently acknowledged at the highest political level. In December 1995, the Madrid European Council added administrative capacity to the Copenhagen criteria of EU membership.

On its part, the Commission, in its 2001 White Paper on European Governance, urged the old Member States to learn from the experience of the new ones in setting up new institutions. At first sight, this seemed to reverse the logic of EU membership. Since it was the candidate countries that had to adjust their administrative structures, what could the existing members learn from them? But precisely because many candidate countries had to start from scratch and design completely new institutions, they were unencumbered by institutional legacies which were unsuitable to the tasks of EU membership. The old could indeed learn from the new.

The effort to improve the capacity of Member States seems to be unending. Last year, the European Commission issued its "Recommendation on the Transposition into National Law of Directives Affecting the Internal Market".² The Recommendation identified certain good practices and urged Member States to adopt them. Chief among such practices are the assignment of monitoring and coordinating responsibility to a single minister and ministry, the establishment of a national database on transposed directives, and the encouragement of close cooperation between national officials who negotiate in Brussels and officials who implement national measures. In some respects, the Recommendation is an indication of policy failure: Member States should have done those things a long time ago.

The European Economic and Social Committee adopted an Opinion in September 2005 on "How to Improve the Implementation and Enforcement of EU Legislation". The Opinion pointed out, among other things, that "enforceable laws are backed by authorities that have the requisite administrative capacity. Otherwise administrative weaknesses result in implementation and enforcement problems."

The Commission has also issued a "Guide to the Main Administrative Structures Required for Implementing the *Acquis*" (May 2005). The Guide is accompanied by the following disclaimer: "This guide is produced as a working tool mainly for use by experts working for the European Commission and by experts in partner countries who are engaged in a process of approximation of their legislation and administration with those of the EU. Although this guide is prepared with care and is regularly updated, it may be incomplete and may contain errors. This document is not an official document of the European Commission and is not binding." Why must this valuable information remain in the form of a guideline? If Member States still lack the required capacity, why should they not be obliged to undertake the necessary adjustments?

Legally, the answer is easy: the EU has no competence in matters of national

public administrations. Yet, in practice the situation is more complicated. The EU has imposed many formal obligations on the Member States concerning their administrative arrangements. For example, they have to establish national regulatory authorities that are “functionally” independent. In the fields of regional policy and agricultural policy, Member States must have different administrative systems for managing and auditing structural funds and agricultural subsidies. It is clear and widely accepted that Member States do not have the freedom to do whatever they wish when they use Community money. Unfortunately, we do not have the same acceptance of a corresponding principle when it comes to the application of Community law in general.

Yet, we do have general principles that come very close to that. Article 10 of the EC Treaty requires that “Member States shall take all appropriate measures ... to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community.” The European Court of Justice has also ruled along similar lines that Member States must take all measures necessary to guarantee the application and effectiveness of Community law, and that Member States may not plead internal administrative difficulties for improper or ineffective implementation of Community law [see cases C-95/77, *Commission v Netherlands*; C-254/83, *Commission v Italy*; C-209/88, *Commission v Italy*].

One perhaps may retort that EU law cannot instruct Member States to have public administrations that behave efficiently and sensibly. But even here there are examples in EU law where the Union does require national authorities to act sensibly. For instance, Article 6 of the Framework Directive on Electronic Communications [2002/21, OJ L108, 24/4/2002] stipulates that “...national regulatory authorities ... [shall] give interested parties the opportunity to comment on the draft measure within a reasonable period. National regulatory authorities shall publish their national consultation procedures. Member States shall ensure the establishment of a single information point through which all current consultations can be accessed. The results of the consultation procedure shall be made publicly available ...”. The EU has told Member States that they must apply these good administrative practices.

What must Member States do?

If a Member State cannot escape its obligations under the Treaty on the grounds that it faces administrative difficulties, what must it do to improve its capacity to apply EU law and policies?

The research conducted by EIPA suggests that the amount of resources as such is not the most important factor. A rich ministry or department does not necessarily function more smoothly, nor is it more effective than a poorer ministry in applying EU rules. The most important factor is the institutional architecture of the administrative system: whether there are clear lines of responsibility and accountability, whether different ministries and departments cooperate, and whether there are requirements in the system for assessing policy outcomes and adjusting policy measures accordingly.

A good administrative system is a learning system. This means that there are incentives that induce its various components, from individual civil servants to entire ministries, to align their interests with the achievement of the objectives of public policies. The system “learns” when it can detect policy errors and initiate corrective measures. In this sense, a bureaucracy is a system that, even though it is composed of intelligent components, is incapable of learning and correcting policy errors. This is the case, for example, when the same procedure is followed irrespective of whether it became obsolete a long time ago or when excessive requirements are imposed on businesses irrespective of mounting evidence that they are too costly.

Conclusion

The mission of EIPA is to facilitate the process of European integration by offering services to the public administrations of the Member States and partner countries of the European Union. As the EU removes the remaining barriers to cross-border transactions and the cross-border movement of people, and as it enlarges, the deficiencies of national administrative structures and procedures become more visible and more harmful to the success of European integration – and the mission of EIPA becomes correspondingly more important. ::

Notes

- * Dr Phedon Nicolaides, Professor of Economics, Unit “European Policies”, EIPA.
- ¹ See Adriaan Schout, *Organisational Analysis of the European Activities of the Ministry of Economic Affairs* (EIPA, 2000); Phedon Nicolaides, *Enlargement of the EU and Effective Implementation of Community Rules* (EIPA, 2000); Frank Bollen, *Managing EU Structural Funds* (EIPA, 2000); Pavlos Pezaros, *Effective Implementation of the CAP* (EIPA, 2001); Christoph Demmke and Martin Unfried, *European Environmental Policy* (EIPA, 2001); Phedon Nicolaides, *From Graphite to Diamond: The Importance of Institutional Structure in Establishing Capacity for Effective and Credible Application of EU Rules* (EIPA, 2002); Phedon Nicolaides, with Arjan Geveke and Anne-Mieke den Teuling, *Improving Policy Implementation in an Enlarged European Union: National Regulatory Authorities* (EIPA, 2003).
- ² OJ L 98, p.47, 16/4/2005.

Surviving European Negotiations



By **Alain Guggenbühl***, EIPA 1993-present

Brussels, as the arena for negotiations between the 25 Member States of the European Union, has become a little world of its own. Today it offers national representatives who are participating in the EU decision-making processes a particular experience that is characterised by a game spirit, a businesslike and bargaining atmosphere, interpersonal communication enhanced by cultural and background diversity, as well as a cobweb of home-made rules with which to muddle through diversified preferences and interests. To some extent, this world has recaptured the essence of international representation described in Europe during the early years of the eighteenth century when, according to former diplomat Harold Nicolson, most representatives operated within the same professional format, knowing each other and developing an esprit de corps that led them to, if necessary, distance themselves from their nationality. Almost 200 years later, Richard Langhorne observed that with the EU's own structure, many officials both within domestic services and in the Brussels system conduct a kind of diplomacy without being diplomats in the formal sense. Today, missions in Brussels for national representatives – whether officials flying in from their “capital” or the attachés/counsellors established in the Permanent Representations – require specific preparation to fit into the clothes of diplomats of a peculiar kind and into a distinct organisation of national interests.

Once upon a time in Brussels

Individual preparation for such a formatted philosophy and collective management has been the target of the EIPA since 1987, when it started to design and invest in knowledge and pedagogical tools through its Programme on European Negotiations. At the time, the processes of negotiation among the Member States of the European Communities were at a crossroads, with specific dynamics suddenly made obvious and the number of meetings growing due to four specific contextual factors.

First, the completion of the internal market was set as an economic and political target, with close to 300 measures of approximation scheduled to be negotiated under the first significant attention of the media, as well as of interest groups, to the normal legislative action of the European institutions. Second, in 1987 the first Decision on “comitology” was adopted in order to provide the institutional framework for the exercise of delegated powers; this set a new negotiating challenge for national representatives, namely to formally and regularly convene with the European Commission to decide on the revision, adaptation and implementation of European legislative acts. Third, the Single European Act entered into force that very same year, introducing a more widespread use of qualified majority in a series of common policies and European prerogatives established in the original founding Treaties. The

shadow of the vote made the incentive to negotiate more salient and demonstrated more evidently the need to use specific techniques to defend national interests. Fourth, this was the time of the first multidisciplinary financial perspective deals that endowed common policies with multi-annual financial commitments; fierce discussion of these issues – in particular economic and social cohesion among the most and the least favoured regions after the accession of Spain and Portugal the preceding year – also took place in the wide open and made conspicuous the predominance of the culture of bargaining in European negotiations. Since most national representatives were not exactly at ease with such a culture, in their eyes the preparations for such a process took predominance.

The boot camps

EIPA's approach over the years has been to identify the job profile of any national representative or European official who is expected to participate in the negotiation processes inherent to the decision-making procedures, political deliberations and legislative production, from the initiation to the implementation phases. The abilities and skills required to survive in this environment have subsequently been targeted and a specific pedagogy has been designed to help current or future negotiators in Brussels either to survive longer or to perform better. EIPA has cultivated learning tools, knowledge and advice related to the negotiation and bargaining theory, the application of procedures and protocols, interpersonal communication, cultural awareness, politically correct behaviour and diplomatic language. Simulations and case studies have been designed to re-create genuine negotiations, within the Council or in co-decision, on European legislation dealing inter alia with toys, chocolate, packaging waste, trans-European networks, the WTO, nuclear safety, family reunification and cosmetics. Over the years, EIPA has polished the job profile of European negotiator and tailored the state of mind required to survive and perform better in European negotiations, whether as a national representative or as a European official. Twenty years of working with and accompanying thousands of national representatives and European officials enable us to outline four of the essential requirements for the job.

Game spirit

First, a European negotiator should be game-spirited. To be convinced that Brussels negotiations bear resemblance to a game, it suffices to witness the behaviour and attitudes of the actors at the end of a negotiation or meeting. Most individual reactions are those of traditional winners and losers, of satisfaction and joy for having used a sleight of hand or having concealed much more than is allowed in the conventional processes of give and take. Gaming among negotiators materialises in the opening bids, argumentation and seduction, the tactics used to increase one's individual pay-off, hide information, slow down the process, save face or divide and rule. Adrenalin and pay-offs are both intense and quite addictive, since most negotiators who have left Brussels' playing field report their nostalgia, regret and sometimes frustration. A European negotiator should therefore not be afraid of gambling; EIPA's training serves precisely the purpose of exploring one's past, undisclosed or unachieved relation to this pattern.

Strategy oriented

A European negotiator should further assess accurately the investment and the expected returns through a programmed calculation strategy comprising four steps. The first calculation is a sequential or chronological one: are the dividends of the negotiating position to be expected in the short term or can/should the return be expected on a longer time scale? The second calculation is a horizontal one: are the gains to be derived from the dossier that is being discussed or can/should there be linkages with other side dossiers? By the same token, should an exchange of vote be envisaged between dossiers in order to switch between

different degrees of salience or interest? Thirdly, potential coalitions and alliance-building might further be considered in order to secure sufficiently favourable outputs. These calculations should be cross-examined with the alternatives that will be available if the negotiation fails and yields no result as a consequence of intransigent negotiating positions. Finally, the negotiator needs to calculate where, how much and with whom to make his/her efforts of socialisation and exchange information; a widely agreed figure among practitioners indicates that around 80% of all efforts needed to negotiate and strike a deal come about informally, outside the official meeting, that is, before, during and/or after the formal plenary session in certain pubs, corridors, rooms, saunas or even confessionals. The European negotiator should not computerise items in order to manage and approach them from a binary angle, such as a large or weaker voting power, but strategically reassess all the power that is available, under what form and where to use it.

Diplomatic mind and tongue

The willingness of other European negotiation partners to offer concessions and arrive at a compromise will, however, not depend merely on how much power and strategic unilateral planning is demonstrated to them: it will depend more on how much consideration is made of their own interests and motives to negotiate. There is a requirement to use a collective method, whereby mutually cooperative attitudes (as opposed to competing unilateral strategies) ensure that the interests of all parties, or a critical mass among them, are recognised and taken on board of the ultimate solution as much as possible. Following both earlier and recent estimates by Fiona Hayes-Renshaw and Helen Wallace, this “philosophy” leads, for example, European negotiators in the Council of Ministers to use their power wisely by reaching consensual decisions without a vote in roughly 75% of the cases where a qualified majority vote is provided for in the Treaties. European negotiators who join EIPA’s boot camps are not invited to cooperate blindly and sacrifice on the altar of a quasi-religious or quasi-ethical recommendation to cooperate; instead, they are prepared to follow a particular method to explore collective solutions and mutually advantageous technical or political ways out of impasses. Alternatives to impasses in European negotiations could materialise in, for example, partial harmonisation, flexible implementation, compensatory measures, safeguard measures or derogations. The first diplomatic requirement is thus to be not so much ethically correct as philosophically and methodologically flexible.

Beyond this method and how good it should prove to be, the willingness of all actors to engage in dialogue and to exchange information as well as concessions further depends on how much respect is paid to the size of the country and its accession date, and on their ego or their cultural preferences. Serious collateral damage can result from such phraseologies and oral references as “new Member States”, “Eastern country”, “cohesion country”, “small” or “poor” Member State. Such references, which are innocuous in other circumstances, might be perceived as attacks, offences or sheer arrogance. A large part of the trust that any group of negotiators needs in order to establish lasting collaboration in recurrent situations is founded on the mutual respect of a verbal non-aggression pact. However, the required diplomatic language does not prevent directness and forceful speeches; negotiators need to reflect on where to draw the line between being ruthless and being rude according to “Brussels” standards.

A clear, bird’s-eye view

The European negotiator’s third challenge is to take into account and calculate the effect of a series of shadows that influence the very perspective of the negotiation, making the target more difficult to aim at. The first shadow is that of the future: the power of a Member State shifts whenever coalitions are altered, the salience and centre of interest of partners evolve, governments or public opinion change, or domestic pressure increases. Even when negotiations are



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successful, the likelihood is that they will merely lead to yet another round of negotiations if the agreement needs implementing measures, review or reconsideration at a later stage simply because the initial national commitments were left sufficiently loose. Negotiators, or their colleagues, will therefore most often meet again, possibly under altered circumstances, with other dossiers attached or different interests linked. Expressing a position and using a vote – two classical vehicles of power – always need to be gauged in the light of how the future might retaliate or intervene in the subsequent rounds.

Closely associated is the shadow of the past through which previous agreements might have been made conditional upon later rewards, compensation, lines of action, reviews or exchanges of votes; such postponed conditionality is akin to a path dependency based on both fairness and long-term calculations. The exchanges of votes can be deferred either from one dossier to the other within the group's competence under the authority of the same negotiators, or horizontally across issues belonging to totally different subject areas; in the latter case, one delegation could exchange its vote on an issue that has low salience for the partner's offer to follow reciprocal voting instructions on another issue. Such a swap could, for example, take place on technically unconnected issues such as the vote on the number of sardines allowed per can sold within the EU and the decision on liberalising financial services. The solution to be found might be dependent upon earlier beaten tracks or parallel avenues.

The third shadow is that of the rules of procedure or, as some might say, the obscurantism of the decision-making rules applying to deliberations and negotiations among Member States. The challenge for the negotiator in this respect is to keep abreast of rules that change after enlargements and internal institutional reforms, how they operate formally and informally, and how they apply differently within the various preparatory groups of the Council and across the comitology groups. Such procedural surroundings encompass language regimes, recommendations for the preparation and conduct of meetings, rules for formal adoption and voting, the circulation and adoption of agendas, as well as timing provisions and calendar obligations.

The next shadow to delimit is the domestic background of the negotiator. The first set of elements constituting this background are the instructions provided in the mandate drawn up by the capital or the hierarchy, how much flexibility and room to manoeuvre is traditionally left to the individual negotiator, and how much autonomy the negotiator is customarily granted to leave aside the initial national instructions in order to secure long-term, side or group interests. Another crucial task for the European negotiator is thus to gather information on the latitude the other negotiators are allowed, how much influence these negotiators have on their domestic institutions and whether they can convince their authorities of the necessary concessions in order to grab something out of the deal that is looming. Other domestic factors to spot and manage are, of course, the cultural preferences and patterns. Here, the challenge consists mainly of becoming aware of how and where cultural differences materialise and taking them into account in order to sufficiently respect them without relinquishing one's own preferences. Negotiators from the 25 Member States have different approaches, preferences and senses of logic when it comes to the autonomy of the representative vis-à-vis the capital, the relation to time, the way to communicate through words and body, transparency and openness, or modes of socialisation. Since differentiated perceptions of these accounts are combined with further disparities of personality and individual background, all these differences result in the negotiators having dissimilar expectations regarding how the process of negotiation should be conducted. The more such expectations are considered by the group within recurrent socialised negotiations, the higher the degree of lasting cooperation every negotiator will be ready to contemplate.

