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Into the New Millennium: The Evolution of the European Parliament from Consultative Assembly to Co-legislator

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Abstract

This article explores the evolution of the EP's legislative function both before and after the enforcement of the Amsterdam Treaty. It provides preliminary conclusions how the new Treaty provisions have been applied in the practical political process. Closely linked is the question whether the growing competencies of the EP have had an effect on the support of the European citizenry.

The EP has come a long way from a purely consultative assembly to co-legislator with the Council and managed to obtain recognition as a body of democratic control. The co-operation and the co-decision procedure have led to internal reorganisation within the parliamentary body, strengthening its capacity as a negotiating partner with Council. The EP has used its power of veto, which was introduced by the Treaty of Maastricht, extremely sparingly thus avoiding, by all means, a blockade of the legislative process. The co-operation procedure has triggered new forms of institutional co-operation such as the triologue. By involving only a selected number of members of the Community institutions, this forum has become an efficient platform to prepare conciliation meetings.

The Treaty of Amsterdam has extended the powers of the EP in the legislative field by streamlining and extending the co-decision procedure to fields such as Transport policy and actions in the environmental sector. It aimed to accelerate the taking of decisions by making it possible to adopt a legal act already during the first reading. The initial experiences with this new procedure have shown that this innovative provision is highly suitable for legal acts of a technical nature. The Amsterdam Treaty has, furthermore, extended the role of the EP in the nomination procedure for the Commission President.

The EP's enlarged institutional role does not necessarily go hand in hand with growing support of the EU's citizens. Barely 50 % of the European electorate have turned out at the polls during the last EP elections. The Eurobarometer surveys also reflect that less than half feel their interests are protected by the EP.

The article closes by focusing on some of the challenges the EP faces at beginning of this Millennium: (possibly) expanding its powers and at the same time enhancing its links with the European citizens.

Introduction

The European Parliament (EP) has been hailed as the winner of the Intergovernmental Conference (IGC) which was concluded in Amsterdam in June 1997. The Amsterdam Treaty widens the scope of parliamentary activity considerably. The Treaty has not only extended the scope of application of both the assent¹ and the co-decision procedures, but the latter has been streamlined and puts the EP on an equal footing with the Council. Another important innovation, which has been very topical, is the fact that the EP now plays a role in the nomination procedure of the Commission President. However, this strengthening of the EP's legislative powers and powers of appointment has not led to greater recognition of the institution on the part of the citizens of Europe; on the contrary – the turnout for the European Parliament elections hit an all-time low in June 1999.

With these points in mind, this article will explore the evolution of the EP's legislative function both before and after the coming into force of the Amsterdam Treaty (1999). It will provide preliminary conclusions on how the new Treaty provisions have been applied in the practical political process. Closely linked is the question of whether the growing competences of the EP

have had an effect on the popular support for this Community institution. The article will close with some concluding remarks.

From consultative body to co-legislator

Consultation and Cooperation

The fact that the EP is now commonly seen as co-legislator with the Council is a relatively new development. For more than three decades it did not enjoy any effective rights of participation in the legislative process. It started out as an assembly possessing only two major powers: the competence to pass a motion of censure against the High Authority² and the right to be consulted by the Council on selected legislative proposals. The opinions, given in this classical *consultation procedure*, were non-binding.

The original 142 members of the EP were not directly elected, but delegated by the national parliaments of the Member States. Although the possibility of direct elections was provided for in the Treaty of Rome (1957), due to reluctance on the part of the Member States it took almost 20 years for the Council to give its consent to this step. The first elections were then finally

held in June 1979, when 410 members of the EP (MEPs) were elected from nine Member States according to the national election procedures of their respective countries.

The Single European Act (1987) represented a major step forward for the parliamentary body. It marked the beginning of a new “triangular relationship”³ between the Council, the Commission and the EP by introducing the *cooperation procedure*. It would go beyond the scope of this article to give a detailed account of the set-up and working of the procedure, but it suffices to say that although the EP did not possess a right of veto, it could, given that the preconditions were fulfilled, exploit its “agenda setting powers”.⁴ Just as in the classical consultation procedure, which was the predominant procedure up to this point, the EP was consulted by the Council on the basis of a Commission proposal. The Council would subsequently adopt its “common position”, by possibly incorporating the amendments of the EP. The amended proposal was referred back to the EP for a second reading. The EP was then forced to walk the tightrope as it had to muster an absolute majority of its members to reject the common position.

The EP, which had been demanding an extension of its legislative powers for more than three decades, could hardly afford to jeopardise its newly acquired powers. In order to be able to obtain the necessary majorities – at least 314 members out of 626 had to support the measure – the EP had to ensure that:

- the cooperation between the two major parties in the EP, the European Socialists and the European People’s Party was intensified;
- the internal working procedures were strengthened by assigning most proposals not only to one committee but also to other committees of relevance.

The main challenge for the EP lay in convincing the Commission to incorporate its amendments into its proposals. Provided that the Commission accepted its changes, then the Council could only reject them by unanimity, whereas a qualified majority was (and is) necessary for its acceptance.

The cooperation procedure, which improved inter-institutional dialogue significantly, constituted the first chance for the EP to “flex its legislative muscles”. The workings of the procedure showed that the Community institutions were able to come to a compromise rather quickly: the procedure lasted 734 days on average. The relevant data reflects that the Commission was more prepared than the Council to include EP amendments both in the first and second reading.⁵ At the beginning of the new millennium, the cooperation procedure, which was initially principally linked to the completion of the internal market, is, however, losing importance. After the Amsterdam Treaty, it has only been retained

for matters falling within the sphere of Economic and Monetary Union (EMU).

The EP as a legislative actor after Maastricht

Building on the positive experiences gained during the cooperation procedure, the EP’s legislative competences were extended by the Treaty on European Union (TEU)

– the so-called Maastricht Treaty (1993). Through the introduction of the *co-decision procedure* the MEPs were, for the first time, granted the power of veto in several policy areas.⁶

The innovative element of the procedure lies in the option to convene a conciliation committee in cases where the

Council and Parliament are unable to reach a compromise. The committee is composed of members of the Council or their representatives and an equal number of representatives from the European Parliament, who have to reach an agreement on a compromise text within the very short time-span of six weeks. The Commission is also represented in the conciliation committee where its role is circumscribed as it can no longer withdraw its proposals and prevent an agreement between EP and Council.

Within the committee itself, delegations are, in principle, composed of the following members:

- 15 members of the Council, each accompanied by two or three assistants, the President of the Council, assisted by the Secretary-General and three Council officials;
- 15 MEPs, joined by the President of the EP – if he/she is leading the delegation him/herself – supported by the Secretary-General and 14 officials sent by the private offices of the President and the Secretary-General and the Secretariat, as well as one or two officials (maximum 15) for each political group represented on the delegation;
- one or two members of the Commission, supported by their private office, the Secretary-General and three officials.⁷

It is clear that according to this set-up, where, in principle, more than 130 representatives of the three Community institutions can be present, negotiations on highly technical and complex draft legislation are not feasible.

For practical purposes a distinct pattern has emerged for the preparation of the conciliation committee meetings. Following delegation meetings of the Council and EP, selected members of the Community institutions – the chairman and rapporteur of the responsible parliamentary committee, the COREPER chairman and the responsible Director-General or Deputy Director-General of the Commission – come together for informal negotiations known as trilogue sessions. These meetings

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– which have developed out of the need of the Community institutions to reconcile their positions before formal conciliation procedures – have proven to be very efficient forums for institutional dialogue. The first formal dialogue dates back to the negotiations on “Socrates” and “Youth for Europe” under the German Presidency. They did not become practice, however, until the Spanish Presidency in the second half of 1995. Notable instances of such meetings occurred in May-June 1998 as regards legislation on the EU’s Fifth Environmental Action Programme for example, where progress was “such that when the conciliation meetings formally met they had little to do other than to rubber-stamp what had been agreed in the dialogues.”⁸

The pre-meetings do not follow a pre-set pattern, but depend to a large extent on the influence of the respective Council chairman. Each Presidency brings its own style to relations with the EP. Not all Council delegations have held the Presidency since the introduction of the co-decision procedure and in some cases they therefore have to go through a period of adjustment, after which about 10 conciliations per Presidency⁹ have to be faced. The Presidency’s key task is to comprehend Parliament’s position, transmit it to the Council and act as a mediator in the quest to find compromises which are acceptable to both institutions.

The EP was not put on a completely equal footing with the Council. The Council still had the possibility, if conciliation failed, to confirm its common position by qualified majority. The EP was then left with a “take it or leave it option”: either it rejected the text by an absolute majority of its members or did not act within six weeks. This put the EP into the uncomfortable position of being seen, in the latter instance, as responsible for the failure of a legislative act as it was forced to put in its veto in the final stage of the procedure.

Consequently, the EP used its power of veto extremely sparingly. A total of 275 draft legislative acts were submitted to the EP under the co-decision procedure between the 1 November 1993 and March 1999, of which 177 were adopted. Two cases failed as no agreement could be reached by the conciliation committee. Only in one case – the legal protection of biotechnological inventions – did the EP plenary reject a compromise agreement which had been laboriously prepared over several conciliation meetings. This veto, which was supported by the majority of the MEPs, was based on reservations in connection with the possibilities allowed by the text as regards of the patenting the human genome. As the Council was also split on this matter, it did not make use of the possibility of reaffirming its common position.

The potential and the dynamics of the co-decision procedure are reflected in the evolving relationship between the EP and the Council. The amount both of formal and informal contacts have increased significantly since the introduction of the procedure, bringing representatives of both institutions to the negotiating table in search of compromise and consensus.

The assumption that the involvement of the EP might slow down the legislative process has, so far, not been realised. The co-decision procedures that were concluded between November 1993 and 30 June 1998 lasted 710 days on average. Procedures where no conciliation was necessary were on average concluded after only 634 days, whereas co-decision with conciliation was completed after 815 days.¹⁰

The Treaty of Maastricht has, by introducing the co-decision procedure, presented both the Council and the EP, as well as to a certain extent the Commission, with a major challenge. It has enhanced cooperation between the institutions and given rise to new patterns of negotiations, preparing the ground for the interaction of the co-legislators after the coming into force of the Treaty of Amsterdam (1999).

EP and Council on an even footing after Amsterdam

As mentioned above, the Treaty of Amsterdam strengthens the EP’s role considerably, especially as regards its involvement in the legislative process. The co-decision procedure has been extended from 15 to 38 Treaty articles. It now applies to new areas within the fields of transport, environment, energy, development cooperation and certain aspects of social affairs. For certain areas¹¹ within the third pillar, it is stipulated that the co-decision procedure should come into effect five years after the entry into force of the Treaty. The EP is still, for the most part, excluded from policy fields such as the Common Agricultural Policy (CAP). The main legal basis for measures in the sector of the CAP will also only provide for parliamentary consultation in the foreseeable future. The provision on public health has been modified, however, to cover veterinary and phytosanitary measures, which consequently fall under the co-decision procedure.

Two other important fields where the EP is only consulted are fiscal harmonisation and the conclusion of international agreements (except for association agreements).¹² There are also new cases of “non-involvement” of the EP, the consultation procedure having been expanded by nine Treaty provisions. The

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EP is, for example, only asked to give an opinion on recommendations on employment policy and on agreements concluded by the European social partners.¹³ In its opinion of 26 January 2000 on the next IGC on institutional reform, the Commission proposes an extension of the scope of co-decision to common commercial policy rules such as basic anti-dumping rules and to legislative aspects of the CAP and the common fisheries policy.¹⁴ It remains to be seen whether Member States can agree on an enhanced legislative role of the EP in these fields, which currently fall under the intergovernmental domain.

The streamlining of the co-decision procedure

A significant new element within the Amsterdam Treaty is the streamlining of the co-decision procedure. Most importantly, the possibility now exists to adopt a legislative act during the first reading, if either the EP proposes no amendments to the Commission proposal or if the Council agrees to the changes put forward by the EP. The significance of this new step becomes apparent when one considers the functioning of the co-decision procedure after Maastricht: of the total number of procedures finalised between November 1993 and June 1999, over 55% could have been concluded after the first reading, as the EP did not put forward any amendments to the Commission's proposal or as the Council approved all parliamentary changes.¹⁵ This seems to suggest that the new procedure might lead to an acceleration and simplification of the legislative process. The practice of the procedure so far has shown however that in this first stage of the decision-making process, dossiers have not been passed except when highly technical matters were at stake. From May 1999 until the end of 1999, four legal acts were concluded at the first reading, a phase which now starts simultaneously in the Council and the EP. These acts covered the approximation and adaptation of laws on technical issues within the fields of: measurement;¹⁶ the Trans-European Networks (TENs);¹⁷ animal health protection;¹⁸ and the CAP¹⁹.

There was one notable exception to the "rule" that only technical issues can be resolved at the first reading stage: the establishment of a European fraud prevention office (OLAF) in May 1999. It was of high political significance after the European Commission resigned in March 1999 due to allegations of fraud, mismanagement and nepotism. This legal act was concluded under extreme time pressure to convey the impression that the Community institutions were undertaking all possible measures within their means to combat fraud and corruption. The Commission put forward its (modified) proposal in March 1999 and the legal act was

adopted just two months later.²⁰

A model for cooperation between the institutions was laid down under the Finnish Presidency during the second half of 1999, involving the newly elected EP and the new Commission. A series of contacts were established between the Council and the EP spanning the following levels:

- Working Group chairman – EP rapporteur;
- COREPER chairman – EP committee chairman;
- The European Commission is involved as a mediator.²¹

The difficulty which the institutions face, at least at present, is that the stage of first reading is readily used by the institutions to lay down their own positions before they are ready to embark on extensive inter-institutional bargaining. Negotiations are complicated by the fact that the individuals concerned do not have a mandate, as internal discussions are still underway in their respective institutions. The Council negotiator has to keep in constant contact with the Member States, most conveniently through the Council Working Party. The negotiator for the EP has to ensure that positions of his/her political group, the respective parliamentary committee and of the plenary are reconciled. It therefore becomes increasingly difficult for the negotiators to make concessions as regards politically sensitive matters.

The first reading stage is therefore rather focused on the exchange of information and on the laying down of preliminary positions. The Treaty provisions, for the time being, do not stipulate any time-limits for the first reading, facilitating – at least in principle – the adoption of a legal act. A new feature of the co-decision procedure is that there is no longer any possibility for "*petite conciliation*", whereby the EP could voice its intention to reject the common position and the Council could then call upon the conciliation committee to meet.²² The EP has made very limited use of this provision in the practical political process; only twice since the co-decision procedure was introduced has it resorted to this option.²³

If the institutions cannot agree and the Council disapproves of the Parliament's amendments, the Council adopts a common position, which is transmitted to the EP and the Commission for a second reading. In principle negotiations have to be concluded within three months.²⁴ Compared to the first reading where the institutions are sometimes still engrossed in laying down their own position, the second reading phase is a platform for detailed negotiations and concessions by the institutions. Nine legal acts were adopted²⁵ between May 1999 and December 1999, covering not only directives of a highly

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technical nature (concerning speedometers for two-wheel and three-wheel motor vehicles or the directive on cableway installations designed to carry persons) but also dealing with more sensitive issues such as the DAPHNE programme 2000-2004.²⁶

The EP and the Council as equals in the legislative process

The EP was put on an equal footing with the Council in the legislative process with the abolition of the so-called third reading: as mentioned above, the Council had previously had the right to reiterate its common position after the conciliation procedure had failed, unless the EP could mobilise a majority of its members to put in its veto. According to the new procedure, the draft legal act is deemed to have failed in the absence of agreement in conciliation. The EP is no longer in the uncomfortable position of having to use the emergency brake, i.e. having to reject the Council's common position and therefore, in the last instance, bearing the sole responsibility for the defeat of a piece of legislation. After Amsterdam, both the Council and the EP are now deemed to be responsible for the failure of a legal act. The informal negotiation patterns developed after Maastricht, notably the trialogue, have proven to be efficient forums for pre-negotiations, and they were reconvened after Amsterdam. All five legal acts adopted during the conciliation phase under the chairmanship of the Finnish Presidency, in the latter half of 1999, were prepared in these sessions.²⁷ They ease and prepare the ground for the conciliation meetings, which have to be completed within a very narrow time frame.²⁸

In some cases, the Council and the EP applied some rather unconventional methods to reach a compromise, for example by strengthening their own position through taking sides with the Commission. In the case of the "Culture 2000" programme, the main dispute between the Council and the EP concerned the financial framework. Whereas the EP proposed an increase in the budget for the five-year programme, the Council decided to maintain the budget at the level stipulated in the Commission proposal. By teaming up with the Commission, the Council – which had to decide by unanimity – was in a relatively strong position. The institutions finally agreed on the financial framework put forward by the Commission combined with a number of compromise amendments concerning other budgetary issues.²⁹

The institutions have also seemed to have resolved the conflict over which comitology committee should be used for implementing a legislative act. The diverging opinions of the institutions have until recently led to

blockages in the legislative process. In two instances, delegations in the conciliation committee failed to agree on a joint text. The new comitology decision of the Council of June 1999 will alleviate this problem by "providing for an adequate involvement of the EP."³⁰

It is important to note that the conclusions on the working of the co-decision procedure after Amsterdam are only of a preliminary nature, as the Treaty has only been in force for less than one year. Building on the experience of the co-decision procedure after Maastricht and the subsequent negotiations in the conciliation committee, one can assume that it will take between two and three years until a clear pattern for negotiations between the institutions will develop, especially as regards the first reading stage.³¹ What can be concluded from the initial observations is that the Treaty of Amsterdam, by introducing the possibility to adopt a legal act after the first reading, will invariably shift the bulk of the workload to earlier stages of the procedure. This will put an increased strain on the respective Presidency and on the parliamentary committees – especially in the field of transport and environment.

Innovations for the EP outside the legislative field

Other changes for the EP, outside the legislative field, include:

- the laying down of a maximum number of members for the EP (700);³²
 - the possibility for the EP to draw up a draft electoral act;
 - the basis for creating a common statute for MEPs;
 - and the EP's assent is required in the appointment of the President of the Commission.
-
- By implication, the stipulation that the total number of MEPs should not exceed 700 will lead to a re-examination of the distribution of seats prior to new rounds of enlargement. The Amsterdam Treaty states, for the first time, that any reshuffling of the number of MEPs must ensure an "appropriate representation of the peoples". This very vague formulation will inevitably provide the basis for each group to try to bolster its own case. In its opinion for the next IGC, the Commission has conceded that it is up to the EP to propose new arrangements for allocating seats, but has offered the following ideas:
 - In theory, seats could be allocated between the Member States on a strictly proportional basis according to population, but the Commission adds that "this is not a realistic option at this stage of political integration of the Union". While this path might seem appealing to larger Member

The EP has to develop a more coherent profile not only to shape European policies, but also to incorporate the preferences and priorities of the EU electorate therein.

States, it would meet with great opposition in smaller ones.

- Another possibility would be to produce a revised version of the formula on which the EP's 1992 decision on the allocation of seats was based,³³ maintaining the principle of digressive proportionality but starting from a lower minimum number of members and allocating fewer seats per capita and/or altering the population bands. The formula will, even after modification, reduce the parliamentary representation of the more populous Member States. Keeping the prospective enlargement of the Union in mind, one has to add that five small to medium-sized Member States would be joining the EU in the first round. This model would therefore widen the "representation gap" between larger and smaller states.³⁴
- Another option would be a linear reduction in the number of seats allocated by the formula used up to now. The enlargement process would then have the same relative impact on the distribution of the number of members.³⁵

At this point it is unclear what will become of these Commission proposals. The discussion of a reallocation of seats is one of the most pressing but sensitive topics with regard to the operation of the EP, resulting possibly in a conflict with larger Member States likely to argue for a levelling out of the present distortions in the ratio of MEP to population, and smaller Member States insisting that their present numbers remain unchanged.³⁶

- Even before the Amsterdam Treaty came into force, the EP adopted a resolution on a draft electoral procedure in July 1998. It provides for the introduction of an electoral system based on proportional representation in all Member States and the creation of territorial constituencies. Another innovative provision stipulates that 10% of the total number of seats in the EP should be filled by means of a transnational list-based system relating to a single constituency comprising the entire territory of the EU.³⁷ The Commission is strongly in favour of this possibility of electing a number of members on Union-wide lists. It has to be noted, however, that before the electoral Act is forwarded to the Member States, so as to be transposed into

national law, it still has to pass the hurdle of unanimity in Council.