The final shadow to distinguish originates from the neighbouring institutions and bodies involved in the decision-making process, in parallel, before and after the national delegations. The representative of a Member State needs to take into consideration the strategy of the other institutional actors such as the Commission, the European Parliament and the Presidency, all acting notably in the shadow of the right of initiative, the agenda-setting or the co-decision procedure.

Conclusion: “The most incomprehensible thing about the universe is that it is comprehensible”

What Einstein said about the universe applies to the Brussels world of negotiations. The hostile appearance of the procedures, the technicality of the dossiers, the national stakes and the bargaining tension may at first sight appear to national representatives as problematic; with guidance, however, negotiations can open up a world of addictive gaming, efficient collective management, mutual confidence, lasting cooperation, subtle engineering of European solutions, enrichment of interpersonal relationships and a quasi-diplomatic status as technical ambassadors. In order to capture the requirements to enter this world, survive it and perhaps even look forward to it, EIPA's Programme on European Negotiations has followed a genuine holistic approach comprising training sessions, simulation exercises and workshops, all of which aim at making comprehensible a system of negotiation that determines to a large extent how the individual parts behave, and that in turn is determined and personalised by them. ::

Note

* Alain Guggenbühl, Senior Lecturer based at EIPA's Representative Office in Brussels.

Demystifying Comitology

By **Dr Guenther F. Schaefer***, EIPA 1984-2003

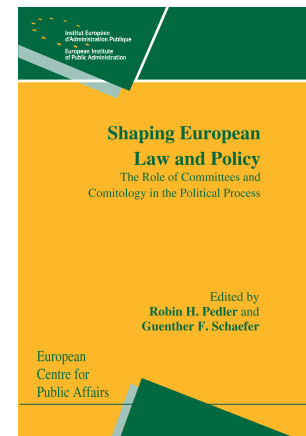


Committees are an essential part of the effective functioning of modern governance. They are particularly characteristic of contemporary forms of multilevel government systems, though they are also widespread in centralised unitary systems. The distinguished British political philosopher Ken Wheare succinctly argued in his *Government by Committee: An Essay on the British Constitution* that crucial decisions are developed and prepared for decision by various types of committees. In multilevel systems, their central function is to link the different levels of government at all stages of the policy process. The Member States that drafted and signed the Treaties – the “masters” of European integration – have a justified interest in influencing and shaping European policy. They do this in all stages of the political process by participating in a great variety of committees.

There are probably more than a thousand of these committees known by many different names, and even those that share a common name may be performing quite different tasks. It has become widely accepted to distinguish committees according to the function they perform in the policy process. Usually the concept of the policy cycle is used to differentiate between major phases of the policy process, namely policy development, policy decision, and policy implementation and application.

Upstream in the policy process of the European Community, when ideas for new laws, regulations and/or programmes are conceptualised, discussed, written down and eventually proposed to the legislator for action or decision, committees (usually referred to as expert groups) support the Commission in performing its central task of policy initiation and development. Relative to the varied tasks and their volume, the Commission is a relatively small organisation. Fewer than 10,000 A-level officials draft some 600-700 proposals for legal acts and programmes to be submitted to the legislator (Council and Parliament) annually. They also draft 6000-7000 Commission decisions and regulations and manage several hundred programmes in research and development, regional development, and the social and educational field. In addition, they have the responsibility to prepare, chair and keep the minutes of about 20 committee meetings every day and to participate in about 10 working parties in Council as well as in several meetings of committees in the European Parliament where they have to defend their proposals. The Commission cannot possibly have the full spectrum of expertise required to draft all these proposals. For this reason, the Commission seeks the help of experts from the Member State administrations, universities and research centres, and from private and public sector interest groups.

It is up to the Commission to structure and organise this advice. If it primarily needs a general picture on a specific issue, it may hold public hearings or call for an expression of opinion on the Internet. If the matter at hand is rather complex and/or of a highly technical nature, and if strong interests are



confronting each other, the Commission may submit it to one of its standing advisory bodies or establish ad hoc expert groups that meet relatively frequently until the Commission has assembled all the information required to draft a proposal that has a good chance of being accepted by the Community legislator. These ad hoc groups are usually dissolved after the Commission has completed its proposal, unless the Commission can use it for another related issue. There are also policy fields in which the Commission requires continuous technical or scientific input. In these cases, permanent advisory committees may be set up through a Commission decision or regulation in which the composition and the tasks are clearly defined. There are also occasions when the Council wants to ensure that the Commission obtains relevant technical, scientific or political advice and establishes permanent advisory bodies that the Commission has to consult prior to drafting legislation or programmes. In the field of statistics, for instance, 18 advisory bodies have been set up by the Council with the task of supporting the Commission in developing and harmonising statistical procedures in the Community.

The composition of advisory groups varies according to their major function. Generally, the participants in such groups are experts from Member State administrations, universities and research institutions, as well as representatives from interest groups and professional organisations. Except for the groups that have been set up by the Council, practically all committees are chaired by Commission staff members. Those groups set up by the Council are usually chaired by Member State officials on a rotating basis. The Commission calls the meetings, sets the agenda and keeps the minutes and manages all organisational aspects of practically all expert groups. It has a keen interest in obtaining the most extensive and comprehensive advice in order to initiate policy proposals that have a good chance of getting accepted by Council and Parliament.

There is considerable uncertainty about the number of expert committees that exist at any specific point in time. Although the budget usually lists only about 100, most observers agree that there are considerably more (around 700-800 active groups). The frequency of meetings also varies greatly: some meet only once or twice a year, while others meet once or twice a month depending on the urgency and salience of the subject matter at hand.

The system of expert groups enables the Commission to develop a European consensus on the substance of its policy initiatives and to assess their political acceptability in the Member States and with interest groups. It provides a venue for interest articulation and conflict settlement, and a forum for the horizontal exchange of information between Member State administrations, interest groups and the scientific community. It facilitates efficient decision-making in Parliament and the Council, and thus contributes to promoting a European perspective among all those involved in the policy process.

In the policy decision phase, crucial roles are played by two entirely different types of committees, namely the standing committees in Parliament and the working groups in the Council. The Treaty revision of Maastricht (which introduced the co-decision procedure) and those of Amsterdam and Nice (which extended its fields of application) have increased the legislative powers and competences of the European Parliament to such an extent that Parliament and Council have become equal partners in legislation. As in most modern parliaments, the standing committees carry most of the burden of its work. In these committees, Commission proposals are carefully examined, and amendments are discussed and possibly adopted. The committees are supported by a sizeable professional staff, which puts the members of the committees in a strong position to develop well-founded policy alternatives.

Parliamentary committees also provide a forum for open debate about the substance of European policy. Representatives of the Commission – usually high-level civil servants – attend committee meetings and defend their proposals. The Council is also present, usually represented by the Presidency. Committee meetings thus often provide an arena for interinstitutional debate and coordination. In addition, interest group representatives have an opportunity to get information about developments in the legislative process, which enables them to better channel their lobbying efforts that are increasingly directed to key members of

the standing Committees, the chairpersons and the rapporteurs.

In Council it is the working parties that carry the major burden of preparing measures proposed by the Commission for decisions to be taken by the ministers. Representatives from the Member State administrations carefully examine proposals from the Commission, article by article, and often sentence by sentence, in an effort to find solutions to complex technical problems and to reconcile conflicting national positions. It is up to the Member State government to decide who should represent it in a particular working party. Usually it is one or several civil servants from the ministry or ministries that are concerned with the substance of the legislative proposal, often accompanied by a staff member of the Member State's permanent representation in Brussels. Quite frequently – and not only in the case of small Member States – the same persons who participated in expert groups to help the Commission to draft the proposal will meet here again. They have to play different roles in this context: in the expert groups, the Member State officials could argue their personal point of view and take positions on the basis of their own expertise in and knowledge of the subject matter. In the working parties, they come with instructions: their governments have taken a position and adopted a strategy to be followed, usually the result of an interministerial compromise. The Commission also participates in the working party, usually represented by civil servants from the division or Directorate-General that has prepared the proposal. Council working parties are chaired by a representative of the Member State that holds the Presidency, as is the case with all other formations of the Council.

The Presidency is the driving force for action in the working parties, as it is on all other levels of the Council. During its six-month Presidency, a country has the responsibility to find common ground, propose a compromise and to move the dossier ahead. It is the Presidency that determines the agenda, sets the dates of meetings and leads the discussions.

During any given Presidency, at least 200-250 working parties are active. Some of them may form subgroups or task forces to deal with particularly difficult or highly technical aspects of a proposed legal act or programme. Usually 300-400 groups are active during the half-year period of a Presidency. Their work is then passed on to COREPER, which submits the proposal to a meeting of the ministers. Managing the business of the Council – particularly coordinating the work of some 300 working parties and groups, channelling it through the two formations of COREPER and into nine different, subject matter specific groups of ministers – is a formidable challenge for the Presidency. The General Secretariat of the Council provides wide-ranging logistical support for the Presidency, which is particularly important for smaller Member States when it is their term to assume the Presidency.

Council working parties and committees provide a second major arena for horizontal and vertical cooperation between officials from the Member States and the European institutions. Participants in meetings often represent their government for a considerable period of time, leading to the development of a European *esprit de corps*. Member State representatives have to make every conceivable effort to get their country's position accepted – yet they are often equally committed to reach a compromise and will strongly argue for the acceptance of a possible compromise by their own national government. In a certain way, they are at the same time advocates of national interest in Brussels and of a European compromise in their respective capitals.

In the policy implementation phase, when decisions of the legislator are applied, another type of committee plays the central role. These committees are generally referred to as comitology committees. In the European Community system of governance, implementation and application of Community law is primarily the responsibility of the administrations of the Member States. The directives and regulations adopted by the European Parliament and the Council are general framework laws that need specification in order that officials in Member State administrations can apply the general rules to specific cases. In national governments this is done through government regulations adopted by the executive on the basis of a legal act of the legislature. On the EU level, the legislator similarly delegates the competence to pass these implementation rules



Committee room in the Albert Borschette Centre, Brussels.
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to the executive, that is, the Commission. Already in the early 1960s, the Council started to delegate implementation rule making power to the Commission, when it became apparent that the Council itself could not possibly adopt and revise the detailed implementation rules required by the market regimes in agriculture. At the same time, the Council wanted to build safeguards into this delegation of far-reaching competences to ensure that the Commission would not misuse them. To this end, the Council established committees that had the task of “assisting” the Commission in exercising the implementation competences that had been delegated to it by the Council. The committees were composed of representatives (civil servants) of the Member States. The Commission had to consult the respective committee prior to adopting an implementation act or a Commission regulation or directive.

The committees are all chaired and have their business managed by the Commission. Since the first committees were set up to assist the Commission in the management of agricultural market regimes, they were called management committees. Later on, two other types of committees were established: advisory committees and regulatory committees. In an advisory committee, the Council acting through the committee could only “advise” the Commission on proposed implementing measures; management and regulatory committees could, following prescribed procedures, refer the proposed measure to the Council for final decision.

The European Parliament was very critical of the emergence of the comitology system. It realised the practical necessity of delegating implementing authority to the Commission, but objected to the way the Council could influence and shape Commission rule making related to implementation. From the perspective of the Parliament, bureaucrats and technocrats from the Member States and from the Commission met behind closed doors in these committees and passed far-reaching binding rules and regulations, and no-one knew who should or could be held accountable for them. This marked the beginning of a long drawn out institutional conflict between the Council and the European Parliament that led to several fundamental revisions of the comitology system. In the Single European Act, the legal foundation for the right of the Council to delegate implementing powers to the Commission and to provide general rules for doing so was laid down in Article 145. These rules or modalities were defined in the Council (Comitology) Decision of July 1987, which formalised the procedures that had been developed and practised since the early 1960s. The Maastricht Treaty introduced co-decision, which together with the reforms of the Amsterdam Treaty gave Parliament equal status to the Council as legislator. Parliament continued to push for more transparency of the system and for more rights of control for the Parliament of implementation rule making by the Commission. Using its budgetary competences and the possibility to block or at least delay important legislative measures, Parliament succeeded to convince the Intergovernmental Conference of Amsterdam to take the necessary steps to reform the comitology procedures. In 1998, the Commission at the request of the European Council submitted a proposal for a revision of the comitology decision. This was adopted by the Council in June 1999. It broadened general access to information about comitology procedures and decisions, and thus significantly increased transparency. It also provided Parliament with some limited, post hoc review possibilities.

The inter-institutional conflict subsided, but during the general discourse on “better Community governance” a further reform was envisaged and finally adopted during the summer of 2006.

Comitology committees not only enable the Council to control Commission implementation activities and decisions, but also facilitate cooperation and coordination between the different Member State administrations and the Community executive in European policy implementation and application, thus increasing its effectiveness and efficiency.

The Community policy system could not function without the committee system. Through expert groups and working parties, the Member States participate in shaping and determining policy; the standing committees of Parliament provide an arena for public discussion and an avenue for direct input

from the electorate; and comitology committees strengthen coordination and cooperation in policy implementation. All committees reinforce and support vertical and horizontal integration in the Community. In expert groups, comitology committees and working parties, the actors are representatives of the Member States and of the European level, while in Parliament, representatives of civil society are included.

The committee system has evolved naturally over time. It was not designed and elaborated in the Treaties but developed in response to a need, that is, the need to cooperate and coordinate policy between the major institutional actors and to link the European to the Member State level in policy development, decision and implementation. Work in all types of committees is consensual. Most participants are committed to searching for common grounds and to developing compromises that could be acceptable to all concerned.

In expert groups, Council working parties and comitology committees, it is primarily officials of Member State administrations that work together in gathering advice, pooling expertise and preparing policy decisions. It is precisely this target group at which many of the activities of EIPA are directed. EIPA faculty realised during seminars and training programmes for civil servants of the Member States, and particularly the candidate Member States that joined the Union in 1995, that knowledge and understanding of the committee system and the role that Member State officials play in it was rather limited. Even those that were participating in a committee often had difficulty in placing their participation in the broader institutional context of European policy-making and implementation. Moreover, scientific interest in the topic was similarly limited. Political scientists and legal experts have been more interested in such traditional issues as the institutional development and the evolving balance between the institutions, the role of the European Parliament and the problem of democratic control of the policy process. It was decided to survey existing knowledge and ongoing research on the topic and to develop training activities that would pass this knowledge to civil servants of the Member States.

The first step was to organise a meeting at EIPA for a small number of researchers and expert practitioners from Community institutions. This meeting – which was co-sponsored by the European Centre for Public Affairs, Templeton College, Oxford – brought together three teams that were engaged in work on the committee system. An effort was made to assess the state of the art and to discuss possible avenues for further research and cooperation. The proceedings were published by EIPA. This little book found a very positive resonance among the academic community and the administrations of the governments of the Member States as well as the Community institutions.

Parallel to this theoretical work, EIPA invested a good deal of resources to develop training activities designed to help Member State officials to become more competent in their participation in the Community committee system. As it is estimated that as many as 30,000-40,000 officials are involved in all aspects of the Community committee system, EIPA management and faculty were convinced that a training seminar stressing both the theoretical and the practical aspects of the committee system would be well received. A small team developed the content and training material as well as several simulations that would illustrate how work in different committees proceeds and how representatives of the Member States could play a constructive role by contributing to reaching a consensus that most or all Member States could accept while still serving the interests of their country. The three-day “comitology” seminar was indeed widely accepted in the “old” Member States and particularly by those countries that had joined the EU in 1995 or 2004.

While doing this work, the “comitology team” increasingly realised that there were still big gaps in our knowledge about the functioning of the committee system. Strengthened by groups from France, Germany and the UK, a proposal for a joint empirical research project was submitted to the Commission for financial support in the context of the 5th Framework Programme. The support was granted and the team, parallel to its training activities, thus contributed to general knowledge about comitology.

Since my retirement in 2003, EIPA’s training activities and research projects

in this field have been taken over by a new team. As the practice of comitology evolves further, they will continue to play an important role in helping to prepare officials from Europe's administrations to participate in these committees, as well as in promoting a wider understanding of this important, and often misunderstood, aspect of Community governance. ::

Note

* Dr Guenther F. Schaefer, former Professor of Public Policy at EIPA.

Europeanisation through Informal Cooperation: *The Case of EPAN*



By **Dr Christoph Demmke***, EIPA 1994-present and **Danielle Bossaert****, EIPA 1999-2004

The changing concept of administrative cooperation

Historically, the European administration and the various national administrations were believed to function as separate entities. Generally speaking, the European administration was principally entrusted with regulatory tasks and the initiation and adoption of legal instruments, while the task of the Member States' administrations was to implement and to execute Community law. More specifically, the principles of subsidiarity, proportionality, and the enumerated competence and institutional autonomy of the Member States reflected the classic picture of clear delineation between the EU and the national administrations.