- The EP resolutions on the draft statute for members stipulate that MEPs who have been elected for the first time should receive the same salary. Unfortunately, the EP could not agree on applying this rule to re-elected members as well. They were given the choice either to receive the new parliamentary allowance or to retain national parliamentary wages. After the June 2004 elections, all members will finally receive the same remuneration paid from the EU budget.³⁸ The draft statute also focuses, *inter alia*, on bringing an end to an alleged "gravy train" expenses system that has, in the past, allowed members to claim more travel costs than they actually spend, by providing for a ceiling on travel costs for members. These new rules are still in the pipeline; members are due to vote on them in plenary.
- Article 214 TEC (ex-158), which now provides that the EP is required to give its assent to the nomination of the Commission President, constitutes a vital step forward for the EP on the path to enhanced supervisory powers over the Commission. This new provision gained topical importance after the resignation of the Commission due to allegations by a committee of independent experts, triggered by Parliament's refusal to grant discharge of the 1996 EU budget. At the European Council in Berlin in March 1999, the heads of state and government nominated the former Italian Prime Minister Romano Prodi as designated Commission President. Mr. Prodi eventually won strong backing from the EP in May 1999, which gave its assent with a 77.6% majority. The EP has made its mark as a force to be

A comparative overview of the turnout for the EP elections (in percent)

	1979	1984	1989	1994	1999
EU-Total	63.0	61.0	58.5	56.8	49.4
Austria	-	-	-	67.7 ('96)	49.0
Belgium	91.6	92.2	90.7	90.7	90.0
Germany	65.7	56.8	62.4	60.0	45.2
Denmark	47.1	52.3	46.1	52.9	50.4
Spain	-	68.9 ('87)	54.8	59.1	64.4
France	60.7	56.7	48.7	52.7	47.0
Finland	-	-	-	60.3 ('96)	30.1
United Kingdom	31.6	32.6	36.2	36.4	24.0
Greece	78.6 ('81)	77.2	79.9	71.2	70.2
Ireland	63.6	47.6	68.3	44.0	50.5
Italy	85.5	83.9	81.5	74.8	70.8
Luxembourg	88.9	87.0	87.4	88.5	85.8
Netherlands	57.8	50.5	47.2	35.7	29.9
Portugal	-	72.2 ('87)	51.1	35.5	40.4
Sweden	-	-	-	41.6 ('95)	38.3

Source: Hrbek (1999)

reckoned with in this field: a veto by the EP would have entailed the selection of a new candidate.³⁹

A lack of popular support?

This article has so far mainly focused on the legislative role of the EP, illustrating the transformation from a purely consultative body to co-legislator with Council. The questions which spring to mind are: have the increased powers of the EP had an effect on both the public perception of the EP, and did this manifest itself in the turnout at the 1999 EP elections? Looking at Eurobarometer, the Commission-based public opinion survey, one will find that only 37% of EU citizens feel that their interests are well protected by the EP.⁴⁰ The turnout at the June 1999 EP elections hit an all-time low, dropping by 7% compared to 1994, demonstrating the lack of popular interest on the part of the European citizens.

It is striking that as parliamentary powers have increased over the course of time, the overall turnout has declined at every election since the first 1979 ballot, from 63% in 1979 to 49.4 % in 1999. The results vary greatly from one Member State to another: the turnout ranged from 90% in Belgium, where voting is compulsory, to 24% in the UK. Only in three countries has the percentage of those finding it worth going to the polls risen – in Ireland, Portugal and Spain – by around 5% since the last election. One (hypothetical) factor, cited in the literature, to explain this trend is that these three countries receive funding from the Cohesion Fund, which might have the effect of mobilising the electorate.⁴¹

The tendency of an otherwise declining turnout across the majority of the EU Member States is linked to a plethora of factors varying from Member State to Member State, and only some can be highlighted at this point⁴²:

- The EP is, as the only directly elected trans-national parliament, an institution *sui generis*. The role of the EP is more opaque than that of parliaments in most Member States and the EP does not enjoy the same acceptance as national parliaments. Citizens do not have a clear idea of its role and objectives within the EU;
- Closely linked to this is the absence of transnational, European media. National media still focus on national issues and national candidates. This tendency was evident in the Netherlands, for example, where the crisis in the national government contributed to the voters turning their backs on the European elections, disillusioned. European issues such as EMU and the Common and Foreign and Security Policy (CFSP) are mainly analysed and discussed as regards to their possible effects on the national level. This lack of information about European issues and the role of the EP is reflected in the Eurobarometer survey. The most common response given (61%) was that people do not feel well enough informed to vote; the second most common reason was that of

not having enough knowledge about the importance and the power of the EP (59%). Only 60% of EU citizens had been informed about the EP in the papers, on the radio or television;

- The EP's censure of the Commission and the latter's downfall could have led to two possible scenarios: The fact that the MEPs finally resorted to the use of this blunt weapon against the Commission could have, on the one hand, convinced voters of the importance of the parliamentary body. On the other hand, it seems to have had just the opposite effect; turning voters away from the polls in view of this malpractice;
- The results of the elections do not have an effect on the composition of the European Commission or the Council of Ministers; as Weiler et.al. put it so pointedly, one cannot "throw the scoundrels out, to take what is often the only ultimate power left to the people, which is to replace one set of governors by another."⁴³ This leaves voters disillusioned as their electoral participation does not have an effect on the composition of the European "government";
- The European parties are, to a large extent, extensions of their national parties and have difficulties developing their own, specific profiles. They are unable to come up with coherent positions on issues such as the role of the EP, the reform of the Commission and developing a vision for European integration. This problem might be alleviated in the future by reserving seats for "European" as opposed to national lists, enabling, possibly, the development of a stronger stance on the integration process;
- Last but not least, the issue of a European identity (or the lack of it) has to be taken into account.⁴⁴ For citizens who see the EU as being remote from their own (domestic) concerns and problems it is unlikely that they would voice their support for the parliamentary body. These politically disenfranchised groups are more likely to turnout in national elections. Citizens who see the EU in a critical light and have no sense of European identity are more reluctant to vote at the European than at the national level. By giving their vote to the EP, they would be seen to be legitimising one of the European institutions.

Conclusions: the implications for the EP

The EP has become an increasingly important actor in the political system of the EU. However, although its competences have increased, it has failed to strengthen its links with the EU citizens accordingly. Obviously, no set recipes exist for increasing popular support for the parliamentary body. Although the media are increasingly turning their attention to the EP, this coverage is not of a constant nature. It focuses on highlights such as the refusal to grant discharge of the 1996 budget and the subsequent downfall of the European Commission. The European parties have done little to cut across national boundaries and develop their own

“European” positions. Electing a number of MEPs on European lists might, at least partially, alleviate this problem. This could encourage the development of “European” political parties and members could claim to represent a European constituency instead of a national one.

The EP has to develop a more coherent profile not only to shape European policies, but also to incorporate the preferences and priorities of the EU electorate therein. In order to establish these enhanced links with the EU citizens, a public debate on issues such as the IGC on institutional reform would be a fundamental precondition. The EP itself has highlighted the necessity of such discussion and a greater degree of transparency in its draft report for the IGC.⁴⁵ How this discussion should be organised on a practical level remains unclear. Citizens are not able to give voice to their opinion at European level through the use of basic democratic instruments such as plebiscites or referenda.

Negotiations on the IGC take place behind closed doors, secluded from the public eye. Citizens are subsequently presented with the final results which profoundly affect the way Europe works. The role of the EP, as it will be in the upcoming IGC, is reduced to that of consultant. Although there is no doubt that the two parliamentary observers will try to influence the political discourse during the IGC, the Member States are not bound by the EP’s opinion. The EP has, contrary to national parliaments, no right to ratify the Treaty. The EP could gain political credibility and strength were this stipulation to be changed in the future.

The EP has to develop into a political arena where, on the one hand, actors from different political and social spheres can appreciate each other’s positions and views and, on the other hand, it must gain enough coherence to be perceived as one institution standing for specific goals and aims.

It is becoming apparent that one of the EP’s major tasks in coming years will be to convince EU citizens that the EU can provide solutions to policies and problems, and that the Parliament matters.

NOTES

- ¹ The Treaty of Amsterdam extends the EP’s right of assent to cases where the Council determines a breach of the Union’s principles by a Member State (Article Fa TEU).
- ² The forerunner of the European Commission.
- ³ Westlake, Martin (1994): *A modern guide to the European Parliament*, Pinter Publishers, London and New York, p. 135.
- ⁴ For a detailed account of these conditional “agenda setting powers” and an illustrative example on how the EP used these powers to its favour, see Tsebilis, George: “The Power of the European Parliament as a Conditional Agenda Setter”, in: *American Political Science Review*, Vol. 88, pp. 128-142.
- ⁵ Of the 400 cooperation procedures which were concluded between July 1987 and July 1997, the Commission accepted 54% of the amendments introduced by the EP at the first reading and the Council included 41% of the EP’s changes. The data for the second reading shows that the Council used the Treaty provisions, whereby it still is the main legislator, to its favour. It only included 21% of the EP’s amendments. The Commission included 43% of the EP’s amendments in second reading. See: Maurer, Andreas (1998): “Regieren nach Maastricht: Die Bilanz des Europäischen Parlaments nach fünf Jahren Mitentscheidung”, in: *integration* 4/98, p. 218.
- ⁶ Initially only 15 Treaty items were covered by the procedure, covering articles falling into the policy fields of the internal market, consumer protection, trans-European networks, cultural policy, public health and education. See: Smith, Julie (1999): *Europe’s Elected Parliament*, Contemporary European Studies, 5, Sheffield Academic Press, Sheffield p. 75.
- ⁷ European Parliament. Conciliation Secretariat (1995): *Implementation of the Conciliation Procedure (Article 189b EC) in the European Parliament*, PE 211.525, p. 11f.
- ⁸ Nungent, Neill (1999): “Decision-Making”, in: Cram, Laura; Dinan, Desmond; Nungent, Neil (eds.) (1999): *Developments in the European Union*, Macmillan Press, Houndmills, Basingstoke, p. 147.
- ⁹ Five conciliation procedures were concluded under the Finnish Presidency in the last half of 1999. Four procedures were completed under the Austrian Presidency during the second half of 1998 and six procedures were concluded under the German Presidency during the first half of 2000. See European Parliament (1999) *Conciliation Procedures – Stop Press*, No. 4, December.
- ¹⁰ Maurer (1998): *op. cit.*, p. 216.
- ¹¹ Visa procedures and conditions (article 62(2bii) TEC) and Visa uniformity rules (article 62(2biv) TEC).
- ¹² Article 37 TEC (ex-43); Article 152 (4) TEC (ex-129); Article 93 TEC (ex-99); Article 300 TEC (2) (ex-228).
- ¹³ Article 128 (4) new title on employment and Article 139 (ex-118b). See: Nentwich, Michael; Falkner, Gerda (1997): *The Treaty of Amsterdam: Towards a New Institutional Balance*, European Integration online Papers (EIoP) Vol. 1 (1997) No. 015; <http://eiop.or.at/eiop/texte/1997-015a.htm>.
- ¹⁴ European Commission (2000): *Adapting the institutions to make a success of enlargement. Commission opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of representatives of the governments of the Member States to amend the Treaties*, p. 27.
- ¹⁵ Maurer (1999): (Co-)Governing after Maastricht: The European Parliament’s institutional performance 1994 – 1999. Lessons for the implementation of the Treaty of Amsterdam. Study for the European Parliament, Directorate General for Research submitted under Contract No. IV/99/

- 23, p. 8.
- ¹⁶ See: 1999/0014/COD.
- ¹⁷ Decision 1741/1999/EC of the European Parliament and the Council of Ministers.
- ¹⁸ Directive 1999/72/EC of the European Parliament and the Council of Ministers.
- ¹⁹ Directive 1999/87/EC of the European Parliament and the Council of Ministers.
- ²⁰ Regulation 1073/1999/EC of the European Parliament and the Council of Ministers concerning investigations conducted by the European Anti-Fraud Office (OLAF). The new act on the Fraud Prevention Office provides, *inter alia*, that the Office has its own right of initiative to carry out investigations, will be totally independent from instructions from Member States and that investigations can be carried out in the Member States as well as in all bodies, institutions and offices in the Community, <http://www.db.europarl.eu.int/oeil/oeil>.
- ²¹ Lehtiranta, Sari (2000): The impact of the co-decision procedure on COREPER and Council working groups, Lecture given at the Seminar "Committees and Comitology in the Political Process of the European Community", EIPA, Maastricht, 18.1.2000.
- ²² Ex Article 189b(2d) TEC.
- ²³ The first case, on engine power, took place in 1994. On 13 January 1999 the EP voiced its intention to reject the Community initiative for the "European Capital of Culture". See: European Parliament (1999): *op. cit.* p. 45.
- ²⁴ The clock starts to tick once the EP has received the Council's common position and within the Council after it has received the EP resolution. The time-limits can, subsequent to the initiative of the Council or the EP, be prolonged by up to one month. See: Article 251 TEC (ex-189b(7)).
- ²⁵ Within the second reading, without conciliation.
- ²⁶ This focuses on the action related to violence against children, young persons and women. Here the negotiations of the institutions concentrated on such delicate and political matters such as the definition of acts of violence and the role of the NGOs and public bodies within the programme (<http://www.db.europarl.eu.int/oeil/oeil>).
- ²⁷ Acts adopted during conciliation under the Finnish Presidency include: education, training: Community action programme SOCRATES, 2nd phase 2000-2004, Culture 2000 : 1st framework programme 2000-2004, Directive on safety and health protection of workers at risk from explosive atmospheres (ATEX), SAVE II programme: Multi-annual programme for the Promotion of Energy Efficiency in the Community, ALTENER II programme: Multi-annual programme to promote renewable energy sources.
- ²⁸ Article 251 (5) TEC (ex-189b (5)). The time-limit of six weeks can be prolonged by two weeks.
- ²⁹ The EP wanted to increase the budget to EUR 250 million, the Commission proposed EUR 167 million. European Parliament (1999): Conciliation Procedures – Stop Press, No. 4.
- ³⁰ For a historical overview of the comitology system and a detailed analysis of the new comitology decision, see: Haibach, Georg (1999): "Council Decision 1999/468 – A New Comitology Decision for the 21st Century!?", in: *Eipascope* 99/3.
- ³¹ Interview with Commission Official, General Secretariat of the European Commission, Brussels, 7.1.2000.
- ³² Article 189 TEC (ex-137); Article 190(4) TEC (ex-138); Article 190(5) TEC (ex-138).
- ³³ The allocation of seats by Member State proposed by the EP was based on the following formula: six seats to be allocated to each Member State regardless of population, plus an additional seat per 500,000 inhabitants for the number of inhabitants between one and 25 million, an additional seat permillion inhabitants for the number of inhabitants between 25 and 60 million, and an additional seat for every two million inhabitants above 60 million. However, this formula had not been strictly applied. The EP proposal was agreed upon by the Edinburgh European Council on 11 and 12 December 1992.
- ³⁴ On the issue of representation, see: Edward Best (1999): "Why are we weighting?", Discussion Paper for the Colloquium "Rethinking Europe for the New Millennium", Maastricht, 5-6 November, p. 17.
- ³⁵ European Commission (2000): *op. cit.*, p. 8.
- ³⁶ Presently one German MEP represents 820,000 citizens, whereas an MEP from Luxemburg represents 65,000 citizens. Neunreither, Karlheinz (1999): "The European Parliament", in: Cram, Laura; Dinan, Desmond; Nungent, Neil (eds.): *Developments in the European Union*, Macmillan Press, Houndmills, Basingstoke p. 73.
- ³⁷ The EP has the possibility to present an additional proposal that would only be applied in 2009. <http://www.db.europarl.eu.int/oeil/oeil>.
- ³⁸ Currently the salary MEPs receive varies greatly, from the ECU 2827 of a Spanish MEP to the ECU 9635 of an Italian representative (<http://www.db.europarl.eu.int/oeil/oeil>)
- ³⁹ The Treaty of Maastricht already provided in Article 158 (2) for the nominated Commission college as whole to be subjected to a vote of approval by the EP before being confirmed by the Member State governments. See Westlake, Martin (1998): "The European Parliament's Emerging Powers of Appointment", in: *Journal of Common Market Studies*, Vol. 36, No. 3, p. 439f. The Prodi Commission assumed office in September 1999 after the EP endorsed it by 414 votes to 142, with 35 abstentions (<http://www.macmillan-press.co.uk/politics/EU/euprodicomm.htm>). The 19 nominated Commissioners had to appear, before their vote of approval, before the different EP committees for hearings, where they presented their principle ideas and answered a series of questions. In order to prepare these hearings, the EP submitted questionnaires to each Commissioner designate. The written answers can be viewed on: http://europa.eu.int/comm/newcomm/hearings/index_en.htm.
- ⁴⁰ European Commission, Eurobarometer (1999): Public Opinion in the European Union, Report Number 51, Release: July 1999, Fieldwork: March-April 1999, European Commission, Directorate General X, Brussels, p.84.
- ⁴¹ Hrbek, Rudolf (1999): Europawahl '99: Ein stärker politisiertes EP, in: *integration* 22, Jg. 3/99, p. 158.
- ⁴² For an analysis of the results of the EP elections – held from 10 to 13 June 1999 – and an exact overview of the composition of the newly elected EP see: June 1999 European Parliament Elections, <http://www.macmillan-press.co.uk/politics/EU/euparlelections.htm>. For country reports on the EP elections in Austria, the UK, France and Spain, see: ECPR (1999): ECPR News, The Circular of the European Consortium for Political Research, autumn 1999, p. 12-20. A detailed analysis of political parties at the European level and the electoral dimension is also given by Smith (1999), *op. cit.*
- ⁴³ Weiler, Joseph; Haltern, Ulrich; Mayer, Franz (1995): "European Democracy and Its Critique", in: *West European Politics*, No. 4, p. 8.
- ⁴⁴ On the question of a European identity, see Leitner, Christine in this issue.
- ⁴⁵ European Parliament (1999): Draft report on the preparation of the reform of the Treaties and the next Intergovernmental Conference, Committee on Constitutional Affairs, Rapporteurs: Dimitrakopoulos, Giorgios; Leinen, Jo, PE 231.873. □

La révision de la directive relative aux emballages et aux déchets d'emballages: une mesure prématurée ?

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Résumé

La Directive relative aux emballages et déchets d'emballages fit l'objet d'âpres discussions au sein des institutions communautaires au cours des quatre années que dura son processus d'élaboration. Après son entrée en vigueur, son application par les Etats membres s'est heurtée à de nombreuses difficultés, ce qui a provoqué une violation réitérée des délais fixés dans la directive et a donné lieu à diverses actions de la part de la Commission européenne.

La directive stipule des pourcentages spécifiques de récupération et de recyclage des déchets d'emballages que seuls quelques Etats membres ont atteints, tandis que d'autres pays ont même du mal à fournir l'information requise sur le niveau de conformité à la législation sur leur territoire. Actuellement, conformément à la directive, l'on a lancé le processus de révision (à la hausse) des objectifs fixés dans sa première version.

Cet article se propose d'analyser les difficultés du processus d'élaboration de la directive, l'existence d'une Europe à deux vitesses en matière de protection de l'environnement, et l'application incomplète de cette directive par certains Etats membres.

L'article passe rapidement en revue le rapport intérimaire rédigé par la Commission en vue de la révision des objectifs. Ce rapport, conjugué à une Europe dont la majorité des Etats membres ont une grande tradition écologique, laissent présager une révision à la hausse des pourcentages de récupération et de recyclage fixés dans la directive initiale.