In recent years, the European Court of Justice has interpreted certain concepts more strictly; for example, it has linked the "correct implementation of Community policies" to notions of effectiveness and administrative cooperation. National administrations have tended to react very cautiously since they fear that "effective implementation" may interfere with the principle of institutional autonomy. This pattern of behaviour has led to a paradox: as the Community and the national administrations develop new forms of administrative interaction, more people stress the need to respect the principle of institutional autonomy and the division between direct and indirect implementation of Community policies. As the Community and national administrations cooperate and interact, awareness regarding the problematic aspects of these trends has also increased (for example, over such issues as accountability).

It has become more difficult to describe new forms of cooperation between the EU and the national administrations in terms of the old dichotomies, for example, formulation and implementation of policies, direct implementation through Community bodies and indirect implementation through national bodies, etc. Instead, new and different forms of administrative cooperation have emerged and take the form of a *Verwaltungsverbund* (an administrative association) between the EU and the national administrations. The often bewildering array of contemporary forms of administrative association often goes beyond the more traditional notions of formal cooperation. New and very different forms of administrative cooperation have emerged between the Community administration and the administrations of the Member States. For example, the network of the Directors-General of the Public Service may not even qualify as a form of formal administrative cooperation. Rather, this network constitutes an evolving informal network of (so



Meeting of the Troika of the Directors-General Responsible for the Public Administration in the European Union and the presentation of the EUPAN Web (Portal: <http://www.eupan.org>), on 21 November 2004, EIPA Maastricht.

far) central administrations with DG Administration of the European Commission.

Unlike the situation twenty-five or more years ago, Community policies are now managed in completely new administrative and institutional settings, in which networks may play an important role. These networks may take a more formal (stable and formalised) or informal (loose or ad hoc) character depending on which policy field is under discussion. Hence, there is no clear trend towards a specific emergent model of administrative cooperation. Instead, one can see further differentiation of administrative cooperation. This development poses a fascinating challenge to the formulation of a new theory of administrative cooperation and integration between the EU and the Member States. Many experts are in a process of describing this reality with concepts like administrative governance, network theory or the open method of coordination.

The classical distinction between European Community and Member States has become more and more obsolete. This obsolescence has been compounded by new information technologies and communication challenges that facilitate communication among different administrations at different levels. In the past, communication was mainly between the Community institutions and the central administrations (ministries). This is no longer the case.

In order to understand this development it is important to analyse the current reform process on both the EU and the national level. Both are undergoing processes of internal differentiation and administrative decentralisation. This is evidenced by the creation of new agencies, many of which link the European administrations with the national administrations.

The first three European agencies were created in the second half of the 1970s, but it was only in the 1990s that new agencies and regulatory authorities proliferated. These have led to a polycentric structure in the Commission's administration, with the result that the Commission now distinguishes between the burgeoning executive agencies and the regulatory agencies. In most cases, agencies have supportive or non-regulatory tasks and are intended to relieve the Commission's considerable workload. Some agencies were set up primarily to assist the Member States, for example in the fields of drugs and drug addiction and the evaluation and observation of discrimination and racism.

The regulations that established these various agencies often do not specify the form of cooperation envisaged between the Commission and the national administrations. However, in almost all cases, the Member States are invited to send a representative to sit on the administrative board of the agencies and decide upon the annual programme and budget plan. Consequently, these agencies have slowly developed as meeting points between the Community administration and the national administrations. One such example, considered in more detail below, is that of the European Public Administration Network.

Administrative cooperation: the example of the European Public Administration Network

While the issue of administrative cooperation takes many different shapes and forms, we shall confine ourselves in this section to examining the effects of cooperation in strictly administrative matters, that is, on issues that are directly linked to the reform of the civil services. Since 1983, this type of cooperation takes place in the European Public Administration Network (EPAN). The Network meets at three different levels: at ministerial level; at the level of directors-general; and at working group level.

A certain preference for a stronger consolidation of the Network has arisen in recent years. This can be seen in, for instance, more pronounced continuity in the selection and analysis of topics (e.g. the follow-up of studies in the field of ethics, pensions and mobility), the stronger efforts made by the different working groups to better coordinate their work and, last but not least, the improvement of EPAN's activities with the activities of other international organisations such as the OECD and the European Commission.

EPAN's structure has changed a great deal since 1991, when its biannual meeting was institutionalised and the decision was consequently taken to remain in step with the rotation of the Presidency of the Council of the European



Communities. Since 1988, the Network has been headed by ministers of the interior/finance and/or public service, from whom EPAN draws its political legitimacy. A troika was created in 1998 and then expanded in 2000 to include the next two Presidencies, and then again in 2004 to include the previous two Presidencies. Within the framework of Europeanisation, this structure can be analysed in terms of its ability to offer a forum for study and social intercourse for its participants and a place for testing methods and instruments.

Many studies have shown the importance of the effects of social intercourse on the work of national officials within working groups and committees in Brussels, even though this importance is sometimes limited by the issue of “multiple identities”. While EPAN is becoming broader, wider and undoubtedly more complex, there is no observable trend towards a deepening of the cooperation process. New developments in the field of social dialogue – such as the constitution of a common and pluralist delegation of trade union organisations under the Luxembourg Presidency – are not necessarily symptomatic of cooperation in other fields. The topics on the EPAN agenda are topics that are dealt with initially at national level and that fall within the competence of the EU Member States.

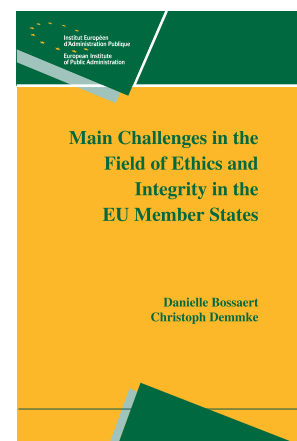
However, this relatively low degree of Europeanisation, as compared to other national policy areas, is unlikely to prove a hindrance in terms of keeping alive the interest of DGs in the Network and need not represent insuperable obstacles to its dynamic development. Several arguments support this view: first of all, the similar reform agendas of EU Member States (e.g. budgetary cuts, the promotion of a more efficient and performance-oriented civil service, and a stronger orientation towards citizens) will further fuel the exchange of experience and good practice in the field of public sector reform. Second, the composition of EPAN – namely top civil servants responsible for public administration in the EU Member states – remains the ideal forum in which to discuss such matters at the European level. The question can be raised regarding the extent to which ever closer cooperation will eventually promote the stronger institutionalisation of the whole Network. EPAN is slowly evolving into a kind of European public management forum and is becoming more transparent and better known to the wider public.

Finally, we should not forget to mention such achievements as the activities in the field of quality management and the further development of the Common Assessment Framework (CAF), the studies in the field of ethics and the study on common elements in the field of integrity, which aim at promoting ethical behaviour in the national civil services. EIPA has contributed to the success of the network in these fields in particular (see also the contribution in this Eipascope by Robert Polet on the CAF).

EIPA's contribution to EPAN

EPAN provides an ideal forum for presenting and discussing comparative studies. EIPA has conducted many of these studies, most of which cover HRM issues or quality management issues. The EIPA studies are unique in that they analyse comparative reform trends and provide information about developments in public management reforms in all EU Member States and the European Commission. Many of these studies¹ have not only been welcomed by the members of EPAN but also increasingly acknowledged by the wider academic community.

The Network has also been responsible for developing new forms of administrative cooperation with the OECD and the Quality Management conferences. New discussion is also under way about strengthening cooperation with other bodies and fora, such as the OECD and its Public Governance and Management (GOV) Committee² and consequently the specific European character of such work.



Conclusions

Today it seems that the concept of administrative cooperation covers many very different forms of cooperation amongst administrations. Although EPAN represents a very loose and informal example of administrative cooperation, it has gone through an astonishing development process over the last twenty years or so. It has expanded from being a single centre of interest (focusing on the issue of mobility of public officials in the context of Art 39 4 ECT) linked directly to the effects of European integration, to embrace – through its three regular working groups, its high-level group and its ad hoc group – practically the entire gamut of public management concerns. It is also interesting to note that the European Commission has always played a cautious but very supportive role in this field of administrative cooperation. The informal character of the Network has never been questioned and its management has been left entirely to the discretion of the Member States. As with the European Commission, EIPA has been involved in the Network from its inception. Its neutral expertise role in the Network is widely recognised and its comparative scientific studies are receiving increasing recognition. Although EIPA has never been involved in a formal way, it has developed – through its scientific and advisory role (in the different working groups of the network) – into a sort of memory for the Network.

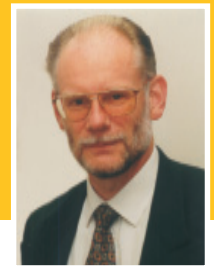
Looking back at the development of the Network, it is difficult to draw conclusions regarding its effectiveness. Some Member States are of the opinion that many meetings are too overloaded with issues and leave too little time for in-depth discussions. Others believe that the Network could be more effective if coordination amongst its different parts were assured, duplication of labour avoided and the different items better evaluated. There is also a concern that the Network has become too big and that the work on comparative studies is gradually becoming too complex and too demanding. However, there is no doubt that through this process of administrative cooperation there is a growing awareness of the potential benefits arising from the exchange of information and of knowledge. The Member States are more aware than ever that many of those initiatives for reform and innovation arise as the result of the experiences of other countries. We hope that EIPA's multinational and multicultural identity and its association with EPAN will continue to make it a valued contributor. ::

Notes

- * Dr Christoph Demmke, Associate Professor, Unit "Public Management and Comparative Public Administration", EIPA.
- ** Danielle Bossaert, Attaché de gouvernement, Ministry of Civil Service and Administrative Reform, Luxembourg.
- ¹ Titles include comparative studies on civil service structures in the EU (*Civil Services in the Europe of 15*, 2001), Ethics and Integrity (*Main Challenges in the Field of Ethics and Integrity in the EU Member States*, 2005), CAF (e.g. *CAF works – Better results for the citizens by using CAF*, 2006), Status Reforms of Civil Servants (*Are Civil Servants Different Because They Are Civil Servants?*, 2005), Services of General Interest (*Public Administrations and Services of General Interest: What Kind of Europeanisation?*, 2005), Social Dialogue (*European Social Dialogue and the Civil Services*, 2004) and Decentralisation trends in the field of HRM (*Decentralisation and Accountability as Focus of Public Administration Modernization*, 2006).
- ² Which replaced PUMA (Public Management).

Exchange of Best Practices: The CAF Experience¹

By **Robert Polet***, EIPA 1994-2004



The creation of EIPA in 1981 coincided almost exactly with the launch of regular meetings of the Directors-General of The Public Service. The Directors-General are not only generally in charge of how public administration and general personnel management are organised and regulated but also of programmes aimed at improving and modernising public management.

It was therefore logical that the DGs would be interested in sharing their respective experiences in these two large areas of administrative management.²

It was in this context of sharing experience about modernisation of public administration management that the exchange of best practices developed, particularly the joint development of a public management instrument: the *Common Assessment Framework*, now generally known by its acronym: the CAF.

As we will describe below, since its creation the CAF has been implemented in many European countries, and has even been exported outside the European Union.³

From quality of service provision to quality of management

The topic of quality was on the agenda of the half-yearly meeting of DGs during the Irish Presidency in 1996 under the title: *Improving Quality in Public Service Delivery*. It focused on the quality of services provided by public administration to its “user clients”.

In the first half of 1997, the Dutch Presidency put benchmarking (or comparative evaluation) of public administrations on the agenda. The study, led by EIPA, compared assessments relating to the quality of administration (speed, efficiency, reliability of services provided) as judged by national federations of firms. In the second half of 1997, the Luxembourg Presidency conducted a survey on the way relations were managed between public administrations and citizens. Right after that, the British Presidency focused on the IT dimension (new information and communication technologies – NICT) to be integrated into the quality perspective of administrative services. In this sequence of topics one can see a development from the pursued goal, i.e. quality of services provided to citizens as well as undertakings, to the quality of means used to reach this goal, i.e. quality of the actual management of public administration.

After taking over in the second half of 1998, the Austrian Presidency offered to launch a European prize for quality in public administration in the EU Member States, based in particular on the experience of the German-speaking countries: Germany, Austria and Switzerland. They have been jointly organising such a prize for several years with the help and authority of the German *Hochschule für Verwaltungswissenschaften* (University of Administrative Sciences) in Speyer.

The conclusion of the Directors-General of the Public Service at this meeting in Vienna was to prefer the exchange of best practice over competitive

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Better results for the citizens by using CAF

Training
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comparison between the public administrations of the Member States. This means that they chose to jointly invest in the development of an instrument aimed at improving the quality of public management that would be similar to the EFQM model,⁴ but adapted to the public administration context, its constraints and its actors. To that end, they set up a technical group composed of EIPA experts,⁵ the Speyer Hochschule and the EFQM “public-sector” specialist.

The CAF: a quality management instrument specific to the field of public administration

The pilot version of the CAF developed by this working group was presented in May 2000 at the First Quality Conference for Public Administrations in the EU held in Lisbon. The current version is based on the experience gained from the implementation and application of that first version of the CAF.

The CAF is offered as an instrument to help public organisations all over Europe use quality management techniques to improve their performance. The CAF provides a simple and easy-to-use framework for self-assessment by public-sector organisations.

The CAF has four main objectives:

- To take account of the specific characteristics of public-sector organisations;
- To serve as a tool for managers in the public sector who seek to improve the performance of their organisation;
- To act as a bridge across the various models used in quality management;
- To facilitate comparative performance analyses (*benchmarking*) between public-sector organisations.

The CAF has been developed to be used in all areas of the public sector, whether the national/federal, regional or local level of public administration. It can, moreover, be used in a broad range of contexts: e.g. as part of a systematic reform programme or as a basis for targeted improvement efforts within public-service organisations. In some cases, particularly very large organisations, self-assessment may also be undertaken in part of an organisation, a selected unit or department.

Since then, the third version of the CAF was launched in the light of the experiences of more than 900 CAF users. The 2006 version of the CAF was officially presented and disseminated at the fourth European Quality Conference in Tampere (Finland) in September 2006. As the use of the CAF has continued to spread throughout Europe, a growing interest in in-depth knowledge of the CAF, its use and the results that it can achieve have also developed. To that end, a new publication called *CAF works – better results for the citizens by using CAF* has just been published,⁶ which aims to:

- bring CAF self-assessment to life by showing specific and concrete results and improvements that this method can produce;
- disseminate the CAF as an instrument for quality management throughout Europe’s public-sector organisations;
- develop mutual understanding via the sharing of experiences by CAF users.

For the first time, detailed information is provided, for citizens and actors of society, about concrete results of the use of the CAF and the improvement actions which it has produced and which have led to a better performance by the public organisations using the instrument.

A multi-dimensional exchange of best practices

Nearly ten years’ experience in quality management within public administrations have been exemplary in several respects.

Cooperation between national administrations

This is the first dimension of such cooperation in the exchange of best practices. At the beginning public administrations meeting in the framework of EUPAN



Experiences with the CAF were discussed at the CAF Centre in Tampere, Finland, during the 4th Quality Conference for Public Administrations in the EU held on 27-29 September 2006.

(European Union Public Administration Network, the new name and acronym of the network of Directors-General of the Public Service and their services) shared their very diversified experiences regarding quality management. In fact, while most of them had taken initiatives regarding the quality of services provided, only some could resort to quality management tools: a minority used the abovementioned EFQM instrument which had originally been developed basically for the field of private enterprise.

Cooperation between national administrations and the European Commission

The cooperation between national and European public managers is almost consubstantial in the EUPAN network. At the political level, at the meetings of the Ministers of the Public Service, the European Commission has been present and active from the beginning through the participation of the Commissioner in charge of relations with national administrations. At DGs level, the Director-General in charge of managing the administrative services of the Commission and relations with national administrations takes an active part in the work of the network, both in its half-yearly plenary meetings and in the various working groups to which he delegates competent experts.

In the field of quality management the Commission has supported work by, for instance, sharing its own experiences in quality management, particularly within its Directorate-General for Industry, and has allowed the CAF working group (and Innovative Public Services Group) to use the excellent reports of the Commission with the European Foundation for Quality Management.

Public-private cooperation

As stated earlier, from the start of the CAF project public experts have used the expertise of the EFQM, whose long experience in this field has represented a considerable asset. This experience was mainly based on ongoing developments in the private sector and the market economy. There were, however, already significant developments in the public sector, especially in the sub-sector of public undertakings, i.e. between the private market sector and public administration.