D'autre part, l'article examine, à la lumière de ce qui s'est passé au Conseil durant le processus d'élaboration de la directive, les coalitions possibles qui se formeront au sein du Conseil au moment du vote sur la révision des objectifs. L'Europe des Douze, qui adopta alors une directive que d'aucuns estiment peu ambitieuse, est devenue aujourd'hui une Europe des Quinze. Les trois nouveaux membres, de grande tradition écologique, feront vraisemblablement pencher la balance du côté d'une Europe plus verte.

La Commission et l'industrie s'interrogent actuellement sur le bien-fondé et l'opportunité d'une révision à la hausse. Cependant, la parole est aux Etats membres à travers le vote au Conseil.

Introduction

L'une des législations communautaires les plus polémiques de la décennie qui vient de s'achever fait actuellement l'objet d'une révision.

La directive relative aux emballages et aux déchets d'emballages a fait l'objet de nombreuses analyses de la part des chercheurs qui s'intéressent au processus d'intégration européenne, dès lors que cette législation est emblématique de nombre de problèmes que pose ce difficile phénomène à l'UE. La complexité de l'élaboration de cette directive est largement représentative du rôle des différents acteurs dans le processus décisionnel au sein de la Communauté européenne. A présent, dans sa phase d'application, elle s'érige en exemple valable pour l'analyse de questions importantes, telles que le niveau de conformité des sujets du droit communautaire aux législations communautaires, l'importance pour la Commission d'obtenir des informations ponctuelles de la part des Etats membres sur le niveau d'application de la législation communautaire, et l'opportunité ou non de procéder à la révision de celle-ci.

Un autre problème tout aussi difficile consiste à

comprendre les causes de la non-mise en oeuvre (ou du retard dans la mise en oeuvre) de la législation communautaire relative à la gestion des déchets. Une partie de la réponse réside dans l'absence des capacités requises pour introduire des modifications ayant d'importantes conséquences économiques et produisant des effets pour plusieurs secteurs.

Cependant, ce n'est là qu'une partie de la réponse. Dans une Europe où les Etats sont si différents et où les traditions économiques, sociales et culturelles autour de la protection de l'environnement sont tellement disparates, il est malaisé de généraliser les résultats d'une analyse. Et cela d'autant plus si l'on ne possède pas l'information nécessaire pour ce faire: il n'existe pas dans l'Europe communautaire de données homogènes sur le niveau de conformité à la directive. Des concepts de base pour toute analyse sur le niveau d'exécution de la directive, comme les "déchets" et le "recyclage", continuent de faire l'objet d'interprétations différentes. Les statistiques ne reposent pas sur des données harmonisées et, en outre, certains pays dotés d'une structure législative décentralisée (par exemple, l'Espagne),¹ n'ont pas de système adéquat de

coordination interne entre les divers agents chargés de fournir ponctuellement les informations requises par la législation.

Cet article se propose d'analyser le processus de révision – actuellement au stade initial – d'une directive ayant des conséquences importantes pour de nombreux secteurs. A cette fin, nous analysons les grandes lignes du processus d'élaboration de la directive, le retard dans son application et les actions (en précontentieux et contentieux) entamées contre certains Etats membres pour non-transposition ou transposition incomplète. Enfin, cet article pose un certain nombre de questions autour du processus de révision de la directive lancé récemment: le rôle de la Commission dans ce processus, le rôle des Etats membres et le résultat prévisible de la révision législative.

Le problème des déchets d'emballages et la directive 94/62/CE

En 1990,² la quantité totale des déchets générés par les 15 Etats membres s'élevait à environ 910 millions de tonnes (à l'exclusion des déchets agricoles). Sur ce volume, 22 millions de tonnes étaient à haut risque.

Les déchets d'emballages représentaient un volume considérable de la totalité des déchets générés: la quantité de déchets d'emballages se chiffrait à 50 millions de tonnes et leur origine se répartissait comme suit: 25 millions provenant des ménages, 15 des services et 10 de l'industrie. Sur ces 50 millions, en moyenne seuls 18% étaient recyclés, avec de fortes variations entre les Etats membres pour les différents types de déchets.

Des pays comme l'Allemagne, les Pays-Bas ou le Danemark avaient des programmes de gestion des déchets très ambitieux, à telle enseigne que certains, à indice élevé de récupération de déchets, n'avaient pas les moyens d'en assurer un traitement adéquat et se voyaient obligés de les exporter vers des pays tiers contre paiement de fortes subventions.

Le cas de l'Allemagne est particulièrement significatif: en 1991, l'Allemagne adopta le "Décret sur l'évitement des déchets d'emballages", appelé décret Toepfer, du nom de son initiateur, Klaus Toepfer, le ministre de l'Environnement. Ce décret fixait une série d'objectifs de recyclage ambitieux et obligatoires: récupération de 50% des déchets d'emballages pour janvier 1994 et de 80% pour juillet 1995. En outre, il exigeait des fabricants d'emballages la collecte de tous les emballages par les différentes parties intégrantes de la chaîne de production et de consommation. La loi autorisait le transfert de ces obligations à des tierces parties: un groupe composé de plus de 600 sociétés institua une nouvelle entité, le *Duales System Deutschland (DSD)*, l'autorisant à collaborer avec les collectivités locales pour la collecte de tous les matériaux d'emballages recyclés. Le gouvernement allemand conféra au DSD le pouvoir exclusif pour la collecte des emballages recyclés³ et assortit son opérabilité d'un certain nombre de conditions.⁴ DSD mit en place l'infrastructure nécessaire à la collecte et à la

classification des déchets d'emballages et en assura le suivi. Mais bien vite le système se heurta à de sérieux problèmes. En premier lieu, les coûts de la gestion de ce système dépassaient les prévisions. En deuxième lieu, l'on se rendit rapidement compte de la difficulté qu'il y avait à garder un contrôle sur la multitude de sociétés, surtout étrangères, qui vendaient des produits en Allemagne. Il convient d'ajouter, en troisième lieu, les abus de la part des consommateurs qui, se voyant obligés de payer des taxes proportionnelles au volume de déchets ménagers produits, déversaient dans un même conteneur tous les types de déchets sans en effectuer le tri.⁵

Des objectifs aussi ambitieux eurent pour résultat un volume élevé de collecte des déchets, mais les capacités adéquates pour gérer ce volume faisaient cruellement défaut. C'est ainsi, par exemple, que face à la nécessité de se débarrasser de ses énormes quantités de déchets plastiques, l'Allemagne trouva une issue dans l'exportation fortement subventionnée vers des pays tiers. L'un des pays de destination de ces exportations était la France qui possédait un système d'incinération des plastiques pour la production d'énergie. Mais le niveau élevé de pollution de l'air produit par l'incinération de matières plastiques déclencha de très vives réactions de la part des protecteurs de l'environnement, de même que l'interdiction de la part des autorités françaises d'autoriser l'entrée des navires ayant pareille cargaison à leur bord.⁶

La fermeture des frontières aux exportations allemandes affecta aussi les frontières belges.⁷ Comme cette mesure représentait une atteinte flagrante au principe de libre circulation des marchandises, la Cour de justice des Communautés européennes (CJCE) fut saisie de plusieurs affaires dans ce domaine.⁸

Le processus d'élaboration de la directive⁹

La recherche d'un équilibre entre la libre circulation des marchandises et la défense de l'environnement a toujours été un exercice difficile: la fermeture des frontières par certains pays aux exportations de déchets provenant des pays plus écologiques, afin d'éviter de devenir les "dépotoirs" du continent, a montré clairement la nécessité urgente d'une harmonisation législative. Celle-ci empêcherait de nouvelles violations du principe de libre circulation des marchandises et assurerait aussi une protection adéquate de l'environnement.

C'est sur cette toile de fond que la Commission européenne a lancé, au début des années 1990, la préparation de la proposition de directive relative aux emballages et aux déchets d'emballages.

Les deux principaux objectifs de la proposition se concentraient sur la nécessité de réduire les dommages causés à l'environnement par les déchets d'emballages, encourageant la récupération et le recyclage des pourcentages les plus élevés possibles des déchets d'emballages. Par ailleurs, elle entendait contribuer au bon fonctionnement du marché intérieur à travers l'harmonisation des politiques des différents Etats

membres, de manière à ce que soit garanti le respect du principe de libre circulation des marchandises.

La Commission dut rédiger plusieurs projets avant de pouvoir présenter formellement la proposition. Les premières ébauches rédigées par la Direction générale Environnement de la Commission européenne étaient le reflet du travail efficace de lobbying mené par les défenseurs de l'environnement des pays les plus avancés en la matière. En fait, des articles entiers de ces ébauches étaient une copie fidèle de la législation en vigueur en Allemagne dans ce domaine. Après plusieurs réformes successives de ces ébauches, la proposition définitive de la Commission fut publiée le 15 juillet 1992.

Même si son niveau initial de protection de l'environnement avait été entre-temps réduit, cette proposition était très ambitieuse pour les pays de moindre tradition écologique. En revanche, comparée aux ébauches initiales, la proposition qui fut finalement présentée par le collège des Commissaires de la Commission européenne était très modeste pour les pays plus écologiques.

Le Parlement européen, institution chargée de formuler un avis conforme par rapport à la proposition, se retrouva soumis à de fortes pressions de la part des deux parties. Il s'agissait d'une directive qui influencerait sur le comportement de 15 millions d'entreprises dans la Communauté et on prévoyait que les conséquences économiques d'un résultat, dans un sens comme dans l'autre, seraient énormes.

Au début, la directive adopta un profil bas: elle portait en elle la crainte latente que l'on opte pour "le plus petit dénominateur commun". Dans une Europe fragmentée en différents niveaux de protection et en proie à des sensibilités diverses en matière de protection de l'environnement, les pays périphériques (Royaume-Uni, Portugal, Espagne, Grèce et Irlande et, dans une moindre mesure, France et Italie) entendaient arriver à une directive qui reprenne les objectifs minimum qui figuraient "déjà" dans les plans de gestion des déchets de pratiquement tous les Etats membres.

La possibilité pour des pays comme le Danemark, l'Allemagne et les Pays-Bas de pouvoir maintenir des niveaux de protection de l'environnement plus élevés que ceux fixés par la directive donna lieu à de longs débats particulièrement animés. Ces pays soutenaient que les exigences du marché unique ne devaient pas les forcer à paralyser ou à éliminer leurs efforts en matière de protection de l'environnement. Face à cette situation, les pays du sud de l'Europe surtout accusaient l'absence d'un système légal aussi développé en matière de protection de l'environnement et le niveau d'éducation de leurs citoyens était assez éloigné de la sensibilité nécessaire par rapport à la protection de l'environnement.

Entre le 15 juillet 1992, date de la proposition de la Commission, et le 23 juin 1993, date à laquelle le Parlement européen donna son avis conforme en première lecture, cette proposition subit plus de 70 amendements. Lors du vote en session plénière au Parlement européen, la majorité des amendements furent

approuvés et la Commission décida d'axer sa proposition autour d'objectifs plus ambitieux.

Cette proposition révisée de la Commission allait être fortement limitée par le Conseil. Le 15 décembre 1992, le Conseil procéda à un premier débat d'orientation. Ce débat était centré en premier lieu sur une série de questions, à savoir l'équilibre entre harmonisation et protection de l'environnement, les objectifs chiffrés, les systèmes de gestion des emballages et les exigences à satisfaire par les différents types d'emballages.

D'emblée, on vit se former deux coalitions au sein du Conseil: celle appelée la coalition des pays traditionnellement écologiques (Bénélux, Allemagne et Danemark) et celle des pays périphériques (sous la conduite du Royaume-Uni). Les discussions entre ces deux groupes étaient l'illustration des profondes divisions existant dans l'Europe communautaire des années 1990 en matière de protection de l'environnement.

Plusieurs questions rendaient difficile le rapprochement des positions:

- Hiérarchie des méthodes de gestion des déchets: face à certains Etats membres et au Parti des Verts du Parlement¹⁰ qui souhaitaient une hiérarchie stricte pour le traitement des déchets,¹¹ d'autres ne souhaitaient aucune hiérarchie ou souhaitaient seulement une hiérarchie très flexible. Finalement, la directive n'établit aucun système hiérarchique, laissant aux Etats membres le choix de décider de leur propre hiérarchie. La directive ne contient qu'un seul article encourageant la réutilisation par rapport au recyclage¹² et cet article a provoqué de vives protestations au sein des groupes industriels.
- Le principe de proximité: l'obligation ou non de se conformer aux objectifs de la directive dans son propre pays ou dans un pays voisin. L'article 6 de la directive établit les objectifs à atteindre, mais on peut déduire de la lettre de la directive que les Etats membres qui se conforment aux objectifs ne sont pas tenus d'avoir la capacité suffisante sur leur propre territoire pour le traitement des déchets, ce qui les autorise donc à les exporter.¹³
- La possibilité d'exemption (*opt-out*): la possibilité d'adopter des programmes nationaux ou des actions analogues dans le but de prévenir la formation de déchets. Malgré les protestations contre le caractère vague du texte de la directive et les difficultés d'interprétation, cet article fut maintenu.¹⁴

La coalition des pays périphériques obtint la majorité qualifiée lors du vote au Conseil.

Les trois pays écologiques (Allemagne, Pays-Bas et Danemark) votèrent contre le projet de position commune afin de pouvoir se réserver le droit d'utiliser l'article 95.4 du Traité CE qui leur permettait de maintenir des objectifs plus élevés pour la récupération et le recyclage.¹⁵

La coalition des pays qui obtint la majorité qualifiée au Conseil (les pays périphériques) en décembre 1993,

sortit en fin de compte vainqueur du processus d'adoption de la directive. Au terme de la deuxième lecture au Parlement (qui ne modifia pas la position commune du Conseil) et après la convocation de nombreux comités de conciliation réunis pour résoudre des questions ponctuelles du texte légal,¹⁶ la directive 94/62/CE fut enfin approuvée le 30 décembre 1994. Son contenu était pratiquement identique à celui de la position commune de 1993. Les pays à tradition plus "verte" se plainquirent que le résultat de la directive fût aussi "pauvre", mais ils réussirent à faire inclure dans ses articles la possibilité d'accroître les objectifs, à condition que les mesures prises dans ce sens n'entraînent pas de distorsion du marché intérieur et n'empêchent pas les autres Etats membres de se conformer à la directive.¹⁷

Le retard dans l'application de la directive

La directive 94/62/CE oblige les Etats membres à l'appliquer avant le 30 juin 1996. Cette obligation n'a pas été respectée par la plupart des Etats membres qui n'ont pris des mesures de transposition que lorsque l'année 1997 était déjà bien entamée.

Le retard d'un an dans l'application de la directive a eu un effet en cascade: la directive établit toute une série d'obligations pour les Etats membres (soumission de rapports, objectifs à réaliser) auxquelles ceux-ci doivent se conformer un an après son entrée en vigueur. La directive étant entrée en vigueur avec retard, tous les autres délais ont été systématiquement dépassés. La révision des objectifs fixés se fera sur la base des rapports que les Etats membres remettent à la Commission sur le niveau de réalisation ou de non-réalisation.

C'est ici que le retard généralisé, dans la transposition comme dans la remise des rapports obligatoires à la Commission, prend toute son importance. Ces objectifs font actuellement l'objet d'une révision sur la base d'informations pour le moins biaisées de la réalité que l'on rencontre dans un nombre non négligeable d'Etats membres.¹⁸

A la date à laquelle la directive aurait dû être appliquée par les quinze Etats membres (juin 1996), seuls certains pays (Autriche, Belgique, Danemark, Finlande, France, Luxembourg, Pays-Bas, Espagne et Suède) avaient notifié à la Commission des projets de mesure mettant en oeuvre, partiellement ou pleinement, la directive 94/62/CE.¹⁹

Cependant, on dut attendre un certain temps avant de voir la directive appliquée par les Etats membres et encore plus de temps avant que la Commission ne puisse disposer des données requises.

Quelques causes qui ont rendu difficile le respect des délais fixés

L'on pourrait attribuer certaines des causes du retard généralisé dans l'application de la directive à des facteurs tels que:

- (1) L'absence d'une définition commune des déchets: le fait qu'il n'y ait pas de définition satisfaisante qui

permette de dire quand un matériau devient déchet et quand il redevient un produit économique préoccupe sérieusement la Commission. La CJCE a reconnu que la définition des déchets est indépendante de la valeur économique que l'objet mis au rebut peut avoir et que les déchets sans valeur économique peuvent être considérés comme marchandises (en vertu de l'article 30 du Traité CE), bien qu'étant de nature spécifique. Malheureusement, la directive 75/442/CEE, modifiée par la directive 91/156/CEE, n'a pas résolu tous les problèmes liés à la définition des déchets et des déchets dangereux. Et ce problème de définition a des répercussions pratiques importantes. De surcroît, le problème est exacerbé lorsque les Etats membres mettent en oeuvre la législation communautaire.²⁰ Chaque Etat membre a adopté différentes notions des déchets et des déchets dangereux et a dressé des listes de déchets divergentes. A moins que tous les Etats membres n'utilisent une définition commune et communautaire des déchets et les mêmes listes dans la législation nationale, une terminologie très différente (déchets industriels, déchets finaux, matière première secondaire, déchets spéciaux, pour n'en citer que quelques-uns) ne fera qu'ajouter à la confusion et accroître les difficultés rencontrées par les opérateurs économiques et les administrations pour appliquer la législation communautaire en la matière.²¹

- (2) L'absence d'un système d'identification commune pour les 15 Etats membres: étant donné la nécessité d'établir un système d'identification commune pour les Quinze, la Commission a élaboré fin 1996 une proposition de directive relative au marquage des emballages réutilisables ou recyclables effectué sur une base volontaire par les opérateurs économiques. Elle établit aussi une procédure d'évaluation de la conformité applicable à tous les emballages visés par la directive 94/62/CE. La Commission a approuvé la décision 97/129/CE du 28 janvier portant réglementation du système d'identification des matériaux d'emballage.
- (3) Le retard dans l'envoi d'informations à la Commission: en vertu des stipulations de l'article 17 de la directive, les Etats membres ont l'obligation de transmettre à la Commission des informations sur l'application de la directive, et doivent le faire sous la forme de rapports sectoriels (conformément à l'article 5 de la directive 91/692/CEE). Dans ce contexte, la Commission adopta la décision 97/622/CE qui établit une série de questionnaires à utiliser pour les rapports des Etats membres sur le niveau d'application de la directive. Fondamentalement, le questionnaire contient des questions sur l'application de chaque article de la directive et stipule qu'en cas de non-application, l'Etat membre concerné doit en préciser les raisons. Conformément à cette décision, le premier rapport devra couvrir la période allant de 1998 à 2000. Les rapports doivent être envoyés à la

Commission dans un délai de neuf mois au terme de la période de 3 ans correspondante.²²

- (4) Le retard dans l'établissement des bases de données: l'article 12 de la directive relative aux emballages et aux déchets d'emballages réclame des Etats membres la mise en place de bases de données sur la gestion des déchets d'emballages afin de pouvoir surveiller la mise en oeuvre des objectifs fixés par la directive.²³ En novembre 1999, près de la moitié des Etats membres avaient envoyé à la Commission leur rapport sur les emballages et déchets d'emballages en exécution de cette obligation.
- (5) L'absence de communication des plans de gestion des déchets à la Commission en application de la directive (article 14).

En septembre 1997, la Commission ne disposait pas d'informations fiables des pourcentages de valorisation et de recyclage atteints par tous les Etats membres.²⁴

Les Etats membres face à la Cour de justice des Communautés européennes (CJCE)²⁵

La Commission avait manifesté à maintes reprises son intention de recourir aux moyens coercitifs dont elle dispose pour arriver à une application adéquate de la directive sur les emballages de la part des Etats membres. L'absence ou l'insuffisance des plans sur la gestion des déchets dans les Etats membres fut pratiquement la norme²⁶ au cours des premières années d'existence de la directive.

Il est clair que les délais de la directive ne seront pas respectés avant que la Commission n'entame ses procédures précontentieuses. La décision de la Commission d'adresser des avis motivés à certains Etats membres pour non-transposition s'inscrit dans le contexte de l'effort concerté en vue d'assurer la mise en place des plans de gestion nécessaires dans tous les Etats membres.

30.06.97

Actions contre l'Espagne, le Luxembourg, la Grèce et la Belgique pour non-application de certaines parties de la législation sur les déchets.

30.06.98

La Commission décide d'envoyer des avis motivés à la Belgique, car celle-ci n'a pas de plans sur les déchets d'emballages pour la Flandre et Bruxelles; aux Pays-Bas, pour la même raison; et à la France pour absence d'un chapitre spécifique sur la gestion des déchets; au Luxembourg, pour non-communication des plans; à l'Irlande pour non mise à jour des plans; à l'Italie pour absence de plans pour certaines régions; et à la Grèce parce que les plans avaient été rédigés sans tenir compte des obligations des trois directives relatives aux déchets (la directive-cadre, la directive sur les substances dangereuses et la directive sur les emballages et déchets d'emballages).

30.10.98

La Commission européenne adresse un avis motivé au Royaume-Uni, car celui-ci n'avait pas adopté ni communiqué à la Commission toute la législation nationale d'application de la directive. S'il est vrai que le Royaume-Uni adopta et communiqua certaines mesures législatives dans le domaine des emballages et des déchets d'emballages, comme par exemple les obligations du fabricant, celles-ci ne couvraient pas la directive relative aux emballages et il n'y avait pas de mesures d'application des articles 9 et 11 de la directive relative aux emballages, et en outre il n'y avait pas de législation couvrant l'Irlande du Nord.

30.10.98

La Commission intente une action contre la Grèce, l'Irlande et le Luxembourg, ainsi que la Finlande, la Belgique et le Portugal pour non-adoption et non-communication à la Commission de la législation nationale d'application de la directive.

05.11.98

La Commission européenne notifie un avis motivé à la Suède et au Royaume-Uni pour non-communication de leurs plans de gestion des déchets par rapport aux trois directives sur les déchets (la directive-cadre, la directive sur les substances dangereuses et la directive relative aux emballages).

15.12.98

La Commission intente une action contre la Belgique devant la CJCE pour violation de la directive.

Niveau d'application de la directive par les 15 Etats membres: examen pour la révision des objectifs

Conformément à l'article 6.3.b) de la directive, "au plus tard le 10 décembre 2000, le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, fixe les objectifs pour la deuxième phase de cinq ans. Cette procédure est répétée ultérieurement tous les cinq ans."

Il faut ajouter que la directive stipule que, pas plus tard que l'an 2006, le Conseil révisera les objectifs établis en 1994 afin de les "accroître substantiellement". La directive prévoit aussi une obligation d'accroître les objectifs en 10 ans et prévoit à cet effet deux phases de cinq ans.

L'article 6.3.a) précise le mécanisme à suivre pour cette révision: "le Parlement et le Conseil examinent, sur la base d'un rapport intérimaire de la Commission, l'expérience pratique acquise au sein des Etats membres lors de la poursuite des objectifs de la directive."

Contrairement au retard accusé par les Etats membres en matière de transposition, la Commission a été très ponctuelle pour la présentation d'un rapport intérimaire²⁷ qui permettra au Parlement européen et au Conseil d'examiner l'expérience pratique acquise au sein des Etats membres afin de pouvoir fixer à temps les objectifs pour la prochaine période de cinq ans 2001-2006. Le

rapport sera analysé par le Parlement et le Conseil, mais seul le Conseil décidera sur proposition de la Commission de la fixation de nouveaux objectifs pour les cinq prochaines années.

Le Parlement européen et le Conseil examinent le 30 juin 2005, sur la base d'un rapport final, l'expérience pratique acquise au sein des Etats membres lors de la poursuite des objectifs visés, ainsi que les résultats de la recherche scientifique et des techniques d'évaluation tels que les éco-bilans. Dès lors et conformément à la législation en vigueur, les objectifs doivent être accrus substantiellement.

Ainsi a été lancé le processus de révision d'une directive dont l'adoption a exigé des années de discussion entre les institutions communautaires, les Etats membres et les groupes de pression. Ce processus trouvera son point culminant dans le vote au Conseil, qui décidera (sans possibilité de veto ni de vote au Parlement), s'il y a lieu d'accroître et dans quelle mesure les objectifs fixés en 1994.

Telle est la situation à laquelle on peut s'attendre, à moins que, sur proposition de la Commission, on ne révisé également d'autres aspects de la directive, auquel cas nous déborderions du cadre de l'article 6.3.b.) et nous retrouverions face à une nouvelle proposition législative qui serait rédigée à travers la procédure de codécision. Il s'agira de suivre de près les événements, dans la mesure où les dernières informations disponibles laissent présager une simple révision des objectifs.²⁸

Analyse du rapport intérimaire

La directive 94/62/CE ne fixait aucune date précise à la Commission pour présenter son rapport intérimaire. La Commission a présenté son rapport le 19 novembre 1999, alors qu'elle ne disposait pas encore des rapports officiels de tous les pays.²⁹

Pour rédiger le rapport, la Commission a rassemblé les données disponibles en puisant à la fois dans celles qui ont été officiellement communiquées par certains Etats membres et dans d'autres sources telles que les chiffres publiés par les opérateurs économiques, les études effectuées par ou pour les associations industrielles et les informations fournies lors de conférences sur la directive 94/62/CE.

Pour la rédaction du rapport, la Commission n'a pas tenu compte des résultats de la recherche scientifique et des techniques d'évaluation telles que les éco-bilans; elle s'est concentrée surtout sur "l'expérience pratique acquise dans la poursuite des objectifs", et la Commission a reconnu que "elle ne disposait pas encore des données complètes de tous les Etats membres par rapport à l'expérience pratique qu'ils ont acquise".

Le rapport ne dit pas si l'on a utilisé ou non au moment de sa rédaction des schémas statistiques communs aux 15 Etats membres. Dans le 5ème Programme d'action en matière d'environnement (voir note n°13), la conclusion est qu'il est indispensable de disposer d'un système commun de classification des déchets afin de pouvoir comptabiliser les données entre

Etats membres.

Ce que le rapport nous dit, en revanche, c'est que les chiffres y présentés sont les chiffres les plus récents que la Commission ait pu obtenir, que certaines statistiques utilisées peuvent souffrir du fait que certains pays calculent leurs chiffres en considérant la réutilisation et le recyclage comme un concept unique, et que l'on a tenu compte pour sa réalisation non seulement des rapports officiels communiqués par les Etats membres (seuls le Danemark et la région flamande de la Belgique l'ont fait) mais aussi des documents de travail sur lesquels les Etats membres ont été consultés.

Le rapport conclut en affirmant que les 15 Etats membres réaliseront les objectifs de la directive pour la première période de 5 ans (1996-2001), et considère cette information "utile" "compte tenu de l'obligation d'accroître substantiellement ces objectifs pour l'an 2005."³⁰

Une révision en marche

Il existe bien entendu de nombreuses différences entre l'Europe de 1994 qui adopta la directive relative aux emballages et aux déchets d'emballages et l'Europe d'aujourd'hui. Mais l'une d'elles est essentielle pour analyser les résultats possibles de cette réforme actuellement en chantier. L'Europe des Douze est devenue l'Europe des Quinze et les trois derniers pays à avoir adhéré à l'Union (l'Autriche, la Finlande et la Suède) se conforment largement aux objectifs de la directive, voire les dépassent. Il est fort à parier que le rapport de force basculera cette fois-ci du côté des défenseurs d'une Europe plus verte.

Tableau récapitulatif des objectifs atteints par les Etats membres en matière de valorisation et de recyclage, COM (99) 596 final.

	Valorisation	Recyclage
Objectifs de la directive (1)	50-65 (%) (25) (%)*	25-45 (%)
Autriche	66	61
Belgique	70	62
Danemark	83	37
Finlande	54	42
France	50	35
Allemagne	65	63
Grèce	25	25
Irlande	18	18
Italie	35	32
Luxembourg		33
Pays-Bas	78	55
Portugal	15	3
Espagne		
Suède	65	58
Royaume-Uni	34	30

* La Grèce, l'Irlande et le Portugal peuvent réaliser des objectifs inférieurs, mais ils doivent atteindre au moins 25% pour la valorisation, et reporter la réalisation des autres objectifs à une date ultérieure qui, toutefois, ne peut pas dépasser le 31 décembre 2005.

L'unité de gestion des déchets de la Commission suggère des changements importants dans la directive relative aux emballages et aux déchets d'emballages de 1994.³¹ Les modifications des objectifs à atteindre en matière de recyclage des déchets s'accompagnent de l'intention d'harmoniser les définitions des concepts de déchets et de recyclage. La directive actuelle exige des Etats membres qu'ils valorisent entre 50% et 65% (en poids) de leurs déchets d'emballages et recyclent entre 25% et 45%, avec un minimum de 15% pour chaque matériel d'emballage, pour le 30 juin 2001 (voir tableau à la page 17). Les propositions de réforme vont dans différentes directions, mais celle qui ressort avec le plus de force est la proposition préconisant l'élimination des objectifs de récupération pour fixer un recyclage de minimum 60%, avec des pourcentages différents par matériau. Cette proposition bénéficie du soutien des groupes de défense de l'environnement.

On prévoit une approche flexible en fonction de la situation de chaque Etat membre ainsi que des objectifs plus différenciés par type de matériau. Quoi qu'il en soit, on peut s'attendre à ce que, à travers la future proposition de directive sur "les objectifs de récupération et de recyclage des déchets d'emballages" (qui réviseront, conformément à la directive 94/62/CE, les objectifs pour la période 2001-2006) l'on prévoit un accroissement général de tous les objectifs. La position de pays tels que l'Allemagne, la France, la Finlande et le Royaume-Uni sur ce point est que toute révision des objectifs actuels serait prématurée avant que ne soit réaffirmée la situation actuelle, en particulier à travers une analyse coût-profit. Un rapport reflétant la position du secteur industriel en date du 5 janvier 1999 sur la révision de la directive³² montre clairement que toute révision conduisant à un accroissement des pourcentages établis serait prématurée et qu'il vaudrait mieux confirmer le texte de la directive pour la deuxième phase.

L'industrie, de son côté, maintient qu'il faut une véritable information de meilleure qualité sur les résultats de l'application de la directive actuellement en vigueur, avant de pouvoir procéder à une quelconque révision. Ceci doit comporter une évaluation d'impact sur l'environnement de la directive ainsi qu'une analyse coût-profit.³³

Si un accroissement éventuel des objectifs n'est pas pertinent pour les pays qui ont réalisé largement, voire qui ont dépassé, les pourcentages de valorisation et de recyclage fixés dans la directive, ce même accroissement peut avoir des conséquences économiques indésirables pour les pays qui réalisent à peine ou qui ne réaliseront pas à temps les objectifs indiqués dans la directive. Par ailleurs, le 5ème Rapport de progrès sur l'environnement (voir note n°13) conclut qu'en dépit des grandes avancées opérées dans la Communauté européenne en matière de gestion des déchets, les objectifs établis pour l'an 2000 pourraient ne pas être atteints.

Le rapport intérimaire de la Commission est en revanche très positif: il dit qu'en matière de réutilisation, en moyenne un tiers des emballages sont réutilisés.

Néanmoins, les Etats membres du nord disposent de systèmes de réutilisation beaucoup plus développés que les Etats membres méridionaux.³⁴ En ce qui concerne les pourcentages de recyclage, il établit que "l'objectif de 25% a déjà été atteint, quatre ans avant la date prévue, par tous les Etats membres qui devaient s'y conformer."

Conclusions

La directive relative aux emballages et aux déchets d'emballages fait actuellement l'objet d'une révision. La Commission a rédigé un rapport intérimaire sur le niveau de réalisation par les Etats membres des objectifs fixés dans la directive. Le rapport donne des indications claires – même si on ne dispose pas de données complètes de tous les Etats membres – quant à la possibilité de réaliser les objectifs fixés pour la première période de 5 ans (1996-2001). Cette donnée ouvre la voie à une nouvelle proposition de la Commission afin de fixer les objectifs pour les cinq prochaines années. Si la proposition de la Commission va dans ce même sens et se limite à une révision des objectifs, conformément à ce qui est stipulé dans la directive, le Conseil devra voter sur les nouveaux objectifs proposés. On peut tenter de prédire ce qui se passera au Conseil moyennant une analyse historique de ce qui s'est passé au Conseil au moment de la rédaction de la directive sur les emballages et déchets d'emballages et au vu du niveau de mise en oeuvre de celle-ci par les Etats membres.

L'Europe des Quinze, qui est à présent appelée à décider de la révision des objectifs, peut former des coalitions similaires à celles de 1993, mais cette fois-ci la balance ne penchera pas du côté des pays périphériques qui obtinrent la majorité au Conseil à l'époque. Les trois derniers membres de l'Europe communautaire remplissent et dépassent même les objectifs de la directive. Cette situation, ajoutée à une Commission dont l'agenda est clairement favorable à une révision portant accroissement des objectifs, livrera un résultat que les pays périphériques doivent dès maintenant commencer à envisager.

D'autre part, un certain nombre de questions se posent quant à l'avenir de la directive: que se passera-t-il lors des révisions futures prévues de la directive? Le dernier élargissement de la Communauté européenne a rendu l'Europe plus "verte". Les prochains élargissements risquent de provoquer exactement l'inverse. Cependant, vouloir imposer aux futurs Etats membres des objectifs irréalisables reviendrait à faire de la non-mise en oeuvre la norme en la matière. Il sera aussi plus difficile à la Commission d'obtenir des informations sur le niveau de mise en oeuvre de la directive. La solution à laquelle on peut s'attendre sera probablement l'introduction d'exceptions et l'extension des délais pour la réalisation des objectifs de la part des nouveaux pays membres, tout en laissant aux pays plus écologiques la possibilité de maintenir leur niveau ambitieux de protection de l'environnement. Ainsi, ce secteur ne devrait-il pas non plus échapper à l'Europe à plusieurs vitesses.

NOTES

- ¹ L'auteur effectue actuellement une analyse sur les systèmes de coordination dans les Etats décentralisés pour se conformer aux obligations de la directive 94/62/CE.
- ² Communication de la Commission relative au réexamen de la stratégie communautaire en matière de gestion des déchets COM (96) 399 final, chapitre 2, point 7, p.5, selon la récente publication "Europe's Environment: Statistical compendium for the Dobris Assessment."
- ³ Ferdinand Protzman, *A nation's Recycling Law puts business on the spot*, New York Times, 12 juillet 1992.
- ⁴ Pierre J. Louis, 1992) (Pierre J. Louis, *Shipping to Europe, which transport pack?*, EUR. Packaging Newsl. & World Rep., octobre 1992).
- ⁵ Steven P. Reynolds, *The German recycling experiment and its lessons for United States Policy*.
- ⁶ "Waste: French decree and franco-German decisions", Europe Env't, septembre 1992 (discussions sur le scandale des déversements de déchets allemands en France et l'interdiction française des chargements de déchets allemands à bord des navires).
- ⁷ Affaire C-2/90, Interdiction d'importations de déchets en Wallonie, Commission contre Royaume de Belgique, Rec. 1992, p. 396.
- ⁸ "Les déchets sont des marchandises", voir note n°7.
La Cour de justice des Communautés européennes de Luxembourg a affirmé que le terme "marchandises" figurant dans le Traité englobe les marchandises indépendamment de leur valeur économique, de leur nature, de leurs caractéristiques et de leur destination. Dans ce contexte, les déchets doivent être considérés comme des marchandises et bénéficient donc de la liberté de circulation à l'intérieur de la Communauté. Mais la Cour a également signalé dans sa jurisprudence que les déchets sont des biens d'une nature particulière, dès lors qu'ils peuvent supposer un danger pour l'environnement. Pour cette raison et à la lumière de l'article 30 du Traité qui contient les bases du principe de protection de l'environnement, la libre circulation des déchets peut être limitée au titre de la protection de l'environnement.
- ⁹ Pour plus d'informations voir "State Power and Institutional Influence in European Integration: Lessons from the Packaging Waste Directive", Jonathan Golup, *Journal of Common Market Studies*, Vol. 34, n°3, septembre 1996.
- ¹⁰ Anne van Goethem, février 1996, *Environmental Protection versus internal market: packaging waste directive case study*. Features from Europe Environment-European Information System.
- ¹¹ La Belgique, le Luxembourg, l'Allemagne et les Pays-Bas étaient d'accord pour une stricte hiérarchie entre les opérations suivantes:
 - Prévention ou réduction de la production de déchets
 - Réutilisation
 - Recyclage et récupération sans obtention d'énergie
 - Incinération avec récupération d'énergie
 - Incinération sans récupération d'énergie
 - Utilisation de décharges.
- ¹² Voir article 5 de la directive 94/62/CE.
- ¹³ Le règlement (CEE) n°259/93 du Conseil du 5 février 1993, concernant la surveillance et le contrôle des transferts de déchets à l'entrée et à la sortie de la Communauté européenne est entré en vigueur en mai 1994. L'objectif de ne pas exporter de déchets en vue de leur élimination définitive pour l'an 2000 est en cours de réalisation. Voir "Vers un développement durable", programme communautaire de politique et d'action en matière d'environnement et de développement durable, connu aussi sous le nom de "Cinquième programme d'action en matière d'environnement", JO L 275, 1998, le 10 octobre 1998.
- ¹⁴ Voir article 4 de la directive 94/62/CE.
- ¹⁵ Article 95.4 du Traité CE: "Si, après l'adoption par le Conseil ou par la Commission d'une mesure d'harmonisation, un Etat membre estime nécessaire de maintenir des dispositions nationales justifiées par des exigences importantes visées à l'article 30 ou relatives à la protection de l'environnement ou du milieu de travail, il les notifie à la Commission, en indiquant les raisons de leur maintien."
- ¹⁶ La Belgique avait également rejoint le groupe perdant en juin 1994, élevant ainsi le statut du groupe à celui de "minorité de blocage". Ceci entraîna la nécessité de convoquer divers comités de conciliation.
- ¹⁷ Article 6.6. de la directive 94/62/CE.
- ¹⁸ "On ne dispose pas encore de données complètes détaillées sur l'expérience pratique acquise, et notamment sur l'"infrastructure" créée afin de poursuivre les objectifs, pour tous les Etats membres. Il faut également tenir compte du fait que le retard général enregistré dans la transposition de la directive en droit national ne permet pas toujours de tirer des conclusions sur l'expérience acquise". Rapport de la Commission au Conseil et au Parlement européen, COM (1999) 596 final, Bruxelles, 19.11.1999.
- ¹⁹ Réponse donnée par Mme Bjerregaard au nom de la Commission le 24 septembre 1996, JO C 11, 1997, p. 38.
- ²⁰ Lettre d'information de la DG XI, *Enlarging the Environment*, mai 1998.
- ²¹ Idem.
- ²² Réponse donnée par Mme Bjerregaard au nom de la Commission le 4 juillet 1997, JO C 45 1997.
- ²³ Ces bases de données devront contenir des informations sur l'ampleur, les caractéristiques et l'évolution des flux d'emballages et déchets d'emballages dans chaque Etat membre. La décision 97/138/CE du 3 février établit les modèles relatifs au système de bases de données pour la présentation d'informations sur les emballages et déchets d'emballages.
- ²⁴ Réponse donnée par Mme Bjerregaard au nom de la Commission le 22 septembre 1998, JO C 82, 1998, p. 123.
- ²⁵ Source: Communiqués de presse relatifs aux cas d'infraction à la directive 94/62/CE, Direction générale XI Environnement, sécurité nucléaire et protection civile, XI. B.3 – Affaires juridiques, activités législatives et application du droit communautaire.
- ²⁶ Cinquième rapport sur l'environnement, voir note n° 13.
- ²⁷ Rapport intérimaire de la Commission au Conseil et au Parlement européen COM/99/0596 final.
- ²⁸ Mi-décembre, article 21 réunion comité: "Certains Etats membres étaient favorables à un élargissement de la portée de la révision pour couvrir des questions en suspens telles que la spécification des exigences essentielles pour les emballages stipulées aux articles 9 et 11 de la directive. Cependant, la Commission déclara qu'à ce stade elle entendait uniquement revoir les objectifs et quelques questions y rattachées étroitement, laissant les autres sujets en suspens pour un examen futur", *EU Environmental Issue Manager*, janvier 2000-3.
- ²⁹ Bien que l'obligation légale de faire rapport couvre la période 1998-2000, la Commission a invité les Etats membres à anticiper, dans la mesure du possible, la fourniture des informations concernant la mise en oeuvre de la directive. Des rapports anticipés ont été soumis par le Danemark et la région flamande de la Belgique et ils ont été également utilisés pour établir le présent rapport intermédiaire, voir note n°27.
- ³⁰ COM/99/0596 final. Rapport de la Commission au Conseil et au Parlement européen, op. cit.
- ³¹ 'EU Environmental Issue Manager', juillet 1999.
- ³² Publié par le Comité UE de la Chambre de Commerce américaine.
- ³³ 'EU Environmental Issue Manager', janvier 2000.
- ³⁴ Les taux de réutilisation les plus élevés sont obtenus dans le secteur de l'eau minérale en Autriche, en Allemagne, au Danemark, en Finlande et en Suède, où ils approchent ou dépassent les 90% du volume embouteillé. Par contre, ces taux sont très faibles dans les autres Etats membres. COM/99/0596 final. □

Walking the Tightrope – Cultural Diversity in the Context of European Integration

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We all know that there are cultural differences between the countries, regions and ethnic groups in Europe. We are also aware, however vaguely, that these differences have a significant bearing on the political systems and the behaviour of individual actors. However, as yet, there is little practical understanding so far of how and to what extent this cultural diversity influences the overall functioning of the European Union.