In this context, the key concepts of the EFQM model were re-examined, particularly on the basis of the experience of the *Speyer Hochschule* and the German-speaking countries, as well as the expertise of the members of the abovementioned technical working group in the field of public management. These key concepts include:

- “Leadership”, which in the field of public administration involves the subtle and democratic play of the politico-administrative structure;
- The concept of “strategy and planning”, which again involves this sensitive interaction between the objectives of political powers that are often preoccupied with short-term results (within the current term of office) and those of public management (senior civil servants) concerned with feasibility, continuity and long-term effect;
- “Client satisfaction” in the EFQM model that has become “citizen/customer-oriented results” in the CAF model, so as to take account of the specific requirements in public management of the “citizen dimension” of the client and the satisfaction of democratic needs, equality of citizens and the quest for the general interest.

Cooperation between practitioners and academics

The CAF has also developed in the framework of active cooperation between practitioners – both from the private sector and from public administration, as stated earlier – and experts from the academic world, in this case those from the *Speyer Hochschule* and the European Institute of Public Administration (EIPA) in Maastricht. This cooperation has also given this long-term project the methodological coherence and solidity necessary for its success, as well as the



Seminar: “CAF & BSC: The Common Assessment Framework and the Balanced Scorecard”, Maastricht, 22-23 May 2006.

means needed to constantly update it. This year, 2006, version 3 of the self-assessment instrument was launched.

Multisectoral synergy

Although the EUPAN network consists only of administrations in charge of the public service, its leaders want to make the instrument they have developed available to all ministerial administrations and public agencies, indeed the entire public sector. The creation of a CAF database centralising the results of CAF applications allows sector comparisons and linkages between services in different countries or sectors that want to share experience and learn from each other.

In this respect it should be mentioned that with this database, managed by EIPA's CAF Resource Centre, comparisons can be made between "types of organisation" (ministries, agencies, etc.), between "levels of organisation" (national, regional or local) and between "sectors of activity" (justice, home affairs, economy, etc.).

Lessons from experience

We will conclude this quick examination by underlining two factors that we believe have been decisive for the success of this CAF experience, unique in terms of transnational administrative cooperation.

The first factor was and remains the *driving and guiding force* behind the operation provided by the network of *Directors-General of the Public Service*. By setting the project objectives, by releasing and allocating the means necessary for running the project, by continuously evaluating the progress made and by setting new objectives, the DGs have, from the start, continuously supported the management and implementation of the CAF. They have also ensured the continuous support of the political authorities for the project.

The second success factor has, in my view, been the coaching role necessary for the long-term continuity of such a project. This role was and still is played by EIPA, which was asked by the EUPAN network to set up a CAF Resource Centre at EIPA, coordinated by a seconded national expert from the administration of an EU Member State.

The exchange of best practices is without a doubt an excellent way of ensuring that all public administrations in Europe make progress. The effectiveness of such an exchange requires, on the basis of the CAF experience, continuity in its leadership on the one hand, and continuity in its daily and continuous management on the other.

It is to be hoped that other new projects of this scale will develop within the EUPAN network so that public management will be able to even better serve the interests of citizens, of the economy of the EU Member States and of Europe itself. ::

Notes

* Robert Polet, Honorary General Adviser to the Belgian Public Service, former Seconded Expert and former Deputy Director-General, EIPA.

¹ This contribution is not a technical introduction to the CAF. Readers who are interested in this topic are referred to the following website www.eipa.eu (click on the CAF logo listed under "Current Projects") which offers a comprehensive overview of relevant publications and projects.

² See on this subject: *Luxembourg Presidency of the Council of the European Union: A New Space for Public Administrations and Services of General Interest in an Enlarged Union*, 8 June 2005. Study conducted under the responsibility of EIPA. Chapter 2, "Europeanisation through administrative cooperation" is particularly interesting in this respect.

³ In the framework of a European administrative cooperation programme with China, coordinated by EIPA, the CAF has also been disseminated in Chinese public administration.

⁴ EFQM = *European Foundation for Quality Management*: Avenue des Pleiades 11, 1200 Brussels, Belgium, tel.: +32-2 775 35 11, fax: +32-2 775 35 35, email:

info@efqm.org

- ⁵ Professor Michael Kelly and the author of this paper had the honour of being actively involved in the work of this technical group.
- ⁶ Elisabeth Dearing, Patrick Staes and Thomas Prorok (eds), *CAF works – better service for the citizens by using CAF*, (Vienna: Austrian Federal Chancellery, 2006). This publication is available in English, French and German.



The CAF expert group after a day of intensive discussions revising the CAF model, Vienna, April 2006.

The Transformation of EU Trade Policy

By **Prof. Dr Jacques Pelkmans***, EIPA 1982-1989 and **Rita Beuter****, EIPA 1986-present



The Union's trade policy has gone through a drastic overhaul in the 25 years of EIPA's existence. In 1981 the EEC-10 had successfully negotiated three GATT Rounds (Dillon, Kennedy and Tokyo), following the emergence of the Community in 1958, and this led to significant tariff reductions over a wide front of industrial goods. Also, the EEC-EFTA industrial free trade area (1973) functioned well and helped Western Europe to minimize the costs of the original failure in the mid-1950s to conclude an overall regional agreement. Nevertheless, the early 1980s are remembered more for its "neo-protectionism" in the world, the EEC included, than for the previous achievements. If we zoom in on the EEC, EIPA began in an era of Europessimism, stagflation and eurosclerosis, resulting in defensive trade policy responses both at the Member States' and at the EEC levels of policy. In those days, trade policy was not yet fully centralized at EEC level and grey-area protection had not yet been explicitly outlawed by the GATT. This meant that there was scope for defensive impulses, ranging from "voluntary export restraints" (both national and EEC) all the way to the infamous Poitiers incident (VCRs, mostly from Japan, having to be re-routed to a tiny customs office in Poitiers, before getting into France), not to speak of a greater emphasis on anti-dumping cases with problematic methodologies.

In 2006 EU trade policy is radically different. Industrial tariff protection is largely gone, remaining tariffs only have nuisance value. Moreover, only a few OECD countries outside Europe and a few countries not yet having become WTO members actually pay these tariffs. Following the Uruguay Round (1994), grey area protection is gone. The Union has 25, soon to be 27, countries and far over 100 bilateral trading agreements in one form or another. Its agricultural protection is still very strong in temperate zone products, but its tariff protection has been reduced somewhat (however, often still prohibitive, though), quotas have gone (except some seasonal ones), erosion of protection is taking place for selected goods (such as sugar) and bilateral agreements increasingly allow at least some agricultural trade to be built up. Current EU offers on agricultural market access in the Doha Round may be disappointing to some developing countries and exporters such as Australia, New Zealand and (partly) the U.S. but, based on a third wave of agricultural reforms inside the Union, they are drastic, when viewed in the light of 25 years of trade policy history. The Union has now complete market access for the 50 poorest countries in the world (the Everything-but-Arms initiative). The EU has been very active in services liberalisation in the WTO, as well as with respect to a host of regulatory issues in the Doha Round. Even where the Union did react protectively – as was the case with the safeguards vis-à-vis Chinese clothing exports in 2005 – it relied on GATT-based mechanisms (a maximum of 3 years) and left room for quite some import growth. In 1981 the response would undoubtedly have been much more bluntly protectionist. Indeed, in the 25 years of EIPA we have witnessed nothing less than a transformation of EU trade policy.



Training Programme for Developing Countries' Trade Negotiators and Administrators, organised for the European Commission and held in Maastricht, Paris and Brussels between 30 January and 26 February 2005.

EIPA training and analyses on EU trade policy

Wisely, EIPA first concentrated on the many aspects of the internal market, in particular for national civil servants, rather than the specialistic domain of trade policy. Gradually, however, EIPA staff members have become active contributors to the trade policy literature and eventually this spilled over to training and advisory activities of the Institute. We shall limit ourselves to illustrations in four sub-domains of EU trade policy. The four topics are: multilateralism, economic regionalism, capacity building for trade and development negotiations and anti-dumping. EIPA activities consisted in training activities under awarded contracts, conferences and publications by staff members. Sometimes, activities were invisible, informal and purposely kept out of any publicity. Indeed, the very first trade policy activity (in 1984) was an informal closed seminar solely for the 113 Committee (the DGs for trade policy of the Member States, meanwhile the 133 Committee) on how to devise strategies for multilateral negotiations on services in a future Round, on the suggestion of deputy DG Paul Luyten of the European Commission.

Multilateralism

Since the conclusion of the Uruguay Round (1986-1994) and the initiation of the new Doha Round, progress has been faltering (as evidenced by the Seattle, Cancun and Geneva meetings). Moreover, the WTO was created (and thereby, a long-standing desire of the EU of subjecting all trading partners, big or small, under a world legal trade regime with judicial review, based on a hard treaty, was fulfilled). The WTO and the underlying GATT agreements as well as the new GATS (on services), generated a demand in the public administration for proper understanding of world trade law and its domestic repercussions, with all the many complications implied. A lot of this type of training is nowadays provided by the WTO itself as well as by the World Bank, although the EU has also become increasingly active in trade-related assistance (see below, under negotiations). EIPA staff have also published on multilateralism.

Economic regionalism

Perhaps the most conspicuous change in trade policies all over the world, since the early 1980s, is the unstoppable rise of economic regionalism. A host of reasons explain this trend, such as the economic attractiveness of so-called North-South type of regional agreements (like NAFTA and the EU-Turkey customs union, which tend to support domestic reforms in emerging economies and render them more robust via so-called "lock-in"), the U-turn of the US in the 1980s when beginning to practice a strategy of bilaterals or genuine regional trade agreements as a complement to multilateralism, the so-called "domino theory" of economic regionalism which focuses on the incentives for market access to large economies for any second trade partner once the "first" one has managed to obtain preferential access and, finally, the failure of APEC to deliver on its "open regionalism" which prompted East Asian countries as well as Australia to begin weaving a web of bilaterals and even agreements between groups. With around 300 instances of economic regionalism notified to the WTO, there are no WTO members anymore without some involvement of regionalism. Thus far, this trend has not yet been damaging to multilateralism (acting more as building-blocks than stumbling blocks), but the current policy trap of the Doha Round is precisely that many players hold regionalism cards as an alternative to the multilateral cards. The problem is not so great for the large players such as the EU, the US and Japan, increasingly China too, but it is bound to be inimical to e.g. the cotton producers in West Africa or many small trading partners which cannot offer attractive market access themselves.

The EU has always been and still is the champion of regionalism. Although historical legacies and political sensitivities put a limit on the Union's influence, the drawbacks of "you-too" regional agreements (as seen in different origin rules and little or no "cumulation", as well as the lack of systematic solutions to the

removal of technical barriers) can be contained by a strategy of consistency. The problem in East Asian agreements is precisely the lack of any discipline, of guidance from APEC or of leadership, causing APEC business to complain loudly about “spaghetti bowls” of unmanageable rules on market access. Thus, quite apart from the possible menace to multilateralism, “wild” regionalism amounts to shooting oneself in the foot.

The EU can look back on three decades of promoting or assisting with GATT-compatible regionalism outside the Union’s orbit via trade and foreign policy. EIPA has frequently been a centre of expertise for these Community efforts. The Institute has long been prominent in the external dimension of internal EU policies, as well as in assisting other regions in the world when setting up and improving their economic regionalism. Bilateral agreements between the EU and other regions (or third countries) usually contain clauses committing the Union to support capacity building in terms of training, advice, conferences, publications and exchanges. EIPA has been a major provider of such services in several parts of the world. Already in 1986 EIPA began an EU-ASEAN programme with the ASEAN Standing Committee (the national DGs for ASEAN of the ASEAN member states) coming to Maastricht. Apart from training, this collaboration led to the co-organisation of two large conferences in Kuala Lumpur at high level, one in 1987 (a three days conference, supplementing an internal ASEAN conference, all papers being published (and one in 1989, on ASEAN & EC-1992, stimulated by the personal efforts of trade minister Rafidah Aziz of Malaysia who co-chaired the conference). In the context of this Special Programme for ASEAN (1986-1989), the Commission of the EC requested EIPA to put the papers of the seminar Experiences in Regional Cooperation in one volume and to have the publication finalised by December 1987 for the ASEAN summit meeting in Manila. The Special Programme for ASEAN was followed between 1992 and 1994 by a Training Programme to increase the awareness of EU developments in the ASEAN region, to promote a better understanding between the two regions and to offer an input into the discussion on closer ASEAN cooperation/integration.

A second major initiative was EIPA’s contribution in carrying out various programmes for the European Commission in support of regional integration in Latin America. Between 1988 and 1991 a series of seminars on regional cooperation and integration were held in Maastricht, based on a comparison between Central American and European experiences, as well as a regional programme in support of public management modernization carried out in Central America. This was followed between 1992 and 1999 by a training programme in the framework of cooperation between the EU and the countries of the Rio Group, implemented through a Training Centre for Regional Integration (CEFIR) set up in Montevideo, Uruguay. These activities were carried out in the member countries of Mercosur and of the Andean Community, as well as Chile and Mexico.

The third activity EIPA undertook, under the TACIS programme, related to the web of countries formerly being part of the Soviet Union (the so-called Newly Independent States). From 1992 to 1996 EIPA organized 35 seminars on the evolution of the external policies of the EU and on economic regionalism. It also resulted in two books published by the Institute, one on explaining the EC trade instruments and the factors influencing the commercial relations of the Community and the other, providing a survey on free trade agreements and customs unions.

The most recent initiative has been the EuroMed Market Programme which was launched in June 2002. Please see the contribution from EIPA’s Antenna in Barcelona.

Multilateral trade negotiations

The EU’s negotiation position in 1999 was to call for a broader round, which would allow more trade-offs than if negotiations would only concentrate on agriculture and services. The broad objectives of the forthcoming round were to strengthen the WTO rules-based system, to promote the liberalisation of trade, improve the integration of developing countries into the multilateral trading



Training Programme for Developing Countries’ Trade Negotiators and Administrators, organised for the European Commission and held in Maastricht, Paris and Brussels between 30 January and 26 February 2005.

system and to address the interface between trade and trade related issues and policies. At its own initiative, EIPA organised several seminars on the European agenda for a future round, by involving different players from various parts of the world. One of the seminars addressed the issue of agricultural negotiations and policy developments in agricultural trade.

From the Doha Ministerial onwards up to 2004, the European Commission has allocated a total of around €3.3 billion to trade related assistance. In this context, EIPA for three consecutive years (2003-2005) won a contract from the European Commission, DG Trade, for the organisation of a four-week Training Programme for Developing Countries' Trade Negotiators and Administrators. This Programme formed part of the Communities' commitments under the 4th Ministerial Conference of the WTO, to provide Trade Related Technical Assistance and Capacity Building (TRTA/CB). The overall objective of the training was, therefore, to strengthen the developing countries' ability to effectively participate in future trade negotiations. This entailed the improvement of negotiation skills, the increase of knowledge on the issues part of the ongoing negotiations and the enhancement of the implementation of current agreements. In total, 107 participants from 52 countries and various regional organisations took part in this training programme.

Anti-dumping

EIPA staff have contributed to the debate about more technical aspects of trade policy. One interesting example is the analysis of anti-dumping cases, both with respect to the GATT-based rules (and its flaws or loopholes) of the EU and to the trade-off between special interests exploiting the mechanism and the EU's general interest. Research at EIPA showed that although in principle there was a legitimate concern at preventing subsidised imports from undermining the viability of European firms that might have been more efficient than their foreign competitors, in actuality more than 90% of all cases posed no significant threat to European industry. Foreign firms were too small to acquire a dominant position that would enable them to exploit European consumers by charging excessively high prices.

Conclusions

EU trade policy is and remains an important competence of the EU level, both for the Commission and for the 133 committee directed by the Council. The core applications are (1) the external implications of the significant deepening, widening and enlargement of the EU, (2) the design and development of stimulating trade, investment and economic cooperation packages in the new Neighbourhood policy in the wider Europe (3) the promotion of and assistance with GATT-compatible regionalism elsewhere in the world, (4) the unfailing support of multilateralism, its legal and financial resources and further Rounds for the benefit of developing countries (with the acceptance of sufficient adjustment at home).

EIPA's record over the last 25 years shows that it is capable to provide training and expertise in the Union, the wider Europe and in other continents in a variety of ways, whilst also contributing to the policy debate in the published literature. ::

Select publications of EIPA staff on EU Trade Policy

Jacques Pelkmans, "The bickering hegemony: GATT as an instrument in Atlantic trade policy", in L. Tsoukalis (ed.), *Europe, America and the world economy*, (Oxford: Basil Blackwell, 1985).

Jacques Pelkmans, "The EC's trade policy towards developing countries", in C. Stevens & J. Verloren van Themaat (eds), *Europe and the international division of labour*, (London: Hodder and Stoughton, 1987).

Rita Beuter and Panos Tsakaloyannis (eds), *Experiences in Regional Cooperation*, prepared in the framework of EC-ASEAN Cooperation, (Maastricht: European

- Institute of Public Administration for the EC Commission, 1987).
- Jacques Pelkmans, "Alternative methods of economic integration with special emphasis on the European Community", in N. Sopheer et al., (eds), *ASEAN at the crossroads*, (Kuala Lumpur: Institute of Strategic and International Studies, 1987).
- Phedon Nicolaides, "The Changing GATT System and the Uruguay Round Negotiations", in R. Stubbs and G. Underhill (eds), *Political Economy and the International System*, (Basingstoke: Macmillan, 1993).
- Phedon Nicolaides (ed.), *EC Trade Policy: Legal Basis, Instruments, Commercial Relations*, (Maastricht: European Institute of Public Administration for the EC Commission, 1993).
- Madeleine O. Hosli and Arild Saether (eds), *Free trade agreements and customs unions – Experiences, challenges and constraints*, (Brussels: TACIS services, European Commission and European Institute of Public Administration, 1997).
- Phedon Nicolaides, "Reform of Anti-dumping Regulations: The Case of the EC" (with R. van Wijngaarden), *Journal of World Trade*, Vol. 27, No. 3, 1993.
- Sanoussi Bilal and Pavlos Pazaros (eds), *Negotiating the Future of Agricultural Policies: Agricultural Trade and the Millenium WTO Round*, (The Hague: Kluwer Law International in association with European Institute of Public Administration, 2000).

Notes

- * Prof. Dr Jacques Pelkmans, former Professor of Economics at EIPA, is the Jan Tinbergen Chair at the College of Europe in Bruges and Council Member at the Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid – WRR*), The Hague.
- ** Rita Beuter, Senior Expert, Head of Unit "European Policies", EIPA.

Managing Europe's Foreign Policy: The Record and Prospects

By **Dr Simon Duke***, EIPA 1998-present and **Dr Sophie Vanhoonacker****, EIPA 1987-2002

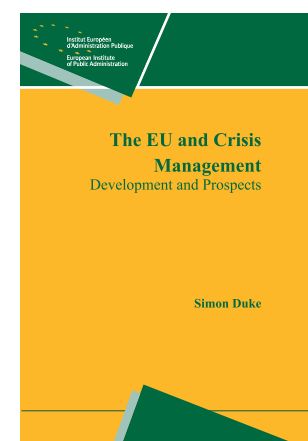
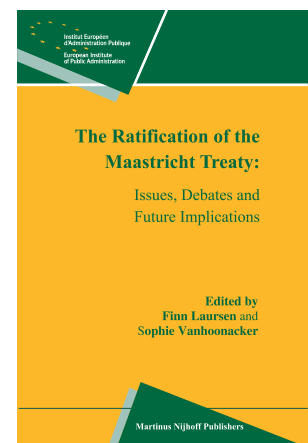


As we look back over the last twenty-five years of external relations it includes some impressive, even momentous, developments. François Mitterrand's accession to power on 10 May 1981 and his appointment of Claude Cheysson as Foreign Minister, removed the main impediments to the growth of what was then European Political Cooperation (EPC). The increasingly frequent and important consultations of Community foreign ministers at European level also enjoyed support from Hans-Dietrich Genscher, the Federal Republic of Germany's Foreign Minister, and his British counterpart, Douglas Hurd. In the third of a series of reports leading up to the Single European Act, the London Report of 13 October 1981 claimed that political cooperation had become a "central element in the foreign policies of all Member States" and that the "Community was increasingly seen by third countries as a coherent force in international relations". The report also noted that "the Ten [Community members] are still far from playing a role in the world appropriate to their combined influence".

The ensuing years saw the external relations of the European Community, built around the Community areas of external relations and EPC as a parallel process, develop in scope and intensity. The momentous events of 9 November 1989 (our "9/11") reshaped European perspectives on the world and security and also led to the transformation of EPC into the Common Foreign and Security Policy (CFSP) – or the second pillar, to use the popular adage. The multifarious post-cold war security challenges, including some on our very doorstep in the Western Balkans, led a decade later to the development of a variety of crisis management roles under the rubric European Security and Defence Policy (ESDP). The rapid growth of CFSP, and its subset ESDP, also gave rise to a number of problems, not the least of which was how to coordinate the more traditional and established Community areas of external relations (such as trade, development and assistance, external relations and enlargement) with the emerging intergovernmental aspects mentioned above. The issue does not though stop with the Community (first pillar) and the second pillar since there are significant aspects of Police and Judicial Cooperation in Criminal Matters (the third pillar) that have increasingly important implications for external security issues, such as the fight against organised crime and counter-terrorism.

It would be a mistake to attribute issues of coherence over the last twenty-five or so years solely to inter-pillar differences since there are well documented cases of intra-pillar incoherence and turf battles (such as the pre-DG External Relations division of external political and economic affairs into separate DGs). Indeed, coherence in external relations has both its horizontal aspects (how the EU institutions themselves coordinate) as well as vertical aspects (how the Member States and the EU institutions coordinate).

To complicate matters further the *tableau* of international relations has changed fundamentally over the last couple of decades, shaped in particular by



our 11/9 and the World Trade Center and Pentagon bombings of 9/11. These events and others have fundamentally challenged our perception of the nature of diplomacy, security, crisis management, multilateralism and the role of force. It is against this background that the EU has struggled to construct a coherent voice in EU external relations. This is very much an uphill struggle due to a number of factors that are worth briefly enumerating:

- The division of EU competences in external relations into *communautaire* and intergovernmental aspects;
- The lack of a legal personality for the EU (whereas the Community has legal identity);
- The lack of a clear “voice” in international relations on the part of the EU;
- Sensitivity and differences as to how far the EU should go in integrating some areas of external relations (notably defence);
- Difficulties in defining the EU’s role and representation vis-à-vis significant third parties (such as the US) or multilateral organisations (such as the UN);
- Providing the necessary financial and human resources to support newer areas of EU external relations, such as ESDP.

All of these issues are familiar and were elaborated upon at length by the relevant working groups in the Convention on the Future of Europe. The list of innovations and modifications to the existing treaties and practice that emerged from the Convention was impressive. Indeed, it could be argued that much of the resultant Constitutional Treaty was a summation and tweaking of the existing treaties, with the main innovations contained in the external relations area. For reasons that are well known, the Constitutional Treaty was rejected and it remains, at least for the time being, on ice. Herein lies the problem.

It was widely agreed at the abovementioned Convention that much could be done to modify EU external relations to address the familiar maladies: these included such innovations as the creation of a Union Minister for Foreign Affairs who would be assisted by the European External Action Service (EEAS). Provision was also made for more forms of cooperation and flexibility in external relations. It is also worth noting in passing that two provisions of the Treaty, the so-called Solidarity Clause adopted in case of terrorist attacks and the European Defence Agency, were adopted by intergovernmental consensus. These, if needed, are clear signs of the need for reform in EU external relations.

The argument is not that the Constitutional Treaty was a panacea, but that the negative Dutch and French votes threw out the baby with the proverbial bath water. If *Eurobarometer* polls are anything to go by, many would support the kind of reforms suggested in the Constitutional Treaty since there is a clear desire for more European involvement in foreign and security matters. It should not be assumed either that the foreign or other external-affairs related ministries in the Member States had any vested interest in the failure of the Constitutional Treaty; in fact, the Constitutional Treaty carried promise for more, not less, national involvement of diplomats in EU diplomacy (through the European External Action Service and various aspects of crisis management). Naturally, there were (and are) vested “turf” interests in the future institutional shape of EU external relations and these sentiments should not be underestimated. The problems are not however insurmountable and there seems to be (at least) consensus that the current structures and institutional practices are suboptimal and that reform is necessary.

As we look to the future the issue of who (and what) should manage EU external relations has a number of interesting dimensions. In the first place it is clear that in the mid-term there are areas of external relations that are likely to remain intergovernmental and any wholesale communitisation of external relations is illusory. This illusion has some popularity due to the misnomer that the Constitutional Treaty removed the old pillar structure; careful reading will reveal that the pillars were removed superficially but that the second pillar (CFSP) still retained its special character, structures and practices. This observation applies in particular to any prospective development of an EU defence policy and common defence. Not only does this pose considerable constitutional and legal issues for the six neutral or non-aligned EU members, it would also elicit strong

opposition from the more staunch Atlanticist members. For similar reasons of national sensitivity deployment of EU "peacekeepers" (and, incidentally, any EU *gendarmarie*) is also likely to remain under strict national control regarding the availability (or not) of national contributions to EU operations. This is though no different than in the NATO case, which is also built upon national contributions to achieve a common goal.

Managing external relations within the Community will remain challenging since the original *famille Relex* (which includes DG External Relations – including the Service responsible for the External Delegations; DG Trade; DG Development; DG Enlargement; the EuropeAid Cooperation Office; the European Humanitarian Aid Office and certain aspects of DG Economic and Financial Affairs) has proven a useful but limited coordination tool. Much of the effectiveness of the *famille* also depends upon the Commission President and the extent to which he is prepared to guide, steer and (figuratively) knock heads together. The *famille* is also limited in the sense that most DGs will have a legitimate external affairs role (such as Environment, Agriculture and Rural Development, Justice Freedom and Security, Education and Culture and Transport and Energy). There are therefore challenges to be met in internal coordination within the Commission which could be at least partially answered by thinking through the implications of creating something like the European External Action Service which would draw upon relevant expertise and skills as required (much as many national diplomatic services do with the secondment of experts from other ministries).

The Council Secretariat, as a smaller institution, is arguably more nimble and able to adapt to changes in external relations than the Commission. In particular DG-E has proven itself adaptable and its role now goes far beyond the traditional mission of supporting the Presidency. While its new role in the area of policy formulation and implementation responds to the need for a more operational foreign policy, it also has led to new coordination challenges, especially with the European Commission. The rather special character of DG-E can be traced back to its origins as the secretariat for EPC. It now works very closely with seconded diplomats (notably in areas such as the Western Balkans and the Middle East) and the various military, police and civilian crisis management bodies that have been developed over the last five years or so. It is in part this flexibility that has underpinned the High Representative for CFSP's frenetic globetrotting – to the extent that, to many, Solana is *the* face of EU external relations.

Solana was the obvious choice to become the Union's first Minister for Foreign Affairs. Perhaps rather presumptively he was named as such, based on the assumption that the constitutional treaty would be adopted. In spite of the malaise surrounding the constitutional treaty, a Foreign Minister may well help the EU in terms of recognition, coherence and visibility. The role, as envisaged in the constitutional treaty, would not be without its challenges since it would involve fundamental reform of the Presidency at the higher echelons, it would also involve working out a complicated series of relations and responsibilities with the European Council, the Commission and the Council. At the national level there may also be adjustment required to the notion of a European "Foreign Minister" although the willingness of the EU members to work through Solana on, for example, the Middle East is encouraging. This may however have much to do with the current High Representative for CFSP rather than his office *per se*. Any appointment that involves this much institutional upheaval and adjustment is unlikely to occur outside a process of treaty reform, but this does not preclude the possibility of moving towards some form of European External Action Service, a professional European *corps diplomatique*, in anticipation of the eventual emergence of such a figure.

At the national level the Foreign Ministries in the Member States have already seen significant adaptation to the presence of the EU as an active international actor. Although there are differences between the members the general pattern has witnessed dedicated sections within Foreign Ministries working on, for instance, CFSP matters. The typical career profile of a diplomat from an EU Member State is more likely than not to involve either service in an EU institution or demand thorough knowledge of various aspects of EU external relations (the same is increasingly true of senior military officers). For those who serve in



Seminar: "Perspectives on EU Institutions, Policy Making and EU-US Relations", in collaboration with the Brookings Institution, Washington DC, held in Maastricht and Brussels on 20-24 March 2006.

Brussels the practice of regular consultations with their national counterparts at the European level has led to both socialisation (the change of practice in work habits and decision-making) and so-called “Brusselisation” (the actual transfer of personnel and responsibility to Brussels). The training, background and experience of national diplomats will be all the more important to the EU with the advent of some form of European External Action Service, in which they will most probably play a critical role.

One of the most notable developments in EU external relations has been the rapid development of ESDP and, with it, the ability of the Union to respond to a variety of crisis management tasks. In a remarkably short period of time (around three years) the EU members have gained valuable experience in conducting a variety of military, police and civilian missions. Although there is considerable progress to be made, most notably in the gap between rhetoric and resources when it comes to the more demanding missions, the EU can nevertheless legitimately claim to be an influential actor when it comes to the civilian aspects of crisis management. This involves drawing not only upon the normative role of the Union in international relations, but also upon the considerable resources at the disposal of the Community. Here too though there is room for improvement, especially when it comes to issues of complementarity of goals and funding. The civilian aspects of ESDP crisis management have not been developed with enough attention to Community capacities in the same or complementary areas. At a more general level, the proliferation in the number of military and civilian crisis management missions endangers the scarce resources that underpin the Union’s (and Member States’) willingness to conduct them. This may therefore call for a more reflective approach as to why the EU specifically should engage itself in one crisis or the other, as opposed to another regional or international organisation. The results of missions will also need more reflection so that a more accurate idea of whether they attain the stated goals and whether they reflect the EU’s general objectives.

The nature of current crises in which the EU is involved has already illustrated that more thought will be required about the linkage between short-term and long-term objectives, as well as the connections between crisis prevention, crisis management and post-conflict stabilisation. The presence of crisis management tools in both CFSP and the Community calls for a more holistic approach so that the overall objectives of EU policy towards any given country or region are not lost in the midst of institutional politics in Brussels and the capitals. Arguably, the attempt to mainstream certain items in external relations, such as the efforts to curtail weapons of mass destruction or human rights, are a nod in the right direction – although, here too, questions of institutional assertiveness and friction can arise.

While considering developments in EU external relations it is also worth briefly considering the European Neighbourhood Policy (ENP) which is viewed as something of a flagship in Community external relations. In short, the policy enables the Union’s immediate members to the south and east to move closer to the Union and this includes the possibility of participation in the internal market. The overall aim is to create an area of prosperity and stability on the Union’s common borders. It remains early days for ENP but there are already evident challenges. Two in particular deserve mention: first, the promise of moving closer to the EU will not satisfy all since some (like Georgia, Moldova and the Ukraine) see membership as the ultimate goal of their respective relations with the Union, and second, ENP is underpinned by a number of normative considerations (such as democratisation, minority rights, the role of women in society and so forth) that are less palatable to a number of southern neighbours. This raises the possibility of two diverging dialogues emerging with the presence, especially to the south, of a fractious and rather unstable neighbourhood and to the east a potentially difficult dialogue that will be influenced by mutual relations (and energy dependency) with Russia.



Visit of a group of South Koreans to EIPA on 26-29 June 2006.

Meeting the challenge: training in a dynamic external relations environment

How, it may be asked, have the developments in EU external relations and the future challenges outlined above been reflected in EIPA's training activities? Historically EIPA has demonstrated a broad array of external relations activities, both in its training and complementary research agendas. These range from the presence for much of the period covered in this Eipascope issue of a specialist in the CFSP area, to regional activities (including Latin America, MEDA and ASEAN), to the training of diplomats from central and eastern Europe (in conjunction with Clingendael), the preparation of diplomats for the Presidency of the Council, to hosting diverse non-EU clients who wish to learn more about the EU and its various facets (amongst others, this includes Americans, Chinese, Canadians, Norwegians, South Koreans and Ukrainians). More recently, EIPA has conducted training activities within the External Service of the European Commission and the Council Secretariat on various facets of EU external relations. EIPA has also developed close relations with external centres of excellence, such as the Brookings Institution in Washington DC (with whom EIPA has its oldest continually running seminar series) and the Federal Executive Institute in Charlottesville, Virginia.

It is clear that EIPA faces future demand for training and research activities in the external relations field and this will include consideration of whether and how to fill possible gaps in the increasingly important external relations ramifications of police and judicial cooperation, the fight against organised crime and counter-terrorism. The individual scientific staff members will also face the challenge of training at the anticipated level in a dynamic environment. Within Europe, training of diplomats is still largely done at the national level, but there is growing realisation that the European level of diplomacy is of increasing significance and herein lie opportunities for training and research; this is of interest to a number of specialised training institutes, including EIPA. Similarly the growing influence of the EU as an actor on the international stage may well result in further demands for training from the Union's international partners.

Although it is dangerous to try and predict the future, the world in 2031 when EIPA celebrates its 50th anniversary, will be no less interconnected and interdependent. Issues of consistency and coherence, defining our relations with our neighbours and partners further afield, the increasing blurring of distinctions between external and internal aspects of EU policy, as well as global issues related to security and stability, will all provide training challenges as well as opportunities over the next quarter of a century. Commission President José Manuel Barroso and Commissioner Benita Ferrero-Waldner presented a communication from the Commission to the European Council in June 2006. The Communication, "Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility" makes it clear that training, at both the national and European levels, has a major contribution to make if, as the Treaty on European Union states, the Union is "to assert its identity on the international scene". ::

Notes

- * Dr Simon Duke, Associate Professor, Unit "European Policies", EIPA.
- ** Dr Sophie Vanhoonacker, former Associate Professor at EIPA, is now Associate Professor at the Faculty of Arts and Social Sciences, University of Maastricht, the Netherlands.