The purpose of this article is to raise awareness of this issue and to illustrate approaches to addressing the cultural aspects of European institutional life in a more conscious and proactive way with the aim of improving the efficiency of European administrative and political cooperation.

Culture and the Treaty on European Union

“The Union’s citizens are bound together by common values such as freedom, tolerance, equality, solidarity and *cultural diversity*...”, states the Millennium Declaration adopted at the European Council in Helsinki in December 1999. The apparently contradictory notion of Europeans being bound together by their diversity reflects the recognition on the part of the Member States that the objective of a European identity based on a set of shared values can only be achieved if a respect for cultural diversity is firmly established as one of them. Accordingly, Article 151(4) of the EC Treaty stipulates that “the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures”.

The same theme, albeit viewed from the individual Member State’s perspective, resurfaces in Article 6(3) of the Amsterdam Treaty which states that “The Union shall respect the *national identities* of its Member States”. This statement underlines the fact that the Union’s cultural diversity is a manifestation of the aggregation of the cultural identities of its Member States. To respect and promote the Union’s cultural diversity therefore equates to respecting and promoting the national identities of its Member States. In addition, Article

151(1) of the EC Treaty introduces the concept of regional diversity, stipulating that “the Community shall contribute to the flowering of the cultures of the Member States, while *respecting their national and regional diversity*”.

Although these statements are clear in their aim, which is to reconcile the existing spectrum of cultural identities, national and regional, with the notion of a common European identity, they are still confined to a very abstract level. However, European Union and Member State officials are confronted with issues of cultural diversity in practice every day, with hardly any guidance on how to deal with them in a way that lives up to the aspirations expressed in these texts.

The meaning of culture

Prompted by unprecedented global flows of information, capital, goods and people, multiculturalism became a buzzword of the 1990s. However, the underlying concept of culture is very complex and no single definition has

been agreed upon in the literature. Anthropologists have collected more than 160 different definitions of culture,¹ a discussion of which is beyond the scope of this article. A widely accepted definition which suits the purposes of this discussion is that “culture is not a ‘thing’, a substance with a physical reality of its own” but rather “made by people interacting, and at the same time

determining further action”.² “*Culture is a set of shared and enduring meanings, values and beliefs that characterise national, ethnic, or other groups and orient their behaviour*”.³ Culture is therefore something shared by (almost) all members of a social group, something one tries to pass on, which shapes (through morals, laws, customs) behaviour, or structures, one’s perception of the world.⁴

Culture and individuals

Cultures are based on different values that shape the mind-sets of individuals living in them, or put in information-age terms, they make up part of the “software of the mind”.⁵ Geert Hofstede argues that culture is “the

“The Union’s citizens are bound together by common values such as freedom, tolerance, equality, solidarity and *cultural diversity*...”

collective programming of the mind, which distinguishes the members of one group or society from those of another". In his opinion, culture consists of the patterns of thinking that parents pass on to their children, teachers to their students, friends to their friends, leaders to their followers, and followers to their leaders. Consequently, the meaning people attach to various aspects of life reflects their culture. Culture determines their way of looking at the world and their role in it, their values, and what they find beautiful or consider as good or bad in their collective beliefs,⁶ a highly selective screen between Man and the outside world.⁷ It is present in people's minds and becomes apparent in tangible products of a society, most notably in its institutions, which in turn reinforce people's mind-sets. The presence of culture in an individual, both conscious and subconscious, ultimately defines his or her cultural identity.

Culture and organisations

Most research and empirical data on the impact of culture on organisations and behaviour focuses on the private sector, and, in particular, on management issues in multinational companies. In this regard, Hofstede argues that management within a society is very much constrained by its cultural context, because "it is impossible to coordinate the actions of people without a deep understanding of their values, beliefs and expressions". In the private sector, multinational companies have realised the relevance of culture and its impact on doing business and results. In response to this, promoting intercultural awareness and skills has become a standard training component in management.

There is a substantial body of empirical evidence to support the private sector's concern about the impact of cultural diversity on business. Recent studies conducted by European firms of trends in foreign trade reveal that firms in Europe are losing business, not simply because of language, but as a result of a variety of cultural barriers.⁸

To the extent that private sector management patterns are applicable to public administration, it is possible to extend these observations to the domain of public affairs. It may be argued that public organisations, namely political and administrative institutions, are still more influenced by their national cultural background than their private-sector counterparts. As a consequence, the loss in potential effectiveness sustained by the Union and its Member States in the course of their political and administrative dealings with each other because of cultural barriers are likely to even exceed those observed in the commercial sector. While it is difficult to quantify these effects in the same way, it is clear that cultural issues influence practically all of the major topics that European policies aim to address today.

Cultural barriers

Cultural differences, which can become barriers to intercultural exchange, become apparent in the nature of political systems, institutions, administrations, businesses and in the mind-sets and behaviour of politicians, officials, employers and employees, and citizens. Different political and administrative systems, as well as the behaviour of individual actors and the way they interact with each other, are mere reflections of different cultural systems which might be similar or different in respect to the sets of core values they embody. The areas at the European level where such cultural differences can have a substantial influence are numerous: on policy and decision-making processes, the quality of policy implementation, negotiations, communications, the sharing of information, and the relationship with the citizen. It is also possible to examine how these cultural differences are reflected in the structure of the EU institutions and their interaction with the Member States and whether they ultimately influence the pace of integration. Another important aspect but one which

reaches beyond the scope of this article is the role of media in this context.

Cultures are based on different values that shape the mind-sets of individuals living in them.

The interaction of individuals from national and European administrations plays a vital role in the progress of European integration. Hence, one key

element for a functioning European Union is to ensure smooth communication at all levels of European affairs. The various actors involved in European affairs encounter difficulties in communicating their needs and/or positions to their European counterparts and in understanding their European counterparts' positions, needs, behaviour and reactions, and thus in finding solutions which all parties involved can accept. It is essential to understand the intercultural framework within which the European venture operates, and to recognise the cultural differences (i.e. different values and mind-sets) which ultimately affect cooperation and performance, and to manage situations effectively in which such differences can affect results. Awareness of these cultural differences and their consequences will promote mutual understanding and contribute to finding common interests and solutions, by bridging and even harnessing cultural diversity.

Cultural Diversity and Cultural Identity

I briefly alluded to the interaction between national and European cultural identity at the beginning of this article with the example of the European Council's Millennium Declaration of December 1999. I argued at that point that this statement expresses a desire on the part of the Union and the Member States to define a European cultural identity as a set of values shared by all citizens of the Union. Is there any empirical evidence at all to suggest that a cultural identity shared by all

Europeans exists?

Eurobarometer, in its 1998 survey,⁹ measured for the first time whether people agree or disagree that there is a European cultural identity shared by all Europeans. A definition of “European identity” was not given. It was found that the majority of EU citizens feel European to some extent, although one can still not speak of the existence of a truly European identity. However, since this is an issue where opinions differ greatly between countries, generalisations can be deceiving. Luxembourg for example contains a high proportion of citizens from other EU countries; therefore people in this country are most likely to feel primarily European. In all other countries, less than 10% of the population feel primarily European. Nonetheless, people who feel European to a certain extent are in the majority in seven countries of the 15. In seven countries, people who identify primarily with their own nationality are in the majority, although in Austria, Denmark, Ireland and Finland, this majority is very small. The only three countries where the national identity is clearly prevalent are the UK, Sweden and Portugal. Even though age, education and occupation all play a role in determining this attitude, it is nonetheless striking that, in a 1998 Eurobarometer survey, 74% of people who regard their country’s membership as a bad thing identified solely with their own nationality, compared to only 27% of people who regard their country’s membership as a good thing.¹⁰ At the EU level, nearly nine out of ten people feel attached to their country, their town or village and their region. However, more than half of EU citizens feel attached to Europe.¹¹

Whether people feel European or not is also strongly influenced by a number of socio-demographic factors. It is, first of all, clearly a generation issue, with people who came into adulthood prior to the 1950s significantly less likely to feel to some extent European than people who grew up after the first European Treaty was signed. At the moment, it also still appears that as people become older they tend to identify more strongly with their own country. Education is another important factor, although education is interrelated with age. People who left school at the age of 15 or younger – many of whom belong to the older generation – are more likely to have a strong sense of national identity, while this is less likely among people who continue studying. There are also clear differences between people who left school at the age of 19 and those who stayed in education longer. As to the economic activity scale, managers are most likely to feel European.¹²

There is an obvious connection between a negative attitude towards EU membership and adherence to the national identity. Considering that the purpose of the European Union is, in the first place, to prevent national

interest becoming so inflamed that it destabilises Europe, the notion of the defence of national interest appears to be a tricky one.¹³ What seems worrying is that at the moment, in every country in the European Union and also outside, “the engines of mistrust are turning over”. We see “Germans worry about the authority of their regional governments; the Danish worry that they will be sucked south, dissolving the barrier with Germany which they have spent so long constructing; the French worry about their farming practices and the national destiny; the Belgians worry about their place in Brussels as it is over-run with European institutions”. And we hear that “the Dutch do not take kindly to being told to toughen up their drugs laws by a French President of very different political persuasion from their own.” We are alarmed that “Austrians do not want to share their country with anyone unless they are tourists.... Such fears go beyond logic and convenience....”¹⁴ Is the spectre of xenophobia and racism haunting Europe once again?

In the light of enlargement, the European Union is increasingly faced with the challenge of both accommodating and, at the same time, taking advantage of cultural diversity. In this regard, the President of the European Commission, Romano Prodi, in his address to the Parliament prior to the vote of investiture of the new Commission in September 1999 suggested for example,

with a special focus on the Mediterranean region, that enlargement “should include a ‘Partnership of Cultures’ “ as the term for a more ambitious commitment towards the Mediterranean, where “we Europeans are dedicated to promoting a new, exemplary harmony between peoples of the three religions of Jerusalem.

A resounding ‘No’ to the clash of civilisations”. And he emphasised “what we now need to build is a union of hearts and minds, underpinned by a strong shared sentiment of a common destiny – a sense of common European citizenship. We come from different countries. We speak different languages. We have different historical and cultural traditions. And we must preserve them. But we are seeking a shared identity – a new European soul.”

Cultural Synergies

“Culture remains generally invisible and, when visible, we usually think it causes problems. People rarely think that cultural diversity benefits organisations.”¹⁵ Revealingly, both Mr Prodi’s statement and the Millennium Declaration assert the view that Europe’s cultural diversity is an asset with enormous creative potential rather than a liability which needs to be borne for a time and can some day be disposed of.

Following economic integration in Europe, political integration will only become a reality when political

“culture is the way in which a group of people solves problems and reconciles dilemmas”

leaders and citizens both come to realise that we share common values which are entrusted to shared policies and institutions. Our task seems less to reassure ourselves of our common origins than to develop a new self-confidence that will allow Europe to play its role in the twenty-first century. Apart from the fear that the promise of a better life in the Union cannot be kept, the European Union is facing another threat, i.e. people's fear that it will "take away peoples' sense of belonging, the elements of their culture that define themselves and give them identity in a world where unemployment, mass communication and distant government are all doing their best to make identity undervalued and insecure".¹⁶

It ultimately boils down to a cultural problem that requires a cultural solution. If Trompenaars¹⁷ is right to argue that "every culture distinguishes itself from others by the specific solution it chooses to certain problems which reveal themselves as dilemmas" and that "culture is the way in which a group of people solves problems and reconciles dilemmas", what could that imply in terms of European integration? An approach which harnesses and encompasses this diversity and a way of thinking which helps to free us from outdated patterns and can break the shell of indifference and ignorance. This requires going beyond awareness of our own cultural heritage and producing something greater through cooperation and collaboration. The very diversity of people can be utilised to enhance problem solving by combined action. Cultural synergy builds on similarities and fuses differences resulting in more effective human activities and systems. This approach recognises both the similarities and the differences between the cultures and suggests that we neither ignore nor seek to minimise cultural diversity, but rather that we view it as a resource in designing and developing organisational systems.¹⁸

Can the reform of the European Commission, as a multicultural, supranational institution, be regarded as one more step in this direction? One would assume that Commission President Prodi's attempt to make the Cabinets of Commissioners more multicultural was based on this assumption.¹⁹ And one welcomes that the recent reform proposal calls for a "change in the culture of the Commission",²⁰ by "modernising working methods, creating new systems and setting new standards that new habits will develop, new attitudes will be formed and a new culture will emerge".

Concluding remarks

To bridge and harness cultural diversity, i.e. to respect cultural identities and promote different cultures, is a stated goal of the European Union. Many cultural barriers are due to ignorance of cultural differences rather than a rejection of those differences. Recent developments

within the European Union show that we have a lot to learn about ourselves and each other, our culture, our history, our fears and our visions in order to give a deeper meaning to statements of principles such as "the European Union as a community of values is part of the concept of the future development of European integration",²¹ and "our European model shows that an ever closer union between peoples is possible where it is based on shared values and common objectives".²² To meet these challenges, the European Union must firstly respond to the concerns of the citizens. Aside from their worries about jobs and the economy, people are increasingly looking to Europe when it comes to improving their environment, their safety and their quality of life. And people want "agents" in effective,

accountable institutions that involve them in European governance and which take their rich and diverse cultures and traditions into account.²³

It is the failure to understand the impact of cultural diversity at every level of society, and particularly its political and administrative institutions, which leads to national,

regional and ethnic stereotyping, and ultimately feeds nationalist and xenophobic tendencies in Europe. Conscious and disciplined research and educational effort is required if we are to develop the necessary intercultural competence and reach a common understanding between all actors involved in European integration: politicians, civil servants, and ultimately the citizens of Europe. Only a Europe of politicians, peoples and individuals, who share fundamental values and political objectives, and at the same time understand and respect the wide range of cultural identities within the Union, will be able to meet the challenges of the new millennium.²⁴ It seems worth remembering that "world history has accorded the empires that have come and gone only one appearance on the stage. It now appears as if Europe as a whole is being given a second chance. It will not be able to make use of this in terms of the power politics of yesteryear, but only under changed premises, namely a non-imperial process of reaching understanding with, and learning from, other cultures...".²⁵

"Culture remains generally invisible and, when visible, we usually think it causes problems..."

NOTES

- ¹ Faure, Guy (ed.), *Culture and Negotiation* (London: Sage Publications, 1993)
- ² Trompenaars, Fons; Hampden-Turner, Charles, *Riding the Waves of Culture. Understanding Cultural Diversity in Business* (London: Nicholas Brealey Publishing, Second Edition, 1997)

- ³ *ibid.*
- ⁴ Adler, J. Nancy, *International Dimension of Organizational Behavior* (Cincinnati: South Western College Publishing, 1997)
- ⁵ Hofstede, Geert, *Cultures and Organisations, Intercultural Cooperation and its Importance for Survival, Software of the Mind* (London: HarperCollins Publishers, 1994);
- ⁶ Hofstede, Geert, *Culture's consequences international differences in work-related values: Cross-cultural research and methodology series*. (London: Sage, 1984); Hofstede, Geert, Cultural Dimensions in Management and Planning, in: *Asia Pacific Journal of Management*, January 1984.
- ⁷ Hall, Edward.T, *Beyond Culture* (New York: Anchor Books, Doubleday, 1989)
- ⁸ Findings from a Business Environment Report, delivered as part of the Language in Business Campaign Feasibility Study carried out under the MLIS programme. Some startling revelations have emerged, such as for example the inability to communicate in foreign languages accounts for 20% of lost business. It was also concluded that firms in Europe lose business as the result of both language and cultural barriers.
- ⁹ Source: Standard Eurobarometer 50, *Fieldwork*, Oct.-Nov. 1998 (Release: March 1999)
- ¹⁰ Source: Standard Eurobarometer 50, *Fieldwork*, Oct.-Nov. 1998 (Release: March 1999)
- ¹¹ Source: Standard Eurobarometer 51, *Fieldwork*, March-April 1999 (Release: July 1999)
- ¹² Source: Standard Eurobarometer 50, *Fieldwork*, Oct.-Nov. 1998 (Release: March 1999)
- ¹³ Mundy, Simon, *Making it Home, Europe and the Politics of Culture* (Amsterdam: European Cultural Foundation, 1997)
- ¹⁴ Mundy, Simon, *Making it Home, Europe and the Politics of Culture* (Amsterdam: European Cultural Foundation, 1997)
- ¹⁵ Adler, J. Nancy, *International Dimension of Organizational Behavior* (Cincinnati: South Western College Publishing, 1997)
- ¹⁶ Mundy, Simon, *Making it Home, Europe and the Politics of Culture* (Amsterdam: European Cultural Foundation, 1997)
- ¹⁷ Trompenaars, Fons; Hampden-Turner, Charles, *Riding the Waves of Culture. Understanding Cultural Diversity in Business* (London: Nicholas Brealey Publishing, Second Edition, 1997)
- ¹⁸ Nancy Adler argues that to a large extent, cultural diversity becomes a key resource in the global learning organisation.
- ¹⁹ Each Cabinet (reduced to maximum of 6 members) should have at least three nationalities. Either the Head or the Deputy Head of Cabinet could be a non-national. These targets appear to have been accomplished. Although this goes beyond the topic of this article, it seems noteworthy that there should also be a strong emphasis on gender balance.
- ²⁰ Reforming the Commission. Consultative document. Communication from Mr Kinnock in agreement with the President and Ms Schreyer, 18 January 2000.
- ²¹ Preamble of the declaration of the Austrian Government, Feb 3, 2000.
- ²² "Sharing the New Europe", Communication from the Commission to the European Parliament, the Council the Economic and Social Committee and the Committee of the regions, Strategic objectives 2000-2005, COM (2000) 154 final.
- ²³ "Sharing the New Europe", Communication from the Commission to the European Parliament, the Council the Economic and Social Committee and the Committee of the regions, Strategic objectives 2000-2005, COM (2000) 154 final.
- ²⁴ In response to this, EIPA launched a training programme in cooperation with ITIM (Institute for Training in Cultural Management, The Netherlands) on Intercultural Management and Cooperation within the European Union in December 1999. The programme is designed to provide an insight into areas of politics and public administration where these differences can have an impact and thus affect results, i.e. on policy and decision making, quality of policy implementation, negotiations (including styles and techniques), coordination and communication. Apart from developing sensitivity to cultural differences, this seminar aims to explore this area, to understand the way these differences influence the behaviour of individual actors and groups and how to deal with them. The next seminar will take place in May 2000 (see flyer in this EIPASCOPE edition).
- ²⁵ J.Habermas, in M. Heffernan, *the Meaning of Europe*, (London: Arnold, 1998). □

L'évolution de la gestion des ressources humaines dans les administrations publiques de l'Union européenne

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Introduction

Le but de cet article est de dresser un rapide tableau des évolutions significatives que l'on observe dans la gestion des ressources humaines (GRH) au sein des administrations publiques des Etats membres de l'Union européenne.

Plutôt que de vouloir donner un aperçu général des réformes de la GRH dans les administrations publiques, nous avons sélectionné un certain nombre de domaines-clés qui sont porteurs de modernisation dans ce secteur. Il s'agit essentiellement de trois domaines: les développements en matière de politique de rémunération, les tendances en matière de temps de travail et le développement du dialogue social dans la fonction publique. D'autres sujets pertinents tels que les évolutions en matière de recrutement, l'apport de la formation et l'évaluation du personnel, ont déjà été abordés par Robert Polet dans un article paru précédemment.¹

Les réformes en matière de GRH s'inscrivent dans le cadre d'un mouvement de réforme plus vaste que l'on peut observer en matière de gestion publique. Certains auteurs ont constaté un changement de paradigme qui a remplacé une administration axée sur la conception et la mise en oeuvre des règles par une administration à orientation beaucoup plus gestionnaire. Ce changement de paradigme est présent en particulier dans ce que l'on appelle la nouvelle gestion publique, au sein de laquelle les réformes de la GRH constituent l'un des principaux éléments. D'autres aspects en sont notamment la décentralisation des responsabilités financières et l'orientation vers les citoyens.

Selon une publication de l'OCDE², les principales tendances qui se font jour dans la réforme de la GRH sont les suivantes:

- décentralisation et déconcentration (les responsabilités de la GRH passent des organes centraux de gestion aux ministères et organismes opérationnels; ensuite, au sein des ministères et organismes les responsabilités sont confiées aux gestionnaires opérationnels);
- application de "cadres" généraux et de principes directeurs mettant l'accent sur les normes fondamentales et les pratiques à suivre plutôt que sur les contrôles détaillés;
- introduction au niveau des départements et organismes opérationnels d'un système de budgets autonomes combinant les dépenses de personnel et

d'administration;

- assouplissement des systèmes de rémunération, d'emplois et d'affectations;
- mesures de formation et de perfectionnement visant à adapter les qualifications et les compétences et à accroître la souplesse du personnel en vue d'améliorer l'exécution des programmes et de renforcer les réformes introduites dans le secteur public;
- mesures de réduction des coûts: réduction des augmentations de salaire, compression des effectifs et efforts en vue d'améliorer l'efficacité.

A cette série de tendances, on pourrait ajouter:

- l'introduction de systèmes plus souples en matière de temps de travail;
- la plus grande importance accordée au dialogue social.

La politique de rémunération

La rémunération est l'une des conditions de travail de base. La plupart des stratégies de rémunération ainsi que la théorie de la rémunération se focalisent sur le fait que le paiement est un facteur essentiel pour la performance des travailleurs. De plus, l'on estime que la fonction de la rémunération est de recruter et de retenir le personnel au sein de l'organisation. On peut considérer que le salaire est une forme de compensation directe, qui est l'un des éléments constitutifs de la récompense totale que reçoit un employé en échange du temps travaillé, de l'expérience, de la formation, des compétences spéciales et de l'effort fourni.³

Dans la fonction publique, le rôle de la rémunération va plus loin que les rôles qui lui sont attribués dans la littérature concernant la GRH qui repose souvent sur des situations propres au secteur privé. Traditionnellement, sa fonction a été de garantir des conditions de vie décentes à l'agent public afin de garantir une fonction publique impartiale. Dans ce système traditionnel de rémunération de la fonction publique de carrière, partant de l'hypothèse du recrutement à vie d'un fonctionnaire, les augmentations salariales interviennent automatiquement suivant le principe de l'ancienneté.

À l'heure actuelle, cependant, la situation d'un idéal-type de fonction publique de carrière en matière de rémunération est compliquée par les difficultés rencontrées par plusieurs fonctions publiques pour attirer, garder et motiver leurs personnels. S'ajoutent à cela d'autres facteurs contextuels de la politique de

rémunération, tels que le souci de maîtriser les dépenses salariales et la volonté d'améliorer la performance managériale des administrations publiques. C'est dans ce cadre que plusieurs Etats membres ont lancé un certain nombre d'initiatives de réforme. Parmi ces réformes, signalons principalement la décentralisation du niveau de décision en ce qui concerne la rémunération des agents publics et une évolution vers des formes de rémunération liées aux compétences, aux responsabilités et à la performance. Généralement ces réformes impliquent une flexibilité accrue du système de rémunération.

C'est surtout dans les pays nordiques et au Royaume-Uni que l'on constate actuellement une décentralisation considérable de la rémunération. Par exemple, au Royaume-Uni, les *Next Steps Agencies* et les départements ministériels ont chacun leur propre système de grades et d'échelons. En Suède, chaque agence du gouvernement central peut décider à l'intérieur de l'enveloppe budgétaire disponible de la répartition qu'elle suivra pour rémunérer ses agents.

La liaison de la rémunération à la performance est un développement général qui est intervenu dans la plupart des Etats membres. L'argument plaçant en faveur de la rémunération liée à la performance est que, contrairement aux systèmes plus traditionnels de rémunération, il s'agit là d'une mesure qui stimule la performance. La question fondamentale néanmoins qui se pose est de savoir si la rémunération ou une augmentation de rémunération liée à la performance constitue un facteur principal de motivation des agents publics. Jusqu'à présent, la plupart des études empiriques effectuées sur la rémunération à la performance se montrent plutôt critiques par rapport à l'efficacité de ces systèmes. Les facteurs suivants ont été proposés pour une politique de rémunération à la performance réussie:⁴

- la rémunération doit être un facteur important de motivation de l'agent;
- le système d'évaluation des personnels doit avoir la confiance des agents et mesurer dans toute la mesure du possible la performance par rapport aux objectifs fixés;
- il faut une masse critique de récompenses;
- la performance individuelle ou du groupe devrait être liée à la performance organisationnelle.

Les développements en matière de temps de travail

Sur le plan du temps de travail dans les fonctions publiques européennes, on remarque une nette évolution vers une souplesse accrue et un plus grand nombre d'options. La plupart des Etats membres ont instauré des systèmes qui autorisent une flexibilité dans le temps de travail quotidien. Ces aménagements d'horaires journaliers sont partout le résultat d'une concertation entre les intéressés et leur administration d'appartenance. La Fonction publique centrale néerlandaise offre un exemple de grande flexibilité liée au temps de travail et a adopté la semaine des 36 heures dès 1996. Les fonctionnaires disposent de plusieurs modes pour

aménager la semaine de 36 heures à titre pratiquement individuel:

- 4 journées de 9 heures;
- 5 journées de 8 heures, avec récupération libre des 4 heures supplémentaires (y compris sous la forme d'un congé de longue durée en cas de travail de 40 heures par semaine pendant plusieurs mois ou plusieurs années);
- alternance d'une semaine de 40 heures sur 5 jours et d'une semaine de 32 heures sur 4 jours.

La flexibilité existe aussi dans plusieurs pays sous forme de temps de travail réparti sur la semaine, sur le mois ou encore annualisé.

Un autre élément de la flexibilité du temps de travail dans la fonction publique concerne la possibilité accrue et parfois aussi le choix forcé du travail à temps partiel. L'emploi à temps partiel est en fait un phénomène que l'on peut percevoir sous plusieurs angles, comme l'organisation du travail, l'emploi, la qualité de vie, la protection sociale, la rémunération, ainsi que l'accès des femmes au marché du travail.⁵ L'évolution positive ou négative de ces aspects dépendra beaucoup de l'angle sous lequel on aborde le travail à temps partiel.⁶ Du point de vue de l'employeur, l'argument qui revient souvent est que le temps partiel permet de flexibiliser l'organisation. En ce qui concerne l'agent public, par exemple, le travail à temps partiel pourrait lui permettre d'arriver à une meilleure adaptation de ses horaires de travail aux obligations familiales, à la formation et aux loisirs. La question primordiale est de savoir si le travail à temps partiel est une option volontaire ou involontaire pour l'agent.

L'évolution générale dans les fonctions publiques européennes va dans le sens d'une politique permettant aux agents qui le souhaitent de travailler à temps partiel sans devoir donner des raisons spécifiques. Il faut noter qu'il existe encore un énorme écart entre hommes et femmes dans tous les Etats membres en ce qui concerne la part relative du travail à temps partiel, aussi bien dans la fonction publique que dans les autres secteurs de l'économie.

Le dialogue social dans la fonction publique

Les réformes dans le cadre du dialogue social dans les administrations publiques s'expriment par une importance renforcée des négociations entre syndicats et employeurs dans la fonction publique. L'Etat joue dans ce cadre le double rôle d'autorité publique présentant un budget à l'assemblée parlementaire et celui d'employeur public. Selon *Hegewish* et *Martin*, des réformes générales des dispositions réglementaires dans la fonction publique se sont souvent accompagnées d'un accroissement des droits de négociation et de représentation collective.⁷ Ceci dit, les différences en matière de dialogue social entre les Etats membres demeurent considérables. Le Danemark, l'Italie, la Finlande, la Suède et le Royaume-Uni connaissent de véritables accords collectifs dans la fonction publique

concernant les fonctionnaires. En général, le personnel contractuel de la fonction publique est davantage soumis aux négociations visant la conclusion d'accords collectifs que le personnel statutaire. Ceci est notamment le cas en Allemagne. Dans d'autres pays, on rencontre d'autres formules concernant les résultats du dialogue social, comme par exemple aux Pays-Bas où un accord entre l'employeur public et les syndicats constitue une étape obligatoire avant que le gouvernement ne puisse proposer de modifier des actes réglementaires afin d'y incorporer l'accord négocié. La Belgique et la France ont pris l'engagement politique de respecter les résultats des négociations entre les autorités publiques et les syndicats.

Afin de donner un véritable visage à la figure de l'employeur public, la Suède et l'Italie ont opté pour la création d'une agence spéciale chargée des négociations. En Italie, l'*Agenzia per la Rappresentanza delle Pubbliche Amministrazioni* (ARAN) négocie avec les syndicats sur la base des instructions des ministres chargés du Trésor et des Administrations publiques. Le gouvernement suédois a délégué ses responsabilités en tant qu'employeur à l'Agence suédoise pour les employeurs gouvernementaux (*Arbetsgivarverket*, SAGE). Toutes les agences du gouvernement central suédois ainsi que l'organisme des ministères centraux sont membres de la SAGE. Dans ce cadre, ces organisations versent une contribution obligatoire qui permet le financement intégral de la SAGE. Le rôle de la SAGE consiste à négocier un accord-cadre avec les syndicats centraux et cet accord-cadre est ensuite élaboré davantage au niveau des agences par l'agence en tant qu'employeur et les syndicats appartenant à l'agence.

On rencontre un dialogue social relativement décentralisé en Suède, en Finlande et au Royaume-Uni. En revanche, le dialogue social est relativement centralisé en Allemagne, en Espagne et en France. Le Danemark, l'Irlande, l'Italie et les Pays-Bas occupent, eux, une position intermédiaire en la matière.

Les activités de l'IEAP dans le domaine de la GRH

L'Institut européen d'administration publique intervient sous plusieurs formes dans le domaine de la GRH au sein de la fonction publique. Tout d'abord, dans le cadre de sa participation aux réunions semestrielles des Directeurs généraux de la Fonction publique des Etats membres de l'Union européenne, où les sujets relatifs à la GRH figurent régulièrement à l'ordre du jour. Ensuite, par la recherche qu'il effectue dans le domaine de la GRH et qui a notamment débouché en 1996 sur la publication *La Fonction publique dans l'Europe des 15; Réalités et Perspectives*. Une réédition de cet ouvrage est actuellement préparée par une équipe de chercheurs de l'IEAP. Finalement, l'IEAP a organisé à plusieurs reprises des séminaires dans ce domaine qui étaient destinés aux responsables du personnel des administrations publiques des Etats membres. Ces séminaires, rassemblant un public véritablement européen, ont suscité jusqu'à présent un grand intérêt public.⁸

NOTES

- ¹ R. Polet, "La Fonction publique dans l'Europe des Quinze: Réalités et Perspectives", *EIPASCOPE* 1999/2, <http://www.eipa-nl.com>.
- ² *Gestion du capital humain et réforme de la fonction publique*, OCDE Paris, 1996, pp. 9 et 10.
- ³ C.D. Fisher, L.F. Schoenfeldt and J.B. Shaw, *Human Resource Management*, Fourth edition, Boston New York: Houghton Mifflin Company, 1999, p.551-553.
- ⁴ Voir D. Marsden, and R. Richardson, "Performing for Pay? The Effects of 'Merit Pay' on Motivation in a Public Service", in: *British Journal of Industrial Relations*, Vol.32, No 2, June 1994, pp.243-261 ainsi que OECD/PUMA, "Performance pay Schemes for Public Sector Managers, An Evaluation of the Impacts", *Public Management Occasional Papers*, No 15, Paris:OECD, 1997.
- ⁵ Voir A. Wedderburn, A. (ed.), 'Part-Time Work', in *BEST*, Number 8, 1995. Dublin: European Foundation for the Improvement of Work and Living Conditions, pp.10-11) ainsi que J.-K. Walter, *Le travail à temps partiel*, rapport présenté au nom du Conseil économique et social. Paris: CES, 1997, p.96.
- ⁶ K. Nomden, "Flexible Working Patterns in Public Administration", in: Horton S. and Farnham D., *Flexibilities in European Public Services*, MacMillan, 2000 (à paraître).
- ⁷ Ariane Hegewisch and Brendan Martin, *Modernisation of National Administrations and Social Dialogue in Europe*, Brussels: European Federation of Public Service Unions, June 1998, p.64.
- ⁸ Le dernier séminaire de ce genre était intitulé "La gestion des ressources humaines dans l'administration publique: nouvelles tendances", et s'est tenu les 25 et 26 novembre 1999. □

Summary of Proceedings of the 3rd European Conference on Enlargement of the European Union:
Negotiations and Effective Capacity to Implement EU Rules
24-25 February 2000, Maastricht

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The purpose of the conference, organised by the European Institute of Public Administration, was to facilitate public debate of the enlargement process by providing a forum for exchange of views, which was inclusive by involving representatives of the European Union and all the countries that have applied for membership of the EU.

The summary below focuses on those issues on which consensus became apparent in the various discussion sessions and on the main issues on which there were distinct differences of opinion. Although not pre-arranged as such, it became apparent during the conference that most presentations and discussions revolved around three general themes: (a) the changing political climate and public opinion concerning enlargement, (b) the process and the contents of the accession negotiations and (c) the assessment of the preparedness of the candidate countries to assume the obligations of membership. In order to encourage open discussion, the proceedings were informal and for this reason we do not attribute any comments to any particular speaker.

Changing political climate and public opinion

A widely held view among speakers and participants was that enlargement has so far been an “elitist” process. Only the policy-making elites in the European Union and the candidate countries have so far been involved in the process or have understood its significance for the whole of the European continent.

Public opinion surveys indicate that the popularity of enlargement is declining in most countries. It was thought urgently necessary to embark on a public information campaign both within the EU and the candidate countries. Such a campaign will have to explain the historical necessity of enlargement. In addition, some suggested that the Commission would have to carry out research, as it did in relation to the completion of the internal market, to quantify the costs of “non-enlargement”. It was argued that much discussion in the EU focused excessively on the budgetary outlays that the new members would require but the financial burden that had to be borne by the candidates themselves was somehow disregarded.

All of the candidate countries recognised that the EU had to “put its own house in order” through institutional reform before enlargement could take place. However, they expressed concern about the consequences for enlargement of protracted negotiations within the recently launched inter-governmental conference (IGC).

Some of the candidates were ready to contribute to the IGC in substantive ways that went beyond the briefings planned by the Presidency of the Council. Some of them

thought that the IGC should not attempt to deal with all the important issues. At this stage it would be preferable for the IGC to focus on ways to improve the functioning of the EU and leave the other issues for later on when new members would be able to participate fully. They supported the idea that the revised EU treaty should be ratified in parallel with the treaties of accession so as not to delay the entry of new members.

The candidates were unanimous in their concern about political developments within the EU, which could instigate hostility towards accession of any new member. The fact that institutional changes and the treaties of accession would have to be ratified by each of the existing member states, exposed the enlargement process to the vicissitudes of national politics.

The candidates were united in their belief that the setting of a target date for accession would speed up the process, make it more transparent and less vulnerable to xenophobic politics, would cement their own internal reforms and weaken any domestic opposition to enlargement that was fuelled by the fact that reforms were painful yet the prospect of accession was still uncertain. However, most conference participants on the EU side questioned the usefulness of fixing any date, as long as the readiness of the candidates was still not certain.

The process and the contents of the accession negotiations

All the “old ins” or the “Luxembourg six” (i.e. Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia) have submitted position papers on 29 chapters. Out of those 29 chapters, negotiations have begun on 23 of them. The Portuguese Presidency intended to open all remaining chapters with the old ins, except institutions and miscellaneous. In relation to the “new ins” or “Helsinki six” (i.e. Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia) the decision on the chapters to be opened would be made in March, depending on the readiness of the candidates, and the likely number would vary between five and eight.

Concerns were voiced with respect to the choice by the Commission of the chapters to be opened with the Helsinki six. Criticism was also made of the overall strategy of the Union to open first “easy” chapters. It was commented that by closing them only provisionally, they in fact had to be re-opened later on. This would contribute further to negotiating fatigue. At the same time the practice of leaving last the opening of difficult chapters prolonged unnecessarily the duration of the negotiations.

They could be dealt with at the beginning of the negotiations and, if necessary, they could stay open for a longer period of time.

The toughest negotiations are likely to take place on agricultural policy, regional policy and free movement of persons (especially given the fact that some member states which are very sensitive on this issue have experienced recently internal political developments which are not accommodating). In this respect, it was questioned whether the pessimistic predictions about massive west-ward movement of labour were at all likely. It was pointed out by several speakers that there are more EU citizens living and/or working in the candidate countries than the number of their citizens in EU countries.

No candidate wished to have extensive or permanent derogations from the principles of the "acquis communautaire" (the body of Community law and EU practice). In fact, they expressed their eagerness to be integrated as quickly as possible in the internal market and policies of the Union. However, they expected that the EU would understand and grant a few temporary exceptions in those areas where they would have to establish substantial new institutional and administrative machinery or where legal and institutional adjustment was by its nature slow and time-consuming or very costly (e.g. decommissioning of nuclear power stations).

The areas in which they encountered difficulties to comply with the acquis were similar across most of the candidates. Those were: energy (90 days security stock), taxation (increase in excise taxes, duty free sales), environment (especially water quality and waste treatment), structural funds (objective 1 status), agriculture (processing, technical adaptations, animal welfare), fisheries (quotas), state aid (incentives to investors). In addition, for some of the candidates the adoption of Schengen posed a special dilemma because they would have to impose visas on their, mostly eastern, neighbours.

In the case of the Luxembourg six, the period during the French Presidency will be crucial. By that time all the chapters would have been opened and all the difficult issues would have been put on the negotiating table. At that point in time it will become necessary to begin formulating the "package" that would be acceptable to both the EU and the candidates. Given the fact that no permanent derogations were demanded, most of the old-in candidates thought that the negotiations could be wrapped up by the end of 2001. That would allow them to stick to their working hypothesis of entry into the EU by January 2003. In response to the question as to whether the particular political situation of Cyprus would prevent it from being among the first candidate countries to enter the Union, it was pointed out that, first, the Helsinki European Council had de-linked accession from prior solution of the Cyprus problem and, second, the EU would not be contributing to peace and stability in the eastern Mediterranean by keeping Cyprus out. After all, the significance of enlargement lied in the fact that it would bring peace and stability to the whole of Europe.

Some of the Helsinki six believed that they could also catch up with the "front runners" and enter the EU by 2003. However, some others in the latter group thought their accession was not likely to take place before 2006-7.