Seminar: "Mutual Perceptions: The EU and Its Eastern Neighbours" (in collaboration with the Clingendael Institute) Maastricht, 25-29 September 2006.

The Multiple Dimensions of Euro-Mediterranean Cooperation



By **Eduardo Sánchez Monjo***, EIPA 1994-present

The current reality in the Euro-Mediterranean area is rather complex; it is the result of a common history marked by periods of peace but also by numerous hardships. This reality results from a differentiated economic, political and social situation characterised by weak economic interrelations among the so-called Mediterranean Partners (MPs) and is marked by events that occurred in recent years which no doubt everyone still remembers. Such is the context in which several Community policies were launched to take up the challenges posed by the Mediterranean area.

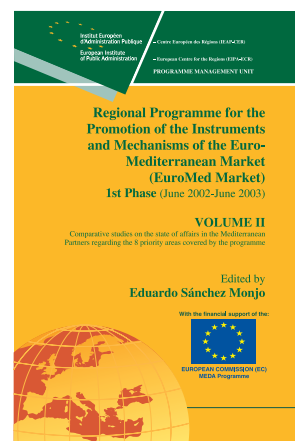
The Euro-Mediterranean cooperation has been developed through various Community policies since the 60s of the last century, and these policies have resulted in various cooperation programmes. These instruments are both of regional scope (for the Mediterranean Partners as a whole – initially 12: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Palestinian Authority, Syria, Tunisia and Turkey; in May 2004, Cyprus and Malta joined the EU) and of bilateral scope (for each of them individually).

What is today known as the Euro-Mediterranean Partnership is not an isolated initiative, but was preceded by others and is the result of a joint decision of the EU and the MPs. Actions have included bilateral trade agreements in the sixties, bilateral financial cooperation agreements in the seventies, and in the period 1972-1990 the Global Mediterranean Policy, which was based on two basic instruments: tariff preferences (exemptions for certain, mainly agricultural, exports), and technical and financial cooperation agreements (aid for industry and for training and research projects). Later, between 1990 and 1996, the New Mediterranean Policy was developed, which had five objectives: strengthening support measures for economic reform in the Southern and Eastern Mediterranean countries; stimulating private investment; increasing bilateral and Community financing of structural adjustments; opening up the EU market; and strengthening the political and economic dialogue.

At the Essen European Summit of December 1994, the Heads of State and Government defined the new EU strategy as regards the Mediterranean. This strategy was more ambitious, followed a different approach and was to reach more ambitious objectives. The Summit confirmed the idea of a Euro-Mediterranean Partnership and agreed to hold the Conference of Barcelona in November 1995, which marked the beginning of the Barcelona Process and resulted in the Barcelona Declaration.

The Barcelona Declaration and the Euro-Mediterranean Partnership

The Barcelona Declaration of November 2005 comprises 3 chapters. The first chapter on political and security matters consists of three complementary parts, namely: political dialogue at bilateral and regional level; partnership-building



measures and the Charter for Peace and Stability. The second, economic and financial, chapter aims to create an area of shared prosperity through the establishment of a free-trade area by the year 2010. The third, cultural, social and human, chapter underlines the importance of intercultural and interreligious dialogue; the importance of the role of the media in mutual knowledge and understanding between cultures; and the development of human resources in the cultural field. It also provides for cultural exchanges, language learning and the implementation of educational and cultural programmes that respect cultural identities.

The parliamentary component of the Barcelona Process is represented by the Euro-Mediterranean Parliamentary Assembly (EMPA). This Assembly meets in plenary session at least once a year. Its presidency changes every year so as to guarantee North-South parity and alternation. 120 members come from the EU and 120 from the 10 Mediterranean partner countries. It has three parliamentary committees: 1) on political, security and human rights issues; 2) on economic, financial, social and education issues, and 3) on the promotion of quality of life, human exchanges and culture.

After the Barcelona Declaration, the European Commission launched two major initiatives represented by the documents "Agenda 2000" and the "New Neighbourhood Policy" (in 2003) to reinforce the Euro-Mediterranean Partnership.

Agenda 2000 envisaged measures aimed at reinforcing relations between the EU and the MPs and to promote sustainable development in the MPs. The latter aim was a challenge to be met head on and, to this end, the measures contained in the Barcelona Declaration had to be relied upon, at least to stimulate south-south relations and the increase of trade.

The general objectives of the European Neighbourhood Policy (ENP) are to reduce poverty and to create an area of prosperity, while taking into account the need to carry out economic reforms with a view to upgrading these countries to enable them to participate in the Internal Market, through law approximation and compatible rules. A key element of the European Neighbourhood Policy is constituted by the bilateral ENP Action Plans mutually agreed between the EU and each partner country. These set out an agenda of political and economic reforms with short and medium-term priorities. At present, the implementation of the first Action Plans agreed in early 2005 has started (Israel, Jordan, Morocco, the Palestinian Authority and Tunisia) and further Action Plans are under negotiation with, among others, Egypt and Lebanon. The EU and the partner country agree on reform objectives across a wide range of fields (cooperation on political and security issues, economic and trade matters, common environmental concerns, integration of transport and energy networks, and scientific and cultural cooperation). In the framework of these agreements, the EU provides financial and technical assistance to support the implementation of these objectives, in support of the efforts of the partner countries. From 2007 onwards, as part of the reform of Community assistance instruments, the TACIS and MEDA programmes will be replaced by a single instrument: the European Neighbourhood and Partnership Instrument (ENPI).

The ENP can be considered as a kind of *à la carte* agreement which gives each partner individually the possibility of deeper integration with the EU regarding some parts of the *acquis communautaire* that they wish to apply in their own context. The ENP offers an approach which is chiefly based on differentiation between countries. The idea is that each partner is well aware of its own capacities, institutions, priorities and needs for harmonisation with the EU.

The contribution of the European Centre for the Regions (ECR)

From the outset, the ECR has had a clear Euro-Mediterranean vocation. A few months after the launch of the Barcelona Process, the ECR submitted to the EC and to the EuroMed Committee an initiative called "Training of MP Public Administrations and Institutions within the Framework of the Euro-Mediterranean Partnership 2001-2003". Below, three Euro-Mediterranean Programmes are set out that the ECR, acting as Programme Management Unit, is managing from

Barcelona, in close collaboration with the Directorate General EuropeAid Cooperation Office of the European Commission.

These three EC programmes funded by the MEDA programme are the EuroMed Market Programme, the EuroMed Training of Public Administrations Programme and the EuroMed Justice Programme. The direct beneficiaries of these programmes are participants from the Mediterranean Partners but they are also open to experts from the 25 EU Member States.

(1) The *EuroMed Market Programme*. This regional programme of the European Commission (EC) for industrial cooperation and Internal Market, aims at all 27 Euro-Mediterranean Partners (35 since May 2004), has a budget of €9.2 million and an initial duration of 3 years, and falls under chapter 2 of the Barcelona Declaration of November 1995, pursuing the establishment of a free-trade area by the year 2010 in the Mediterranean Region. Launched in June 2002, this programme should have ended in May 2005, but the European Commission decided twice to extend it by one year, first until May 2006 and then until May 2007. Hence, the total duration of the programme is 5 years.

Within this regional programme, 8 priority fields pertaining to the Single Market have been identified, presented and discussed: free movement of goods; customs, taxation and rules of origin; public procurement; intellectual property rights; auditing and accounting; protection of personal data and e-commerce; financial services; and competition rules.

This programme should contribute to adopting a series of measures to support the good functioning of the free-trade area: law approximation, regulations, procedures, adoption of common standards between the MPs and the EU Member States; furthermore, surveillance structures and bodies to stimulate trade should be set up.

This programme comprises information activities about the situation in the EU and in the Mediterranean Partners in the abovementioned fields and training and networking activities in the form of 55 seminars, workshops conferences and train-the-trainers activities, 60 study visits and 5 expert missions (targeted technical assistance). It also involves carrying out 4 comparative studies on intellectual property, trade promotion, competition and public procurement respectively. The first two studies have already been completed.

Other actions under this programme include 8 comparative studies on the 8 priority areas, 3 publications and several CD-ROMs containing ad hoc documentation. The participants in the programme (some 1,900 in total) are mostly experts from public administrations but also from the private sector in the 35 Euro-Mediterranean Partners. Generally speaking, they come from ministries of industry, trade, economy, finance, transport and communication, foreign affairs, etc. Finally, it should be underlined that this programme has its own website (euromedmarket.org) which is an information and networking tool for participants.

Although of regional scope, this programme also comprises intraregional and bilateral activities. Whereas events organised for all 10 MPs are nearly always organised in the EU Member States, those of intraregional scope usually take place in the Mediterranean Partners according to a fair geographical distribution of venues. Some activities have been carried out for the states party to the Agadir Agreement (Egypt, Jordan, Morocco and Tunisia) and each of these countries has hosted one or several of such activities. Bilateral activities have included study visits of MP experts to administrations of EU Member States and missions of European experts to administrations of some MPs.

(2) The “Regional Training and Consultancy Programme on Public Administration for the Mediterranean Partners” (*EuroMed Training of Public Administrations Programme*) of the European Commission is also funded by the MEDA Programme.

It should be noted that this programme is an extension of a Commission initiative which was taken in 2000 and resulted in a conference organised by the ECR in Barcelona on 7 and 8 February 2000 entitled “Meeting of the



Representatives of the Public Administrations of the Euro-Mediterranean Partners in the Framework of the Euro-Mediterranean Partnership”.

This programme comes under chapter II of the Barcelona Declaration of November 1995 and aims to provide training on European affairs to civil servants from the Southern Mediterranean and the Middle East; it also envisages the creation of a network of public administration training centres of the Euro-Mediterranean Partners.

Having a duration of 3 years (January 2004-January 2007), extended by 6 months (until July 2007) and with a budget of €6 million, this programme is aimed at the 10 Mediterranean Partners. It consists of 4 modules: 1) EU Basics; 2) EU Programme Basics; 3) EU Advanced (e.g. on free movement of goods, competition, common agricultural policy, public procurement, economic and monetary union, etc.); 4) Train-the-Trainers; and the creation of a network of public administration training centres.

The objective is to facilitate the creation of a free-trade area by 2010, to strengthen institutional and administrative capacities as well as management skills necessary to deal with Community dossiers, to enhance the absorption capacity of programmes, to promote interregional and intraregional cooperation, to provide an introduction to EU affairs and to present the situation in the MPs.

The target group is composed of civil servants from various ministries in the MPs who deal with EU dossiers in their daily work.

EU Member States are involved in this programme through consultancy and participation in training when necessary, as well as through participation in the network of public administration training centres of the Euro-Mediterranean Partners.

In total, some 1,550 participants should attend the 40 activities (seminars, workshops and conferences) planned in this programme.

- (3) The *EuroMed Justice Programme* is also funded by the EC MEDA Programme (€2 million) and falls under chapter 1 of the Barcelona Declaration: the political and security chapter. Its aim is to set up an interprofessional community of judges, magistrates, public prosecutors, lawyers and court registrars at the service of an open and modern justice system, reinforcing the rule of law and the effective pursuit of human rights.

This training programme will last for 30 months, from January 2005 to June 2007, and 20 seminars and 5 preparatory meetings are being organised during this period. All 10 Mediterranean Partners participate in the seminars with a delegation comprised of 2 legal professionals, generally magistrates and/or public prosecutors. In total, some 400 members of the legal professions should benefit from this programme.

The seminars are grouped into 5 topics and with 4 seminars being organised on each topic. These topics are:

- (1) Initiation to and training in cooperation and international judicial mutual assistance in criminal matters;
- (2) Terrorism and interconnection of criminal networks;
- (3) International dimension of financial procedures; financial and economic crime, in particular money laundering
- (4) Initiation to and training in cooperation and international judicial mutual assistance in civil matters;
- (5) Management and administration of justice: management of procedures; computerisation.

Considering the obvious international dimension of judicial topics nowadays, enhancing cooperation and judicial mutual assistance is more than ever necessary. But to this end we need to better know our judicial systems and legislation, while also taking into account the specificity of each country and the sovereignty of each government.

This programme does not aim to reform training in the MPs but rather to stimulate the parties involved to exchange information and experience, to work together and to get to know each other better in order to enhance cooperation; it also aims to create personal and institutional links among participants in the activities.



Seminar in the framework of the EuroMed Justice Programme on “Exchange of Non-Judicial Information and Its Procedural Use”, Brussels, 15-18 May 2006. From left to right: Khaled Abouali, Legal Officer and Criminal Law Expert, Deputy Adviser detached to the President Services, International Relations Department, Federal Public Service Justice, Belgium; Eduardo Sánchez Monjo, Director of EIPA-ECR; Laurette Onkelinx, Vice-Prime Minister and Minister of Justice of Belgium; Anna Abariotou, Principal Administrator of the EuroMed Justice Programme, DG EuropeAid Co-operation Office, European Commission.

Conclusions

This wide-ranging policy launched by the EU as devised by the Euro-Mediterranean Partnership was confirmed and restated 10 years later by all governments of the region and the Community institutions at the Barcelona European Summit in November 2005. All authorities attending this event stressed the need and importance of this unique forum where the 10 MPs can sit together with Europeans at the same table to be updated on and discuss topics of common interest aimed at improving the conditions in the area.

Thanks to the Euro-Mediterranean information and training programmes and initiatives – of bilateral but also of regional scope – funded by the MEDA Programme (by the ENPI as of next year), leaders and experts from the 10 MPs can discuss general or sectoral topics of interest so as to improve their technical knowledge. This exchange of experience and shared work also result in personal links which in their turn contribute to the exchange of experience and development of networks.

The international and regional context has been, and still is, complex and unstable. This represents an additional difficulty but also a most rewarding challenge as the Mediterranean will again become an area of peace and stability, and of shared prosperity where dialogue, respect and mutual understanding will prevail.

Note: For further information on the Euro-Mediterranean Partnership, please consult the europa.eu website, particularly the site of the EuropeAid Cooperation Office as well as that of the European Neighbourhood Policy. ::

Note

- * Eduardo Sánchez Monjo, Expert; Director of the European Centre for the Regions (EIPA-ECR), Antenna Barcelona.

Building EIPA: Perspectives of the Directors-General

The Convergence of European, National and Regional Interests and the Establishment of EIPA



By **Dr Stefan Schepers***, Director-General of EIPA, 1981-1988

At the end of the 1970s, the European Community – which then comprised nine Member States – underwent one of its periods of stagnation. Such periods are mostly a result of political and economic developments outside the EC/EU or in its Member States, or a combination of both. Although these periods may not satisfy those for whom European integration should be a continuous process of policy centralisation, they do allow consolidation of previous achievements as well as time to reflect on whether and, if so, how to proceed. Although the discussion about which competences the EC/EU should have and how its institutions should function has been going on throughout its history, the widespread concern about overstretch is a more recent one, resulting from a steady growth in policy competences and members as well as from a fundamentally changed external political and economic environment.¹

The history of the EU is littered with grand ideas and more practical ones, only some of which made a concrete contribution. European initiatives then as now could only succeed if they fitted actual political thinking and concerns and if they could rally a majority of Member States behind them. The establishment of EIPA was no different.

The European context

Having restructured its coal and steel markets, launched a common agricultural policy and successfully established a general Customs Union in 1968, from 1973 the EC was confronted with the consequences of the oil crisis and with an economic malaise. In addition, the entry of three new members at the beginning of 1973 required adjustments.

What to do next was not clear, and the political circumstances in the Member States did not allow for quick remedies. This led to the production of reports, which are a way to test ideas and to develop a new consensus. As early as 1970, the Werner Report proposed a three-stage plan to realise an Economic and Monetary Union within a decade. While the timing was too optimistic, the report would nevertheless form the basis for the establishment, in 1978, of the European Monetary System (EMS), following a French-German initiative by Chancellor Helmut Schmidt and President Valéry Giscard d'Estaing. The aim of the EMS was to stabilise exchange rates and reduce inflation, and to introduce the European Currency Unit (ECU) – a mechanism to stabilise exchange rates and limit their fluctuation – and a monetary cooperation fund. As such, it was the direct forerunner of the euro and the EMU.

In 1975, the Belgian Prime Minister, Leo Tindemans, was tasked with producing a report on how to achieve a more integrated Europe, and how to bring it closer to the citizens. Its approach was visionary, but the recommendations of the report received only lip service in the Council.