The start of Turkey's accession negotiations was put at around 2005-6, while its negotiations were likely to last for several years.

The assessment of the preparedness of the candidate countries

The candidates accepted that the principle of "differentiation" would enable those that prepared faster to progress faster and to conclude the negotiations in less time than the rest. But they questioned its objectivity as was used by the Commission to assess their performance.

There was expression of puzzlement as to what exactly the principle of differentiation meant with respect to actual entry into the EU. Would those candidates concluding the negotiations first actually enter the Union first and/or on an individual basis. If that would not be practically feasible, did it mean that they would enter as a group of some sort? If yes, what would be the minimum membership of that group?

All candidates wanted to know more about how the EU and in particular the Commission would judge whether they had developed effective capacity for implementation of the *acquis communautaire*. Some speakers cast doubt on the usefulness of devoting a significant part of the EU's pre-accession technical assistance to twinning programmes. In this connection, it was commented that no more than about 100 twinning projects per period should be expected. Moreover, if the candidates wished to utilise twinning more fully they would have to define the projects more meticulously.

They all expressed their unease at the reported development of performance benchmarks by the Commission. In this respect, the period under the French Presidency is likely to be important also because of the fact that the Commission's regular reports on the progress of the candidates will include its first performance "scoreboard".

Most candidates also stated that the Accession Partnerships, that defined their short and medium term targets, were not instruments of true partnership because they were determined unilaterally first by the Commission and then by the Council. Although the candidates were to some extent resigned to the reality that the enlargement process is not a fair process, in that it places candidate members under more intense scrutiny than existing members, they nonetheless expected fair treatment from the EU in relation to each other.

Conclusion

The conference highlighted the need to safeguard the smooth and speedy progress of the enlargement process and to ensure that it would eventually lead to the integration within the EU of all the candidate countries. It also highlighted the complexity of the whole issue with the various linkages between internal and external developments and the many remaining unknowns and uncertainties. The candidate countries wanted to have more clarity and certainty. For its part, while stressing its commitment to the whole process, the EU reiterated the necessity for laying strong foundations both within the EU itself and the candidate countries. The process will reach a critical stage in the Autumn of 2000. □

Is Being Consistently Inconsistent, Being Consistent?

Dr Simon Duke

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EIPA's research project¹ on consistency in the EU's external relations takes as its departure point the call in the TEU for 'consistency of its external activities as a whole in the context of its external relations, security, economic and development policies.' The consistency refrain appears not only overtly but also implicitly as in, for example, the Union's objective to assert 'its identity on the international scene.'

What does consistency mean? Consistency is considered to be coordinated behaviour based on agreements amongst the Union and its Member States, where comparable and compatible methods are employed in pursuit of a single objective which results in an uncontradictory policy.²

In accordance with the literature in the field, consistency is considered in its vertical and horizontal manifestations: vertical consistency considers relations between the Member States and the Union, while horizontal consistency applies to relations between the external relations apparatus of the Union.

In the CFSP context, which is the subject of the first part of the project, consistency has considerable practical importance. The unsure and spasmodic EU reactions to a variety of post-cold war security challenges (Bosnia, Albania and Kosovo in particular) and reliance upon the U.S. for leadership and military muscle, have illustrated CFSP's shortcomings in stark relief. An inconsistent response to crisis situations will have no deterrent effect upon future trouble-makers or abusers of human rights. The ability to offer a seamless web of crisis responses, ranging from non-military to military forms, will not only make the Union in general a consistent actor but may well contribute to the stability of the region. It is an interesting and perhaps sobering realisation that in every single post-cold war European crisis, *ad hoc* solutions and reliance upon 'coalitions of the willing' has been the *modus operandi*.

Consistency is not considered to be a legal requirement since its justiciability is, at best, weak. Perhaps this is the first of many inconsistencies in the EU's external relations, where the responsible overseers are identified in the TEU (the Council and the Commission) but there are no real means of control or enforcement, especially in the second pillar. However, even if there were adequate means within the Union, inconsistency may still stem from the Member States and the different national ministries therein. The manner in which the Member States organise themselves domestically (vertical consistency) is therefore an issue which needs to be addressed in parallel with efforts to ensure the consistency of the Union.³

Vertical consistency is notoriously difficult to ensure since, in the foreign and security policy realm, the mechanisms employed by the fifteen foreign ministries to ensure that 'its' voice is heard in Brussels varies enormously. Some are more effective than others since they have highly organised and centralised structures to ensure this while others, especially those with coalitions or political forms of cohabitation, find

it much harder. The intergovernmental nature of the EU's second pillar may also encourage the advancement of national positions over the search for commonalities. Larger states will also tend to forward their interests in different ways from smaller states in the external relations realm as will those with special positions, like the neutral and non-aligned members. One obvious, but highly sensitive, way of addressing some of the root causes of vertical inconsistency is to stress greater training and co-ordination efforts at the European level for diplomats and officials in the CFSP realm. In this regard many of the European militaries (and, to an extent, the defence industries) have realised the need for Standard Operating Procedures (which is of essential importance for a consistent response capacity) between themselves. The economic and political pressures that bear upon the militaries in post-cold war Europe have already induced profound changes that may yet have a 'trickle up' effect on foreign policy planners.

Generally at the horizontal level progress has been made, especially after the dismantling of most of the old European Political Co-operation and Community parallel structures in the Maastricht Treaty. The Amsterdam Treaty introduced a number of potentially valuable mechanisms to enhance CFSP consistency. For instance, the Policy Planning and Early Warning Unit (PPEWU), although modest, opens up the possibility of more deliberative approaches to issues rather than reactive and *ad hoc* reactions. The use of Qualified Majority Voting in the second pillar may also help avoid paralysis through the need for unanimity but any use of armed force will require unanimity and, as Bosnia and Kosovo showed, a strong external influence to provide the requisite leadership and coherence.

Efforts to enhance both vertical and horizontal consistency have continued during the last year which, at least on paper, may prove to have been CFSP's *annum mirabilis* based on the apparent determination of the EU Member States to give substance to vision. Accordingly, the Cologne and Helsinki European Council proposed a number of new permanent bodies for the second pillar. The introduction of the interim Political and Security Committee (COPS), the Military Committee and Military Staff, on 1 March 2000 holds the promise of improving consistency between CFSP and the burgeoning Common European Security and Defence Policy (CESDP) – also referred to at Cologne and Helsinki. But, precisely how the new structures fit in with existing ones, such as COREPER, remains to be seen. Although Article 25 of the TEU suggests that treaty revision is not necessary for the introduction of the interim (and later permanent) bodies, there would seem to be compelling political reasons to use the ongoing intergovernmental discussions as a way of clarifying their mandates and relations with other structures. Finally, the introduction of the second common strategy, on the Ukraine, at the December 1999 Helsinki European Council represents a tremendously useful device for consistency since it remains the only form of

decision-making that covers all the pillars.

The new CFSP structures may also have implications for consistency at the national level where the growing visibility of defence ministries, alongside trade ministries, in European affairs may challenge the traditional role of foreign ministries as *primus inter pares*. It would be a misnomer to suggest that the European Council's initiatives will cause inconsistency but they may nevertheless exacerbate the trend away from foreign ministries as 'gatekeepers' of external relations in the EU context thus posing new challenges to vertical consistency.

Consistency has a further important aspect – how the Union is seen by third parties. In this respect the Union has perhaps unwittingly done itself a disservice with the appointment of a High Representative for CFSP (especially such a well known international diplomat). Javier Solana's appointment has raised the question of who embodies the external *persona* of the Union. Is it Romano Prodi, Chris Patten, Javier Solana or any number of other Commissioners who can legitimately claim external interests? Prodi's invite and subsequent withdrawal of an invitation to Libya's Colonel Muammar Gaddafi underlined the point.

Consistency also extends to the EU's relation with other regional and international organisations. The partial merger of the WEU into the EU carries with it the seeds of greater predictability and consistency (with the notable exception of defence). However the potential for inconsistency is also apparent if the Member States fail to plan together to procure and fund the necessary resources to make CESDP a reality. This is a matter of immediate concern to not only the EU fifteen but also the eighteen non-EU WEU associates or observers and the four non-EU NATO members. The inter-organisational aspects of security and defence may well pose the biggest challenge to consistency in the second pillar.

The WEU, for all practical purposes, will soon disappear which means that EU-NATO relations will become of prime importance and, if conflict prevention continues to be stressed, so too will EU relations with the Council of Europe and the OSCE. In spite of the generally positive notes being sounded in the aftermath of the joint NATO-WEU crisis management exercise (CMX-CRISEX) in February 2000, it is worth noting the exercise comprised two scenarios. One was a 'NATO only' collective defence exercise and the other was a joint NATO-WEU crisis management exercise using NATO assets. The scenarios perhaps unwittingly pointed at the future path for European defence and security.

It is unlikely that the four neutral and non-aligned EU members, to which Denmark should be added, will accept the indirect or direct incorporation of a defence role into the EU *post* WEU. This implies that consistency within the CESDP may well be found through surrendering the defence aspects found in, for example, Article 17 of the Treaty on European Union. The 'D' in CESDP would therefore have to be dropped and this role would fall explicitly to NATO. In the EU context the emphasis would then be upon crisis prevention and crisis management which will still necessitate the kinds of military improvements identified by the Cologne and Helsinki European Council summits, as well as the WEU's November 1999 Audit of Assets and Capabilities.

Following a Finnish-Swedish initiative, emphasis has also been placed upon non-military crisis management.⁴ The non-military crisis management goals outlined at Helsinki may not be as attention grabbing as the 'headline goals' for the development of the EU's military crisis management capability, but they pose considerable demands on

consistency. Not only does it necessitate consistency between the pillars of the Union in issues as diverse as humanitarian assistance, civilian policing, search and rescue and administrative and legal rehabilitation, it also demands considerable coordination with other international organisations in the field, such as the OSCE and UN, as well as a host of NGOs. The record in Bosnia and Kosovo suggests that there is considerable room for improvement in this regard.

Consistency also requires that attention be paid to the aftermath of the WEU and, specifically, in what ways the Associate Members (Czech Republic, Hungary, Iceland, Norway, Poland and Turkey) should be involved in EU crisis management operations. The status of the WEU's current observers (Austria, Denmark, Finland, Ireland and Sweden), all of whom are EU members, means that prior agreement is necessary in the EU Council before non-EU NATO members can be invited to participate. Since the WEU was used to operating 'at 21' (the ten full members, plus the six associate members and the five observers) and, with increasing frequency 'at 28' (adding on the seven associate partners), the question rises of whether Europe can retreat back to fifteen. The importance of consistency between the external relations pillars of the EU may well point in this direction while, if the CMX-CRISEX sets an example, there is a need to prepare for crisis management 'at 30' (the 28 plus Canada and the United States).

The research, which is confined to the second pillar so far, notes a number of improvements in consistency at the vertical and horizontal levels. Notwithstanding a number of significant developments, the highly intergovernmental nature of the CFSP continues to give rise to concern about the Union's overall consistency as an actor on the international scene. Above all, the Kosovo crisis showed how much there is to be done to create a seamless web of appropriate and applicable tools for post-cold war external relations. These should range from conflict prevention to a variety of crisis management tools ranging from diplomatic intercession, to economic leverage, to the credible threat of armed force and, *in extremis*, the use of armed force. The continued inability to link these facets together in a predictable and coherent manner will condemn the Union to consistently inconsistent responses – otherwise known as *ad hoc*ery. Further research will examine consistency in other areas of the Union's external relations such as trade and development.

NOTES

- ¹ The first output of the project is Simon Duke, 'Consistency as an Issue in EU External Activities,' *EIPA Working Paper 99/W/06*, available only on-line as a pdf file at: http://eipa-nl.com/public/public_publications/default_working.htm. Comments and suggestions are welcome.
- ² The definition is based on that of Horst-Günter Krenzler and Henning C. Schneider, 'The Question of Consistency,' in Elfriede Regelsberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels (eds.), *Foreign Policy of the European Union: From EPC to CFSP and Beyond*, (Boulder: Lynne Rienner Publishers, 1997), p.134.
- ³ For a discussion on this issue see David Spence, 'Foreign Ministries in National and European Context,' in Brian Hocking (ed.), *Foreign Ministries*, (Basingstoke: Macmillan, 1999).
- ⁴ See *Helsinki European Council: Presidency conclusions*, Annex 2 to Annex IV, 'Presidency Report on Non-Military Crisis Management of the European Union,' Helsinki, 10-11 December 1999. □

The Maastricht Master's in European Public Affairs

Dr Les Metcalfe

Professor, EIPA

Maastricht University, in collaboration with EIPA, has introduced a Master's programme in **European Public Affairs**. The first students, drawn from ten countries, were admitted in September 1999. Some come from EU countries, others from Central and Eastern Europe and the Americas. They will complete the one year course this summer. We are currently inviting applications from suitably qualified candidates for the next programme, starting in September 2000. Since readers of *Eipascope* may be interested in knowing more about this programme and may know potential students, my purpose here is to explain what the course is about and who it is designed for. More information about content and design of the programme is available on the EIPA website. Details of how to find it are given below.

Why is this Master's course needed? The impact of European integration and increasing economic interdependence is generating growing demand, not just for high level professional expertise, but for professionals who have the skills and understanding to use their expertise in different working environments. Most graduates, whatever their discipline, are familiar with the national institutions and culture that they have grown up in. But increasingly, as their careers develop they are being called upon to work in other countries and cooperate with colleagues whose experience and backgrounds are different from their own. The purpose of the Maastricht Master's is to equip professionals to work in a European environment by becoming able to formulate problems, and also to develop workable solutions, taking account of institutional and cultural differences. The course is designed to prepare students not only to understand differences but also to enable them to coordinate the work of specialists in implementing effective policies. These skills are needed as much in the public sector as in the private sector. But, compared with business, public administrations have been slower to respond to Europeanisation by developing training programmes that equip professionals to manage interdependence across national boundaries in a systematic way.

The aim of the Master's programme is to help fill this gap by enabling students to learn to think and work in European terms. The course is multidisciplinary in content, taking account of the diversity of Europe and not being confined to the European institutions and policy processes. In particular it draws on law, history, political science, economics and management. These are integrated by using the educational methodology

developed at Maastricht University: problem-based learning. This approach is designed specifically to promote and develop skills in synthesis as well as analysis by presenting students with real public policy problems. Teaching based primarily on transmitting current information runs the risk of obsolescence. In a world of rapid change and innovation information soon passes its "sell by" date. Organisations increasingly require "knowledge workers" who have the conceptual, technical and interpersonal skills to acquire and manage the use of relevant and up-to-date information when it is needed. This means knowing the range of sources of information available at the European level and how to apply them. Sometimes this is done on an individual basis and sometimes as part of a team. The Maastricht Master's is designed to develop and test the ability of students to work in both ways. It relies on strengthening individual learning capacities but also addresses the issues of organisational learning that are relevant to public management reform and public policy innovation.

We expect successful students of this programme to make careers in organisations that have a European dimension to their work. While it is natural to think of the European institutions themselves, Europeanisation now affects a widening range of organisations, private as well as public. Increasingly this is having an impact on organisations in the countries now engaged in the process of accession to the EU as well as those in the existing Member States. The Maastricht Master's programme we are developing is designed to meet this need for professionals who can work effectively in a European context; a need that is certain to grow in the future.

In the main, the programme is being taught by faculty of Maastricht University and EIPA with some additional inputs from invited academics and practitioners. The programme is taught in English and students are able to choose other languages as options. Four of the six Modules are run by the University and two by EIPA. EIPA's contributions are in the areas where our professional competences complement those of the University; the economics and politics of integration and public management reform.

More information about the content of the programme, qualifications required of students and application forms and procedures can be obtained via EIPA's website <http://www.eipa.nl> which for this purpose is linked to the Maastricht University website. You can find this information by clicking on *Master Programmes*. □



ANNOUNCEMENTS / *ANNONCES*

Workshop on

State Aid Policy and Practice in the European Community: An Integrative and Interactive Approach

Maastricht (NL)

11-12 May 2000, to be repeated on 9-10 November 2000

The European Institute of Public Administration (EIPA) would like to announce a new Workshop on “State Aid Policy and Practice in the European Community”. The two-day Workshop will take place in Maastricht, the Netherlands, on 11-12 May 2000.

One of the foundations of the European Community is “a system ensuring that competition in the internal market is not distorted” (Art. 3 of the EC Treaty). However, competition can be distorted both by restrictive practices of companies and by subsidies granted by central and local governments of the Member States. Therefore, the European Community has developed an elaborate system of rules and procedures to prevent governments from using state aid to support inefficient industries and offer unfair incentives to attract mobile capital.

The purpose of the Workshop is to examine in depth the interpretation and application of the Treaty rules and of the frameworks, guidelines and notices that have been developed by the Commission over the years. Some Commission decisions are analysed so that participants obtain a better understanding of the factors that shape those decisions. The Workshop also provides a forum to compare national experiences in granting state aid.

An innovative feature of the Workshop is that participants are also presented with an extensive and updated **statistical assessment of state aid policy**. This assessment is the result of the continuous research on and monitoring of state aid cases by the EC Policies Unit of EIPA. Participants will be offered free copies of the Institute’s latest publication on state aid.

The **target audience** of the Workshop consists of middle managers and senior officials from all levels of government and local authorities, officials from public enterprises, academics, representatives of business and trade associations and other practitioners.

EIPA, which is organising and hosting the Workshop, has extensive experience and a well-established track record in these kinds of educational activities. Last year it organised more than 300 conferences, seminars, workshops and round-table discussions, spanning the whole range of EU institutions, decision-making procedures, policies and the EU legal system. The Workshop also represents a continuation of the research and seminar activities of the Institute in the area of competition policy.

The working language of the Workshop will be English.

For further information and registration, please consult:

EIPA web site: <http://eipa.nl/activities/default.htm>

or contact:

Ms Sonja van de Pol, Programme Organisation, EIPA

P.O. Box 1229, NL – 6201 BE Maastricht

Tel: +31-43-3 296 371; Fax: +31-43-3 296 296; e-mail: s.vandepol@eipa-nl.com

Seminar / Séminaire
European Negotiations / Négociations européennes

Maastricht

20-24 March, 19-23 June, 2-6 October, 20-24 November 2000

This is a practical programme which aims to explore and define the strategies and tactics inherent in negotiations at the European Union level. This programme adopts a twofold approach. On the one hand, progressive simulation exercises will enable the participants to experience genuinely recreated negotiations and transform them into a laboratory to reflect on ways and means of optimising the experience of European negotiations. This programme obviously aims to help participants to improve their negotiation abilities and therefore places emphasis on practical skills development. For this particular purpose, individual performance cards will be drawn up and made available by the trainers. On the other hand, sessions in which debriefing of the simulations will take place will present both theoretical and empirical research on the factors which influence negotiations. Such factors include good preparation, particular techniques of negotiation, cultural patterns, communication skills and personal style. Similarly, the EU context is presented highlighting *inter alia* the institutional intricacies, Council rules of procedure, and the roles of the Presidency, the European Commission and the Parliament in negotiations. Finally, the multinational composition of the group should also offer participants an opportunity to discover together the special dynamics of the European negotiations in this intensive and highly participatory programme.

The working languages are English and French. Simultaneous translation will be provided.

Ce séminaire, à caractère pratique, vise à explorer et à définir les stratégies et tactiques inhérentes aux négociations à l'échelle de l'Union européenne. La méthode du programme est double. D'une part, des exercices de simulation progressifs permettent aux participants de recréer plusieurs situations authentiques de négociations et de les transformer en un laboratoire où ils pourront réfléchir sur la façon d'optimiser l'expérience des négociations européennes. Ce séminaire est avant tout conçu pour aider les participants à perfectionner leurs talents de négociateurs, et met donc l'accent sur le développement des aptitudes pratiques. A cette fin, des fiches d'action personnalisées seront préparées et distribuées par les formateurs. D'autre part, des sessions d'évaluation des simulations présentent à la fois des recherches théoriques et empiriques sur les facteurs qui influent sur la négociation: la bonne préparation, les techniques particulières de négociation, les traits culturels, les canaux de la communication et le style personnel. Le contexte de l'Union européenne est lui aussi présenté, et en particulier les rouages institutionnels, les règles de procédure au sein du Conseil ou encore le rôle de la Présidence, de la Commission et du Parlement européen dans les négociations. Enfin, la composition multinationale du groupe devrait offrir aux participants une occasion unique de découvrir ensemble la dynamique particulière des négociations européennes dans ce programme intensif et fortement participatif.