In 1979, a committee of three “wise men” – namely former Dutch Prime



Dr Stefan Schepers speaking at the Colloquium “The Impact of European Affairs on National Administrations – The Case of the Presidency”, held at Erenstein Castle on 17-18 November 1983.

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Minister Barend Biesheuvel, former EC Commissioner Robert Marjolin and a former UK Labour Party Minister, Edmund Dell – was asked to work out how to improve the functioning of the EC institutions. The issues to be dealt with were the relations not only between Commission and Council but also with the first directly elected European Parliament, as well as the implementation of EC legislation by the Member States.

The increasing body of European law led to the first concerns about proper implementation. In addition, senior national civil servants became more involved in the preparation of European legislation. It was felt that they were not always sufficiently prepared for these new tasks, which brought them into direct working relation not only with the Commission, but also with national officials of other countries. Conflicts and misunderstandings resulting from different administrative cultures increased and negotiations became unnecessarily complicated.

These were just the most important reports that were going around ahead of 1981, when a new Commission under President Gaston Thorn would take office, and Greece would join the EC. During its mandate, the powers of the Commission would increase considerably (laying the basis for the future Delors Commissions), and the accession of Portugal and Spain would be successfully completed (1986).

The Dutch context

In order to succeed, European political initiatives need the active support of national governments. This was the case with the 1985 White Paper on the Single Market, ideas about which started to emerge in business and government circles in those days too. The Tindemans and Three Wise Men reports had received little follow-up, although the functioning of the EC and its regulatory production were a concern, as they are now.

The background for the Dutch Presidency in the first half of 1981 comprised a new Commission, the first directly elected European Parliament, another enlargement, an economy that had not recovered from the oil shocks, and discussions about solutions for pressing political and economic needs. The general European context was not favourable for a bold proposal: only a pragmatic initiative that would follow the political thinking of these earlier reports and that would not shake the political balances would stand a chance. The Dutch Prime Minister – Andries van Agt – considered his options.

Meanwhile, the modernisation of public administration through the adoption of management methods from the business sector was receiving increasing interest, at least in the United Kingdom, under Margaret Thatcher, and in the Netherlands.

Internally, the Netherlands at that time had a regional restructuring programme for the Province of Limburg, following the closure of the coal mines there, and a lot of money was earmarked for this objective. The governor of the Province – Johan Kremers – clearly saw the potential economic benefits of positioning the historic town of Maastricht on the European map and thus attracting innovative activities. He convinced the Prime Minister to host the European Council in Maastricht, a departure from the practice to meet in capitals, which at the time was welcomed with considerable scepticism.

A chance meeting between Johan Kremers and myself led to a short note about the creation of a centre for comparative and European public administration, linked to the new University of Maastricht, to deal with policy development and management in a multicultural administrative environment such as the EC. It aroused interest in The Hague, where the Prime Minister – who, like the Governor, is a former academic – saw its potential. A working group chaired by the University's rector was set up to explore it further.

Exploratory meetings were held with the Secretary-General of the Commission, Emile Noël. Some governments were believed to be sympathetic, as were some leading academic institutions. The short note gradually became more substantial and concrete, and finally led to a concept paper for a European Institute of Public Administration, focused on policy analysis and public management improvement.

Political soundings had made it clear that support from the Commission and other Member States would be forthcoming only if the new institution were to be independent from the University, and if the Netherlands would launch it and guarantee its basic financing for at least ten years. Given the budgets available for regional economic development, this was not a serious hurdle. In these circumstances, and given the lack of time to discuss a proper European legal basis (which had taken the European University Institute in Florence nearly seven years to establish), the Dutch government proposed a legal structure *sui generis* according to Dutch law. This was accepted by the Commission and the other governments.

The early years

On 23 March 1981, EIPA was formally launched at the European Council meeting in Maastricht. Barend Biesheuvel – former Dutch Prime Minister and former chairman of the Three Wise Men Committee – became the first chair of its Board of Governors. Prime Minister Andries van Agt, who was President of the European Council, quoted in his opening speech the French revolutionary politician Antoine de Saint-Just: “*Tous les arts ont produit leurs merveilles, l’art de gouverner n’a produit que des monstres.*” It sounded like a warning, though everyone in the room seemed to interpret it to mean that EIPA should help to prevent the production of monsters.

It took several years before the promises made by other governments were turned into acts. The first country to join the new body was the newest Member State, Greece, followed by Luxembourg and, surprising to some, the UK. Despite Margaret Thatcher’s doubts about the EC, she supported the improvement of its management. The governments that were most vocal about European integration were the last to turn words into acts.

EIPA benefited a lot in the early years from its Scientific Advisory Council, which brought together the directors of national public administration institutes with independent academics – namely professors Jürgen Donges, Aimé François, Heinrich Siedentopf, Jean-Claude Thoenig and Gérard Timsit – an early example of new forms of governance that much later would become the norm.

Whereas the Dutch Government provided generous financing for EIPA’s infrastructure, the Commission involved its professors and researchers early on in the preparation and implementation of various European policy initiatives and in its own efforts to modernise its management. Particularly under President Jacques Delors, the working relation became increasingly intense.

In those years, also EIPA became involved with assisting new Member States with their integration into the EC/EU mechanisms, and in the growing EC/EU relations with key partners, leading to the cooperation with the Brookings Institution in Washington. This expansion would continue later with the establishment of specialist antennae in other countries.

Conclusion

Alongside the College of Europe in Bruges and the European University Institute in Florence, EIPA built in these early years its position as a leading policy research institute and as the public executive development institution of the EC/EU, thus contributing in a pragmatic way to the development of the single market, the EMU and the EU in general.

It was both exciting and instructive to be able to participate in the conception and the implementation of such a new European institution, whose continuing success is due in no small measure to the dedication of its scientific and administrative staff in those early years, when every effort was undertaken with much motivation, to the wisdom of the members of the Board of Governors and the Scientific Advisory Council, who steered without meddling, and ultimately to the people in the Commission and in governments who used the new opportunity given to them by this Dutch initiative to consolidate and forward European integration and cooperation. ::



Colloquium: “Public Administration and Health Services in Western Europe”, held at Erenstein Castle on 16-18 November 1983.

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Notes

- * Dr Stefan Schepers was project manager in 1980-1981 and Director-General in 1981-1988. He is now chairman of EPPA Partnership, a consulting company in Brussels.
- ¹ Frits Bolkestein, *The limits of Europe*, 2004.

Bringing the European Union Closer to Its Citizens: *The Role of the “European Public Service” and of EIPA*



By **Spyros A. Pappas***, Director-General of EIPA, 1989-1995

On the threshold of its 50th anniversary, the European Union seems to be faced with a paradox: an island of peace and wealth that has lasted for half a century is a target of scepticism by its own citizens. Although many efforts have been made to bring the Union closer to its citizens, little attention has been paid to the role of national administrations in this respect. Yet deeper interaction between administrations at all levels of government, and the formation of a true European civil service, could do much to overcome the unfairly negative image which the EU institutions seem to have today.

In the year of its 25th anniversary, the European Institute of Public Administration can be proud to have made a continuous contribution towards bridging the gap both vertically, between the European and the national public administrations, and horizontally, among national public administrations.

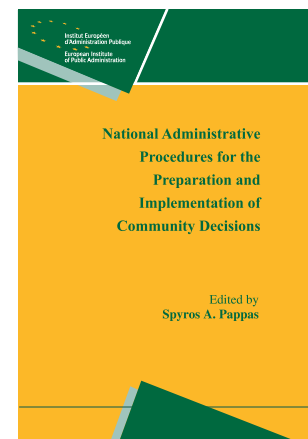
My contribution to this special issue of EIPASCOPE looks back at some of the steps taken by the institutions in the past. It also proposes some further measures which might be taken, and perhaps be supported by EIPA in future.

No focus on administrative reforms

A number of administrative initiatives have been taken by the European Commission that would, it was affirmed, “enable the Commission to maximise the *effectiveness* of its activities, both in qualitative and quantitative terms, focusing primarily on the *formulation of policy* and on the expectations of citizens in Europe and elsewhere. This should contribute to a better understanding of European goals, to bring Europe closer to the citizens and lead to a new European administrative culture”. Yet the administrative reforms of the Commission have, in my view, missed the mark in this respect.

The implementation of Community policies is in principle the task of national administrations which, in this way, become extensions of the Commission and together form the “executive” of the European Community. National administrations are in charge not only of the implementation of Community policies but, also, of their management, be it execution or further policy formulation.

Despite this important sharing of responsibility, however, very few references or thoughts have been devoted in reform initiatives to the linkages between the European Commission and the national administrations, which are treated as if they were separate entities. The 1979 Spierenburg report raised the question of incoming mobility, expressing the wish that more national civil servants would come to the Commission. Since then, only the Williamson report of 1998-1999 has pleaded for outgoing mobility of Commission officials seconded to national administrations. A modest attempt has been launched this year by DG Enterprise but only involving a week to be spent at an SME. The only successful example relates to horizontal mobility among national civil servants and this is the Action



Plan for the Exchange of National Officials Responsible for the Internal Market Legislation (Karolus) supported by EIPA.

The latest administrative reform has taken place within a political climate which has downplayed the administrative demands of the Community – and this continues today. Contrary to political statements in support of a strong Commission, on 14 July 2006 EU finance ministers agreed to make radical cuts in the European Commission staff budget despite warnings that this will prevent recruitment of new Member State officials – and that the Commission is already too small an administration to continue playing its role as guardian of the Treaty. Furthermore, instead of examining a new role for the Commission in an ever-changing environment of enlargement, new communication technologies and globalisation, the reform confined itself to policy formulation and personnel policy, while neglecting the question of policy implementation in coordination/cooperation with national administrations.

Reaching out to citizens through national administrations

On 10 May 2006, the Commission decided to “transmit directly all new proposals and consultation papers to the national parliaments, inviting them to react so as to improve the process of policy formulation”. Commenting on the initiative, Mrs Wallström said on 11 September 2006: “A greater voice for parliaments is a greater voice for Europe’s citizens. The Commission sends a signal to the national parliaments that we will inform them and we will listen to them. Their comments will be carefully considered.” This direct approach constitutes a substantial change in the involvement of the national political level in EU policy making, and may prove to be a way to help bring the Union closer to the citizens.

Nevertheless, it has to be borne in mind that national parliaments become involved in European decision making only after national administrations have already participated in the various consultative steps leading to the Commission’s proposal. In addition to that, national administrations are part of the “comitology” system and in charge of policy implementation. Moreover, it is equally important institutionally to establish closer coordination and cooperation with national administrations, not only in order to fill the gaps in management, but also to respond to public misperceptions – often fed by national governments for the sake of internal political consumption – about an inherent conflict of interest between European and national levels. It is essential to clarify the real nature of the respective roles and to build on what should in fact be a natural relationship of cooperation. Who does what, who is responsible for what? What is the role of the national administrations and what of Brussels? To what extent are national administrations part of “Brussels” and how could “Brussels” become stronger by forming a united front with national administrations? Opening the way to national Parliaments without prior consolidation of European administrative cooperation, could even be premature and cause increased unease as far as accountability is concerned.

In 1992 I wrote in EIPASCOPE: “The European public service is an activity of Community interest, defined through the policy formulation procedures and the distillation of the national interests, carried out by the European public administration which is articulated in the national administrations and the administration of the European Community according to the principle of subsidiarity”.¹ Some 15 years later I am disappointed in the progress made.

Although we are still far from what I call a “European public service”, there are further steps that could be undertaken towards the establishment of a well-networked European administration. One of them could be the systematic pursuit of civil servants’ mobility (in the light of 2006 as the European Year of Workers’ Mobility) on the obvious condition that the budget allocation for human resources would allow an adequate increase in the Commission’s staff. Such mobility should not be limited to horizontal exchanges among national administrations or within the services of the European Commission, but should be extended to the outgoing mobility of Commission officials to national administrations. So far it has been voluntary and did not work. A more detailed

action plan could become more attractive and would then lead to the secondment of numerous Commission officials to national administrations for a period long enough for them to acquire the knowledge of a national administration that is imperative for the effective exercise of their European tasks. Most importantly, they would transpose their expertise at the national level; at least one Commission official should become the permanent vertical linkage in a policy field of his/her expertise. Collectively, the seconded officials in all Member States could form a coordination forum in each policy field to ensure a more homogeneous implementation of policies. Gradually, this exchange would not only have a clear impact on the quality of European cooperation but also help create the feeling that Europe is also home, that we, the national administrations, are Europe too. The same applies to the citizens: public administrations constitute the contact point between the State and the consumer-citizen, and thus contribute to the picture that citizens form about their municipality, their State, their “Europe”.

What is more, I should emphasise that we are currently witnessing a process of close collaboration between the European level and the national level in certain areas which is producing remarkable results. I am sure that these examples will in fact become paradigms which will inspire joint actions in other sectors. I will begin this non-exhaustive list with the new provisions which have been introduced in competition law. Council Regulation 1/2003 of 16 December 2002 on the implementation of the competition rules laid down in Articles 81 and 82 of the Treaty has the effect of decentralising the implementation of these rules by allowing national courts and national competition authorities to become more involved in the implementation of Community rules. To ensure that the Community rules are applied effectively and coherently, the Commission and the national authorities designated by the Member States are together forming a network of competition authorities to cooperate closely in the implementation of Articles 81 and 82 of the Treaty. To achieve this, the Commission has published a communication relating to cooperation within the network of competition authorities to provide a framework for such cooperation in cases where Articles 81 and 82 of the Treaty are applied, and to form a base from which to create and preserve common competition culture in Europe. The second example of this cooperation between European and national authorities is to be found in the area of financial services. The final report of the Committee of Wise Men on the regulation of European securities markets, chaired by Baron Lamfalussy, proposed the establishment of a four-level approach to regulation. I shall go through the different stages very briefly. Legislation concerning securities markets must be based, within a general conceptual framework and on a case-by-case basis, on framework principles (Level 1) and on implementation measures at Level 2. Two new committees have been established to facilitate the definition of the details of implementation measures: the European Securities Committee and the Committee of European Securities Regulators. Level 3 which aims to strengthen cooperation is under the responsibility of the first committee whose objectives are to set out coherent guidelines for preparing administrative rules, adopting common interpretative recommendations and common standards, comparing and reviewing regulatory practices and, finally, providing reciprocal controls. The final stage concerns the implementation of the rules drawn up and their application by the authorities concerned. What is new about this regulatory approach is that it involves the different actors (Commission, European Parliament, national regulators and Member States) in the various stages of the formulation of the rules and of their implementation by the competent authorities. Today we can state that this approach was a great success and has led to the implementation of the Commission’s Financial Services Action Plan (FSAP). In conclusion, I believe that we must learn lessons from the examples quoted above. When the European Commission and the Member States work together within a given structure, the results are positive and the advances considerable. More than ever, we require close collaboration between the various powers so that a proper response can be made to the citizen’s needs. For this reason, I believe that a *rapprochement* between European and national administrations is desirable and the first realistic step

could be a step towards structured and systematic mobility.

It was a great privilege for me to participate for more than seven years in the early life of EIPA; to experience its transition from an uncertain present to a secure future, its dramatic expansion from a few activities to more than 300 each year, from a couple of hundred members to many thousands, from the headquarters in Maastricht to several thematic centres in Europe and beyond, from a private initiative to its recognition by all Member States and the European Commission. I would like to pay tribute to all those whose devotion has made EIPA what it is today: an island of excellence at the service of the European ideal in a pragmatic and consistent manner. ::

Notes

- * Before his term as EIPA's Director-General, Mr Pappas was member of the Supreme Administrative Court in Greece and was involved in the founding of the National Centre of Public Administration, of which he became Secretary-General. After leaving EIPA, he went on to hold various positions as Director-General within the European Commission; i.a. in setting up the DG Health and Consumer Protection as well as the DG Education and Culture. He returned to private practice in 2001 and founded his private law firm in 2004.
- ¹ Spyros A. Pappas, "Towards a European public service", *EIPASCOPE*, 1992/3.

Managing EIPA: *A Personal Experience*



By **Isabel Corte-Real***, Director-General of EIPA, 1996-2000

In my capacity as former Director-General of EIPA, it is a pleasure and an honour to contribute to this special issue of *EIPASCOPE*.

The present Director-General proposed a section devoted to EIPA's history and a set of reflections from EIPA's successive Directors-General, based on their experiences with and perceptions of EIPA and its role in European governance. My testimony will not be long. However, I should like to stress the following points.

The first is related to the importance of EIPA within the context of the European Union. For many of those who work at EIPA, this simple acknowledgement is not transparent: they do not realise how important EIPA's work is. Nevertheless, EIPA is a very important institution, an excellent network and a prestigious guardian of European expertise. Knowledge is EIPA's business – and knowledge is the basis for building trust, understanding and development. European issues are complex and sometimes perceived as fragile, as they result from hard-working technical solutions and political balances. But for those of us who are now outside EIPA and are observing from a distance (I left EIPA six years ago), it is crystal clear that the role of EIPA has been and still is of overwhelming importance in sharing knowledge, building bridges of understanding between people and public administrations, and contributing to the fulfilment of their management responsibilities in European terms.

The second point concerns one of the strengths of the Institute, and again it is something that is not clearly perceived in the organisation's daily life. I am certain that EIPA's staff and faculty are among the Institute's most important assets: they are competent, keen and attentive – impregnable fortresses whenever difficulties emerge or the organisation needs to be assertive.

The third point is related to friendship and people – people I have worked with. I cannot mention everybody, but allow me to recall my chairmen, Peter Sutherland and Henning Christophersen, and their effective leadership. Allow me also to recall my predecessor Spyros Pappas, my successor Prof. Dr Gérard Druesne, the former Deputy Director-General, Robert Polet, the former Director of Development, Michael Kelly, my assistant, Manon Damoiseaux, and other faculty and staff members, such as Rita Beuter, Edward Best, Phedon Nicolaides, Wytse Veenman and so many others. I am still overwhelmed with admiration for all of them.

The fourth point concerns the city of Maastricht and the Province of Limburg. During the time I lived in Maastricht, I was always longing for the sun of Portugal. However, I confess that the Netherlands has become my second homeland. I will always remember the happy and intensive period I spent working at and for EIPA.

Finally, I wish EIPA continued success. It has already achieved a lot and deserves to be successful. ::



Ms Isabel Corte-Real handing over to EIPA's new Director-General, Prof. Dr Gérard Druesne, 15 April 2000.

Note

- * Prior to becoming Director-General of EIPA, Mrs Corte-Real was member of the Portuguese Government and held the position of Secretary of State for Administrative Modernisation. After leaving EIPA, she became Secretary-General of the Portuguese Parliament.

EIPA: New Ventures

New Perspectives in Social Affairs and Public Health Care



By **Dr Angelo Carenzi***, EIPA 2003-present

The European Training Centre for Social Affairs and Public Health Care, best known by its French acronym CEFASS, which stands for *Centre Européen de Formation dans les Affaires Sociales et de Santé Publique*, is EIPA's Antenna in Italy. It was created in October 2001 following an agreement between the President of the Lombardy Region, Mr Roberto Formigoni, and the Director-General of EIPA, Prof. Dr Gérard Druesne, with the mission to promote the training of civil servants in the field of social affairs and public health care. CEFASS is a foundation that maintains relations with the IReF (Lombardy Regional Training Institute for Public Administration) and the *Agenzia del Lavoro* (Regional Employment Agency) through a Liaison Committee chaired by EIPA's Director-General. The other members of this Liaison Committee are Mr Arie Oostlander, representing EIPA's Board of Governors, Prof. Alberto Barzanò, representing the Italian Government, Mr Romano Colozzi, Lombardy's Minister of Finance, representing the Lombardy authorities, and EIPA's Director of Finance.

The Liaison Committee, which meets twice a year, approves CEFASS' programme of activities and its provisional budget, and evaluates its scientific and financial achievements as well as its training and research performance.

The decision to establish the Antenna in Milan was based on a few important considerations: the Lombardy Region is one of the most dynamic regions in Italy and in Europe as a whole. The Government of the Lombardy Region, an area that especially excels in the field of health care and welfare reforms, has always underlined the importance of training public servants. It therefore created the IReF, one of the most successful and highly qualified training institutes in Europe. Moreover, Milan has an international vocation, having three airports, and is a crossroads of international trade.

When starting its operations, the Antenna focused on the following topics: free movement of workers, welfare and social security, health and safety, equal opportunities, management of social administrations, and public health. More recently, the fields of eHealth and eGovernance were added to its scope of activities.

The Antenna's strategy has been to develop its activities on the Italian market and particularly in a region that is rich in providers of training activities for public administration. Consequently, CEFASS has sought to acquire knowledge that is competitive and innovative in comparison with the other training institutions and to promote the high quality of EIPA's training projects in a country where its reputation is not well known yet.

To follow this strategy, some major decisions have been taken since CEFASS became operational five years ago:

- a) To attach great importance to applied research, being a tool to gain in-depth knowledge of the different issues that come within CEFASS' scope of activity. For instance, the Antenna's scientific staff were involved in research projects



From left to right: Councillor Alberto Guglielmo, who is in charge of training and employment affairs in the Lombardy Region; Roberto Formigoni; Prof. Dr Gérard Druesne; Lorenzo Ornaghi, Director of ASERI (Alta Scuola di Economia e Relazioni Internazionali).

supported by the European Commission and by the Italian Ministry of Health and Welfare, having the opportunity to analyse – through targeted benchmarking – best practices in health care and social affairs in various countries. In this way, the Antenna was able to identify best solutions and to present them to public administration at high-level and innovative training activities.

- b) To gradually increase training activities focused on topics that are the EU's main concerns – European Year of People with Disabilities (2003), European Year of Workers' Mobility (2006) – as well as on relevant EU legislative acts and strategies and their impact on the Member States.
- c) To increase EIPA's visibility in Italy through the signing, in 2004, of an additional agreement between the Region of Lombardy and EIPA. Both parties agreed on the objective to carry out an EU-oriented training programme for Italian public officials. As for the organisation of the seminars, EIPA's Director-General has been responsible for the planning, the coordination with the regional administration of Lombardy and the scientific input. However, as a general rule, it was agreed to run the seminars in Milan, making use of CEFASS' logistical and organisational support.



Roberto Formigoni, President of the Lombardy Region, next to Prof. Dr Gérard Druésne, Director-General of EIPA, cuts the ribbon, officially opening the Antenna in Milan.

In the field of social affairs – one of CEFASS' two main fields of activity – training and research focus on social security systems (pension systems) and employment policies. CEFASS has succeeded in stimulating positive exchanges of experience and in disseminating good practices on how to help people find work. A higher employment rate means more social contributions and thus requires financially more sustainable social security systems for Europe's ageing population. The adjusted Lisbon Strategy ("Lisbon 2") must be put into practice and social security systems have to be reshaped so as to keep European welfare states sustainable.

Lisbon also implies measures seeking to help Europe become "the most competitive knowledge-based economy in the world". Lifelong learning is widely recognised as having key priority. Experts agree that the best way to address the global challenges is to move up towards more complex, higher-value work, i.e. to climb further up the ladder of professional skills in the public and private sector. In a knowledge society, up to 30% of the working population are estimated to be working in the production and diffusion of knowledge in the manufacturing, service, financial and creative industries. In 2006 and 2007, the Milan Antenna is addressing these issues through a series of specific training projects.

In the field of public health care, CEFASS has tackled the following issues: management of health care systems, long-term care, insurance systems and public private partnerships in health care systems.

These issues have been analysed in relation to the current European demographic context. The impact of the demographic ageing of European populations on social protection expenditure in the Member States is one of the major concerns of the European Union, which is confirmed by studies published by the European Policy Committee and is apparent from the requests of the European Commission to Member States to safeguard the financial sustainability of their systems.

CEFASS published two reports focusing on these themes (*Welfare in Europe 2003*, and *Welfare in Europe 2005*).

In tackling this challenge, information communication technology (ICT) plays a very important role: in 2005, CEFASS launched two experimental projects, i.e. the first one, supported by the Italian Ministry of Health, aiming at the creation and monitoring of a knowledge centre based at the Ministry of Health of the Lombardy Region and of a learning community of medical doctors using distance learning, and the second project, supported by the European Commission, focusing on the definition of "Vision 2000" in eGovernance systems in different countries.

Training has moreover been tailored to the needs of officials in several Central and East European countries (Bulgaria, Hungary, Poland, Slovakia). Features of the European Social Model, such as the Danish employment policy

combining flexibility and security for employers and workers (“flexicurity model”), were presented to officials from China and Korea in Milan and – in cooperation with the Italian training provider FORMEZ – in Rome. Moreover, the skills and competencies of seconded civil servants from Bulgaria and Romania have been further developed.

In the short and mid-term future, CEFASS will tackle challenges that damage the confidence of EU citizens in European governance: direct worldwide competition, the economic boom in Asian countries, widespread diseases and pandemics, competition from countries with different or lower levels of protection (“social dumping” and lower labour standards), and worldwide immigration. These issues have fuelled fears of general social insecurity. CEFASS will provide answers to these challenges through up-to-date training programmes. For this purpose, strategic alliances have been formed with such institutions as the European Foundation for the Improvement of Living and Working Conditions (Eurofound Dublin), the European Health Care Management Association (EHMA), the International Labour Organisation (ILO), the National Institute for Working Life in Sweden and the Federal Academy of Public Administration in Germany (BAkÖV).

The close link between CEFASS and EIPA has been crucial to the development of the Antenna: thanks to EIPA’s wide knowledge of the European context CEFASS has rapidly acquired international insight into the most important topics in its fields of expertise. EIPA’s methods of planning and organising training activities for public administrations have been gradually taken over by the Antenna, which has considerably increased its (open and contract) activities. CEFASS’ Director participates in EIPA’s Management Committee and thus keeps abreast of the different activities organised by EIPA and the projects that its staff are launching, keeps informed of what happens at EIPA Maastricht and, at times, proposes cooperation and synergies.

CEFASS considers its future in the light of a closer link with EIPA, ultimately leading to full consolidation. ::

Note

- * Dr Angelo Carenzi, Director of the European Training Centre for Social Affairs and Public Health Care (CEFASS), EIPA’s Antenna in Milan.



The participants at the seminar “Il Diritto europeo per non giuristi” which took place at EIPA-CEFASS, Milan, 4-5 October 2004. This seminar was the first one in a series of training activities addressed to Italian Civil Servants foreseen by the agreement signed between Prof. Dr Gérard Druesne, Director-General of EIPA and Mr. Roberto Formigoni, President of the Region Lombardy in June 2004.

Meeting the Challenges of Public Financial Management in the Enlarged EU



By **Slawomir Zalobka***, EIPA 2006-present

Public financial management is continuously in the spotlight within the European Union and elsewhere. Given the importance of meeting these challenges, EIPA has set up a new Antenna in Warsaw in order to train a broad array of public servants by the sharing of knowledge and experience in this field. Since the Antenna has only been created in 2006, this contribution will focus on how we anticipate that it will contribute to the broader activities of the Institute.

Let us start with some broad principles. When in a private enterprise the finances and supplies are badly managed, its effectiveness decreases, operational costs grow, and resources for investment diminish. In effect, the company loses its competitiveness. If the company does not undertake actions to correct this, the harsh laws of the market will quickly eliminate it. This is reflected by the fact that the goal of commercial enterprises is to maximise profit. Financial management is therefore always judged on this criterion.

Within the public sphere, profit maximisation does not play a decisive role, and hence different criteria apply. Broadly speaking, public finance consists of all economic phenomena concerning accumulation and spending of money supplies (within the state budget and budgets of other entities of the public finance sector) in order to satisfy social needs and to fulfil the constitutional duties of the local, governmental and state power. In the case of public finance management, besides the purely rational approach to maximising the utility of the available funds, additional elements such as the preservation of social justice and political stability also have to be considered. The necessity of taking into account so many factors which are very difficult to measure and potentially unstable over time implies that public financial management is very different from managing private enterprises. Its goal is also different: public finance management focuses on achieving stable economic growth, which should be accompanied by the growth of the standard of living.

The public and private sectors frequently overlap since, for example, the state budget and other parts of the public finance sector are often significant participants in the market economy, both in terms of demand and supply. Hence, they may deliver a certain amount of services required by the citizens and they influence the financial market by receiving credits to finance a budgetary deficit.

In the case of public finance we are dealing with a stream of resources coming into the treasury from the public contributions by citizens on the one hand and, on the other, expenditure of the institutions in the public finance sector in pursuit of the tasks entrusted to them by the state. Often public finance management tends to be associated with the spending side. However, this is a simplification since an effective and efficient tax system is equally important. The aim of an effective tax system is to acquire financial sources with minimal inconveniences or negative consequences to the taxpayers, but also in a way that



Photograph taken on the occasion of the signing, in Warsaw on 30 March 2006, of the agreement between the Government of the Republic of Poland, represented by Mr Jan Pastwa, Head of the Civil Service, the National School of Public Administration (KSAP), represented by its Director, Mrs Maria Gintowt-Jankowicz, and EIPA, represented by its Director-General Prof. Dr Gérard Druesne.

keeps the costs of tax collection low. The tax system should not only fulfil its obvious fiscal functions, but it should also be designed in such a way that it supports the development of the economy. Creating (and continuously adapting) such a tax system is one of the major objectives for managers of public finance. This is not only a national issue: in our times of globalisation the level of taxes has great influence on the level of foreign investments in a given country.

The significance of global tax competition can be seen by the ongoing debates within the European Commission on the standardisation of direct taxes or, at least, a standard way of defining the tax base of the Member States. From the above it is clear that managers of public finance dealing with tax system design must possess broad knowledge of both the European regulations as well as the prevailing local conditions.

It was mentioned above that any tax system should be efficient and friendly to the taxpayer. To achieve that, a well-trained and well-managed staff is required, because the final income level of the constituent parts of the public finance sector depends on the quality of its staff.

However, the quantitatively more substantial field of operations in the realm of public finance is to be found on the spending side. In all European countries there is an overarching need to organise the rules of calculating expenditures, to limit those rules and to better utilise them, so that the effectiveness of public expenditure will be increased and overall expenditure can be reduced. In other words, it is necessary to create an effective system of public finance management while taking into account the factors characteristic to a given society. A significant complicating factor is the fact that it is extremely hard to create the right indicators of "effectiveness" of public expenditures, especially in the case of services delivered to society. Many international organisations (OECD, IMF) and academics have pointed this out. Therefore, the results of public finance management in terms of prescriptions for effectiveness are difficult to define.

But apart from those limitations we can say that the process of creating good management of public finances can be helped by basing it on the principle of the "three Es": efficiency, economy and effectiveness. In addition, a so-called performance budget can be instrumental to a more efficient attainment of the government's programmes.

Hence, for proper public finance management one should possess knowledge allowing the public servant to propose and subsequently implement systematic changes in the framework of public finance, as well as legislative changes, and to exercise activities in all spheres of social life that use public sources. The goal here is not to simply cut off spending, but to create mechanisms that will lead to more effective usage of the available sources, so that the diminished sources allow not only small, but perhaps even larger effects.

Also, one should not forget that the majority of countries have debts. It is important to manage public debt effectively since it can either stimulate economic growth or it can be a burden to it. This management is extremely important for the new and aspiring Member States of the EU. If we take Poland as an example, its accession to the EU in May 2004 had a remarkable impact on the conditions in which the management of public debt takes place. Two of the most important aspects influencing management stem from the financial flows connected with the membership of the EU and changes in the environment in which the management of public debt takes place, including the growth of Poland's credibility and the gradual integration of the internal market of stock and bonds with European ones. So, in order to effectively manage public debt, to minimise operational costs, one should possess broad knowledge in the field of public finance as well as great comprehension of the situation on the international financial markets.

Membership of the EU has helped to define the direction of development of the countries of Central and Eastern Europe, who collectively assumed the challenge of levelling the differences between themselves and the fifteen "old" Member States. They are not alone in this process however, because through its Cohesion Policy the European Union consistently strives to level the standard of living of the citizens of the individual regions of the united Europe. The budget of the Communities is created by all EU Member States and the means reserved



for the Cohesion Policy are substantial. It is therefore of no surprise that the European Commission is keenly interested in the way the EU money is spent. First of all, these means can be used only for purposes that serve the Community as a whole and especially those projects that promise advantageous multiplier effects. The next important determining condition for EU support is the co-financing of projects using Community and Member State funding. This can have positive effect on the public finance of the countries involved as well as providing them with strong incentives to find the means for socio-economic development. Naturally, those means should be managed in a way that guarantees their most effective and law-abiding use.

Hence, the most effective allocation and usage of the means available in the framework of the Cohesion Policy are of great interest for the EU. Obviously, the means we discuss here are being managed by the Member States through their public administrations who should be properly qualified for the tasks at hand.

This brief overview illustrates the range of challenges that members of public administrations face while dealing with public finance, regardless of whether they are taxes, expenditures of public debt, managing the means available for absorption of EU funds, as well as proper technical estimation and checking / auditing of all of these complicated operations. To meet these formidable challenges, the Warsaw Antenna aims both to provide specialised training and to create a centre for the exchange of knowledge and experience about public financial management. By creating this Antenna, EIPA is giving a clear signal that it is ready to take part in the difficult and long-lasting process of building a modern, competent and effective financial administration for the enlarged Europe. ::

Note

- * Slawomir Zalobka, Director of the European Centre for Public Financial Management, EIPA's Antenna in Warsaw.