Langues de travail: anglais et français (l'interprétation simultanée étant assurée).

For more information please contact:

Ms Noëlle Debie, Programme Assistant,

Tel.: +31-43-3296226; Fax: +31-43-3296296; E-mail: n.debie@eipa-nl.com

EIPA web site: <http://www.eipa.nl>

Séminaire

La marque communautaire et le droit communautaire des marques

Luxembourg, les 25 et 26 mai 2000

Ce séminaire, qui suit celui que l'IEAP avait organisé avec succès en octobre 1997 sur "Le droit communautaire des marques", a pour objet d'analyser les nouveaux développements survenus dans la protection du droit de marque. Le séminaire s'intéressera surtout à des sujets de droit communautaire tels que: le système de la marque communautaire (directive et règlement) et la jurisprudence récente de la Cour de justice (Windsurfing Chiemeesee Produktions und Vertriebs GmbH, Pharmacia & Upjohn SA), du Tribunal de première instance (l'affaire relative à la marque communautaire "Baby-dry") et des chambres d'appel de l'Office de l'harmonisation dans le marché intérieur. La candidature à la marque communautaire, l'opposition et les procédures d'appel seront également étudiées. Dans la mesure du possible, un point de vue concret sur la marque communautaire sera proposé. L'action en contrefaçon sera analysée en insistant plus particulièrement sur le rôle du juge national avant de s'intéresser aux accords de licence. Enfin, le séminaire cherchera à évaluer l'importance du TRIPS (accord international sur les aspects commerciaux des droits de propriété intellectuelle).

Le séminaire s'adresse aux juges, avocats, à tous ceux qui dans les entreprises s'intéressent au droit de marque (services juridiques, responsables de l'action en contrefaçon, etc.) et aux universitaires.

Les langues de travail du séminaire seront le français et l'anglais, la traduction simultanée étant assurée.

Si vous souhaitez obtenir des informations complémentaires, n'hésitez pas à prendre contact avec:

Christiane LAMESCH, Organisation des programmes, IEAP Antenne Luxembourg

2, Circuit de la Foire Internationale, L – 1347 LUXEMBOURG

Tél.: 00352 426 230 302; Fax: 00352 426 237; E-mail: c.lamesch@eipa.net

Site Web de l'IEAP: <http://www.eipa.nl>

Seminars on:

European Public Procurement

The European Institute of Public Administration is organising three types of seminars on public procurement in Europe:

Practitioner Seminars: Achieving Better Procurement Practices in Europe **6-7 April 2000, to be repeated on 25-26 May 2000**

The *Practitioner Seminar* is designed to increase the awareness concerning professional procurement practices and to assist public authorities involved in procurement to reform their procurement organisation so as to increase the efficiency of the procurement process in a manner consistent with the EC rules and principles.

Introductory Seminar: European Public Procurement Rules and Policy **18-19 September 2000**

The *Introductory Seminar* aims at presenting and explaining the EC Directives on public procurement in a simple and accessible way, in view of the fact that all public entities in the EU have to comply with the Directives in their purchasing activities above the prescribed thresholds. The emphasis of the presentations is on the practical implications for procurement activities of the Directives, their enforcement and the recent case law.

Policy Seminar: Challenges for a European Public Procurement Policy **30 November – 1 December 2000**

The aim of the *Policy Seminar* is to discuss some of the main features of and recent developments in the public procurement policy in Europe, including the EC legislative package, recent case law, electronic procurement, and other policy issues (environment, competition, etc.).

The working language for the seminars will be English.

For further information and programme, please contact:
Ms Esther Haenen, Programme Organisation, EIPA
P.O. Box 1229, NL – 6201 BE Maastricht
Tel: +31-43-3 296 361; Fax: +31-43-3 296 296; e-mail: e.haenen@eipa-nl.com
EIPA web site: http://www.eipa.nl/activities/default_proc.htm

Seminar

Implementing the Agenda 2000 Reforms: The EU Structural Funds in 2000 – 2006

Maastricht (NL), 13-14 April 2000

In recent years an increasing emphasis has been put on the EU Member States' administrative capacities to effectively manage the EU Structural Funds. As a result of the recently agreed Agenda 2000 reforms, the new Regulation on the Structural Funds has, even more than before, allocated the primary responsibility for the implementation of the Funds to the Member States. Hence, in order to benefit from the EU structural aid, the Member States no longer have to comply only with the formal eligibility criteria laid down in the Regulation; in practice they are increasingly forced to demonstrate that they have the necessary administrative capacities to manage the Structural Funds.

The objective of this seminar is to provide a European-wide audience with multiple discussion forums for assessing the implications of the Agenda 2000 reforms of the EU Structural Funds. In particular, the various sessions will focus on questions related to the implementation of the new Structural Funds Regulation, such as the concentration of the Structural Funds and the new priority Objectives; the required linkages between the EU Structural Fund support and the national regional aid maps; the new division of responsibilities for the management of the Structural Funds between the European and Member State authorities.

The speakers at the seminar will be representatives of the European Commission as well as of various Member States' authorities and prominent academics. The seminar also includes sessions during which case studies will be presented which should encourage the participants to exchange practical examples and experiences in order to identify 'good practice' in effectively managing the EU Structural Funds.

Participants at the seminar will receive a comprehensive set of background materials, as well as a copy of EIPA's newest publication "EU Structural Funds Beyond Agenda 2000: Reforms and Implications for Current and Future Member States" (by Frank Bollen, Ines Hartwig and Phedon Nicolaidis).

The working language of the seminar will be English.

For further information and registration forms, please contact:
Ms Sonja van de Pol, Programme Organisation, EIPA
P.O. Box 1229, NL – 6201 BE Maastricht
Tel: +31-43-3296 371; Fax: +31-43-3296 296; E-mail: s.vandepol@eipa-nl.com
EIPA website: <http://www.eipa.nl>

Seminar / Séminaire

An Efficient, Transparent Government and the Rights of Citizens to Information / *Pour une administration efficace et transparente et la garantie du droit des citoyens à l'information*

Maastricht, 29-30 May 2000 / *les 29 et 30 mai 2000*

“Transparency”, “Open Government” and “Citizenship” are concepts which are not only becoming increasingly important but also demand changes in organisation and a different approach from administrations as well as citizens.

One of the questions is whether “a fundamental right to information” would or could initiate new forms of communication, interaction and participation at the various governmental levels. Once established, could such a right enhance the dialogue between public administrations and citizens, give substance to the rather theoretical concept of European citizenship and, in the process, develop or improve the legitimacy of administrations at all levels?

The emergence of an “electronic government” opens up new avenues for communication and interaction with the citizens but at the same time raises a lot of concerns for both governments and citizens. This seminar is an opportunity to discuss various concepts and explore practical approaches and solutions to meet the new challenges for public administrations within the information age.

The working languages are English and French. Simultaneous translation will be provided.

“Transparence”, “Administration ouverte” et “Citoyenneté” sont des notions qui s'imposent de plus en plus dans notre société, mais requièrent aussi des changements au niveau de l'organisation ainsi qu'une nouvelle approche de la part des administrations et des citoyens.

L'une des questions soulevées est de savoir si “un droit fondamental à l'information” serait de nature à introduire ou promouvoir de nouvelles formes de communication, interaction et participation aux différents niveaux d'administration. Une fois établi, ce droit permettrait-il d'améliorer le dialogue entre les administrations publiques et les citoyens, de donner une certaine substance au concept plutôt théorique de citoyenneté européenne et, dans la foulée, de développer ou renforcer la légitimité des administrations à tous les niveaux?

Si l'émergence d'une “administration électronique” laisse entrevoir de nouvelles possibilités de communication et d'interaction avec les citoyens, elle soulève aussi de nombreuses préoccupations pour les administrations et les citoyens. Ce séminaire a pour objet de débattre de différents concepts et d'explorer diverses approches et solutions pratiques en vue de faire face aux nouveaux défis qui se posent aux administrations publiques à l'ère de l'information.

Langues de travail: anglais et français (la traduction simultanée sera assurée en anglais et en français).

For more information and registration form, please contact:

Ms Joyce Groneschild, Programme Organisation, EIPA

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EIPA web site: <http://www.eipa.nl>

Seminar / Séminaire:

“Who’s Afraid of European Documentation?” / *“La documentation européenne à la portée de tous”*

Maastricht

5-7 June 2000 / *de 5 au 7 juin 2000*

The aim of this seminar is to provide those working in the field of European affairs on a daily or occasional basis, both within and outside the Community institutions, with the skills to trace and use European documents, by offering them a complete overview of European documentation (including online documents) and methods of gaining access to it.

The seminar is open to all those working in the field of European affairs, Community officials, legal experts and information specialists from the Member States of the EU and the candidate countries.

This seminar will be conducted in English and French with simultaneous interpretation.

Le séminaire a pour ambition d'aider ceux qui travaillent chaque jour ou occasionnellement dans le domaine des affaires européennes, tant à l'intérieur qu'à l'extérieur des institutions communautaires, à retrouver et à utiliser les documents européens en leur offrant une vue d'ensemble des principaux documents (version papier ou électronique) ainsi que des méthodes disponibles pour y accéder.

Le séminaire s'adresse à tous ceux qui sont appelés à traiter des affaires européennes, aux fonctionnaires communautaires, aux juristes et aux spécialistes de l'information dans les Etats membres de l'UE et les pays candidats.

La traduction simultanée sera assurée en anglais et en français.

For more information and registration form, please contact:

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EIPA web site: <http://www.eipa.nl>

Institutional News

On 1 March 2000, the Board of Governors of the European Institute of Public Administration officially appointed Mr Gérard DRUESNE (F) as the new Director-General of EIPA.

Mr Druesne will succeed Mrs Isabel CORTE-REAL (P), who has been the Director-General of EIPA since 15 April 1996 and who has asked the Board of Governors not to renew her mandate so that she can return to Portugal. Mrs Corte-Real will be leaving as of 15 April 2000.

At the moment Mr Druesne is the Director of the *Centre des Etudes Européennes* in Strasbourg (F) and he will take up his duties at EIPA on 1 May 2000.

In the next EIPASCOPE more information will be provided.

Le 1er mars 2000, le Conseil d'administration de l'Institut européen d'administration publique a nommé officiellement M. Gérard DRUESNE (F) au poste de nouveau Directeur général de l'IEAP.

M. Druesne succède ainsi à Mme Isabel CORTE-REAL (P), qui occupe le poste de Directeur général de l'IEAP depuis le 15 avril 1996 et qui a demandé au Conseil d'administration de ne pas renouveler son mandat de manière à pouvoir rentrer au Portugal au terme de celui-ci. Mme Corte-Real quittera l'IEAP le 15 avril 2000.

A l'heure actuelle M. Druesne est Directeur du Centre des Etudes Européennes à Strasbourg (F). M. Druesne prendra ses fonctions à l'IEAP le 1er mai 2000.

De plus amples renseignements sur le nouveau Directeur général seront fournis dans le prochain numéro d'EIPASCOPE.

At their meeting of 12 November 1999, the Board of Governors of EIPA unanimously approved the following changes.

A. BOARD OF GOVERNORS:

The Netherlands

Mr Roel GATHIER, Head of the Department of Finance and Management of the Directorate for Research and Science Policy within the Ministry of Education, Culture and Science, has been appointed as a member of EIPA's Board of Governors.

B. SCIENTIFIC COUNCIL:

Germany

Professor DONGES, Professor of Economics and Co-Director of the Institute of Political Economy at the University of Cologne, who has been a member of EIPA's Scientific Council from the very beginning of EIPA's existence, has resigned from the Scientific Council.

Sweden

Mr Björn BECKMANN, Project Manager and Head of Forum Europe, has been appointed as a member of EIPA's Scientific Council, succeeding Mr Peder Törnvall, who has left his position as Director-General of the Agency for Administrative Development.

United Kingdom

Mr Robert GREEN, the Director of Corporate Development and Training in the Centre for Management and Policy Studies (CMPS), has been appointed as a member of the Scientific Council.

Norway

Mr Jørn SKILLE, who has succeeded Mrs Gudrun Vik as the Deputy Director-General in charge of the Department of Human Resource Development and Internationalisation, has also been appointed as observer in EIPA's Scientific Council.

Bulgaria

Mr Branimir BOTEV, Senior Adviser in charge of European integration policy within the Council of Ministers, has been appointed as observer in EIPA's Scientific Council.

EIPA Staff News

* Newcomers

- Harry List (NL) joined EIPA on 1 January 2000 as an expert
- Dr Tom Casier (B) joined EIPA on 1 January 2000 as a lecturer
- Toon Theunissen (NL) joined EIPA on 15 March 2000 as the new Director of Finance and Organisation
- Dr Jean-Michel Eymeri (F) joined EIPA on 28 February 2000 as a lecturer

Visitors to EIPA

Visit to EIPA by the Ambassador of the People's Republic of China to the Netherlands, Mr HUA Liming and Mrs HUA Liming



Mrs Isabel Corte-Real, Director-General of EIPA and Mr Jan Voskamp, Member of EIPA's Board of Governors, welcoming Mr HUA Liming to EIPA



Mr HUA Liming, Ambassador of the People's Republic of China to the Netherlands

Alexis de Tocqueville Prize 1999

Prix Alexis de Tocqueville 1999

The seventh Alexis de Tocqueville Prize was awarded on Friday, 11 November 1999, in the Town Hall of Maastricht, to Professor Eduardo García de Enterría who is considered to be one of the most notable academics in Europe and one of the most outstanding experts in public law in the Spanish-speaking world since the adoption of the Spanish Constitution. In addition he is an outstanding scholar in public and administrative law who has made important contributions in the field of European public administration and European law and who has published extensively in all these fields. Furthermore, he is holding an honorary degree from several universities in Spain, Europe and South America, including those of Paris I – Panthéon Sorbonne and Bologna.



Le septième Prix Alexis de Tocqueville a été décerné le vendredi 11 novembre 1999 à l'Hôtel de Ville de Maastricht au Professeur Eduardo García de Enterría (E) qui est considéré comme l'une des personnalités scientifiques les plus dynamiques du monde universitaire européen et, en même temps, la figure la plus marquante du droit public en langue espagnole depuis l'adoption de la Constitution espagnole. En outre, il est un expert incontesté du droit public et du droit administratif et il a livré une importante contribution dans le domaine de l'administration publique européenne et du droit communautaire et a publié de très nombreux ouvrages et articles dans ces domaines. Par ailleurs, il a reçu plusieurs distinctions honorifiques de la part de plusieurs universités en Espagne, en Europe et en Amérique latine, notamment l'Université de Paris I – Panthéon Sorbonne et l'Université de Bologne.

Le septième Prix Alexis de Tocqueville a été décerné au Professeur Eduardo García de Enterría le vendredi 11 novembre 1999 à l'Hôtel de Ville de Maastricht



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

Recent and Forthcoming EIPA Publications

Negotiating the Future of Agricultural Policies: Agricultural Trade and the Millennium WTO Round

Sanoussi Bilal/Pavlos Pazaros (eds)
Only available from Kluwer Law International 2000, approx. 250 pages
(Only available in English)

EU Structural Funds beyond Agenda 2000: Reform and Implications for Current and Future Member States

Frank Bollen/Ines Hartwig/Phedon Nicolaidis
EIPA 2000, approx. 265 pages: **NLG 70**
(Only available in English)

Umweltpolitik zwischen Brüssel und Berlin: Ein Leitfaden für die deutsche Umweltverwaltung

Christoph Demmke/Martin Unfried
EIPA 2000, ungefähr 180 Seiten: **NLG 60**
(Nur auf Deutsch erhältlich)

The Dublin Convention on Asylum: Its Essence, Implementation and Prospects

Clotilde Marinho (ed.)
EIPA 2000, 413 pages: **NLG 25**
(Mixed texts in English and French)

Le niveau intermédiaire d'administration dans les pays européens: La démocratie au défi de la complexité?

Torbjörn Larsson/Koen Nomden/Franck Petiteville (éds)
IEAP 1999, 446 pages: **NLG 65**
(Also available in English)

Understanding State Aid Policy in the European Community: Perspectives on Rules and Practice

Sanoussi Bilal and Phedon Nicolaidis (eds)
EIPA/Kluwer Law International 1999, 260 pages
Paperback available from EIPA: **NLG 70**
Hardcover available from Kluwer Law International
(Only available in English)

European Environmental Policy – A Handbook for Civil Servants

Christoph Demmke/Birgit Schröder
EIPA 1999, 385 pages: **NLG 50**
(Only available in English)

Internal Management of External Relations: The Europeanization of an Economic Affairs Ministry

Adriaan Schout
EIPA 1999, 360 pages: **NLG 65**
(Only available in English)

Schengen's Final Days? The Incorporation of Schengen into the New TEU, External Borders and Information Systems

Monica den Boer (ed.)
EIPA 1998, 174 pages: **NLG 65**
(Mixed texts in English, French and German)*

L'Euroformation des administrations régionales et locales d'Europe" (Actes de la Conférence interrégionale; Barcelone, juin 1998) /Eurotraining for Regional and Local Authorities in Europe

(Proceedings of the Interregional Conference; Barcelona, June 1998)
Sous la direction de Eduardo Sánchez Monjo
IEAP 1998, 409 pages: **NLG 65**
(Pour faciliter la compréhension de cet ouvrage et lui assurer une large diffusion, les textes sont publiés dans la langue originale mais aussi en traduction française et anglaise)

• **CURRENT EUROPEAN ISSUES SERIES**

L'égalité de traitement entre hommes et femmes

Sous la direction de Gabrielle Vonfelt
IEAP 2000, environ 100 pages: **NLG 40**
(Disponible en français uniquement)

Managing, Monitoring and Evaluating the EU Budget: Internal and External Perspectives

Roger Levy (ed.)
EIPA 1999, 133 pages: **NLG 50**
(Mixed texts in English and French)

Les administrations en mouvement

Les réformes de modernisation administrative dans quatre pays:

Portugal, Pays-Bas, Irlande et France

Isabel Corte-Real/Koen Nomden/Michael Kelly/Franck Petiteville
IEAP 1999, 148 pages: **NLG 50**
(An English version is forthcoming)

A Regional Representation in Brussels: The Right Idea for Influencing EU Policy Making?/ Une représentation régionale à Bruxelles: un choix judicieux pour influencer sur l'élaboration de la politique européenne?

Alexander Heichlinger
EIPA 1999, English: 32 pages; French: 34 pages: **NLG 35**
(This publication comprises both an English and a French version)

Services of General Interest in the EU: Reconciling Competition and Social Responsibility Developments in Telecommunications and Postal Services

Georg Haibach (ed.)
EIPA 1999, 192 pages: **NLG 60**
(Only available in English)

A Guide to the Enlargement of the European Union (II): A Review of the Process, Negotiations, Policy Reforms and Enforcement Capacity

(Revised and Extended Edition)
Phedon Nicolaidis/Sylvia Raja Boean/Frank Bollen/Pavlos Pazaros
EIPA 1999, 102 pages: **NLG 40**
(Only available in English)

Formation à l'intégration européenne: Pour une coopération, entre les institutions européennes et les administrations des États membres de l'Union européenne, en matière de formation permanente du personnel et des gestionnaires publics

Sous la direction de Robert Polet
IEAP 1999, 56 pages: **NLG 25**
(Also available in both English and German)

La face nationale de la gouvernance communautaire: L'élaboration des "positions nationales" des États membres sur les propositions d'actes communautaires

Franck Petiteville
IEAP 1999, 113 pages: **NLG 40**
(Disponible en français uniquement)

Taming the Third Pillar. Improving the Management of Justice and Home Affairs Cooperation in the EU

Monica den Boer
EIPA 1998, 44 pages: **NLG 15**
(Only available in English)

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