

# EIPASCOPE

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# Who's a National and Who's a European? Exercising Public Power and the Legitimacy of Art. 39 4 EC in the 21<sup>st</sup> Century



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## Summary

The European Union has experienced dramatic internal and external changes within the last few decades. These changes have deeply affected and changed the traditional concepts, meaning and importance of the principles of sovereignty and nationality. The discussion about the pros and cons of the exception clause to the free movement of workers principle (Art. 39.4 EC) has to be seen from a national and European point of view. Although we agree that there is no reason to transfer to the EU tasks and functions which could be better dealt with on a national basis (e.g. competence to regulate national civil services), this does not apply to the provisions of Art. 39 EC. Today, the number of civil servants moving throughout the Union is very low – a situation which is unlikely to change in the future. This implies that even if Art. 39.4 were deleted there would be no massive increase in mobility in Europe.

In addition, a number of developments have taken place in the past few decades which have rendered Art. 39.4 EC old fashioned. Today it poses artificial obstacles to the free movement principle and is more and more difficult to justify. We therefore propose that Member States should restrict its provisions to specific areas of the public sector.

## A. Introduction

Art. 39 EC states that freedom of movement for workers shall be secured within the Community. The provisions of this Article do not apply to employment in the public service (Art. 39 4 EC) and national administrations therefore have the opportunity to restrict certain posts to nationals. This means that EU nationals can be barred from accessing certain posts in the civil services of the Member States. Art. 39 4 EC is one of the last “dinosaurs” of the Treaties, having not been changed or modified since the Treaties of Rome. Looking at the integration process over the last few decades it is striking that no politician has “touched” upon this Article in 50 years. Also, the negotiations on a future European Constitution will not modify it. In the final report of Working Group V to the Members of the Convention, the following recommendation was made: “The provisions in TEU Article 6 (3) that the Union respects the national identity of the Member States should be made more transparent by clarifying that the essential elements of the national identity include, among others, fundamental structures and essential functions of the Member States notably their political and constitutional structure, including regional and local self-government; their choices regarding languages; national citizenship; territory; legal status of churches and religious societies; national defence and the organisation of armed forces”.<sup>1</sup>

Although the national public services are not explicitly mentioned, they too (at least partly) belong to the fundamental structures and essential elements of the national identity and will continue to be regulated solely under national law and not under Community law.

Why will the provisions of Art. 39 not to be applied to employment in the public sector? What do the Member States fear? Why should certain positions in the public sector be restricted to nationals? What is a national nowadays and for who will certain posts be reserved?

This article will discuss all relevant arguments in favor and against Art. 39 4 EC. Our approach is twofold: First we will examine why the public sector should be restricted to EU officials – and why not. Second, we will question the notion of “a national” and “a citizen”.

The authors take the reader into an area of extraordinary complexity and into a discussion which is – from a political point of view – extremely sensitive. At the end, we will discuss how and to what extent the Article should be modified and reformulated.

## B. Art. 39 on the free movement of workers

In the chapter of the EC Treaty devoted to the free movements of persons, Article 39 establishes the fundamental principle of the freedom of movement for workers within the European Union.

Freedom of movement is part of the broader concept of the single market and the objective to reach an ever closer union. Ideally, citizens should not be hampered in their movements. The right of free movement is firstly described in Art. 18 of the Treaty, which states:

“Every citizen of the European Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty...”

However, the principle of free movement of persons

still lags behind the other freedoms. Workers, self-employed persons and service providers, for instance, enjoy more rights than students, retired people and civil servants.<sup>2</sup> The limitations on free movement also illustrate the fact that the EU is still mainly an economic community, and is not yet a Union for citizens.

Article 39 paragraph 1 EC provides that “Freedom of movement for workers shall be secured within the Community.” And such freedom of movement “shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment”. Paragraph 3 provides that freedom of movement “shall entail the right, [...] to accept offers of employment actually made; to move freely [...]; to stay [...]; to remain [...] in the territory of a Member State.”

In the past few years it has become evident that state restrictions on citizens moving freely within the EU and among third-countries are creating increasing economic drawbacks for the country in question. For example, in the Dutch Civil Service Dutch nationality is required for a very limited number of posts. If non-nationals are excluded no distinction is made between citizens from the EU and third-country nationals. This non-distinction is interesting; one reason for it is the fact that there is a real shortage of personnel in some (public) sectors in The Netherlands. Other EU countries face even bigger challenges in attracting a sufficient number of public employees due to the aging of their populations.

Problems in recruiting talented and qualified staff will most likely affect more and more areas, especially the armed forces, the police, the social sector, teachers and the research sector.<sup>3</sup> Therefore, Member States open up their civil services to the private sector and introduce measures to increase the mobility between the private and the public sector. Within this logic it is also important to create a European employment market and fill vacant positions with candidates from EU countries and especially from those where recruitment problems do not exist in a given sector. Finally, from an ethical point of view, it is difficult to argue in a consistent way that the public service should be opened up for (national) managers from the private sector (and vice versa), but not for senior officials from other Member States.

### **C. The scope of Article 39 4 EC and its legal interpretation**

Paragraph 4 of Article 39 specifies that “The provisions of this article shall not apply to employment in the public service.” Article 39.4 makes employment in the public service an exception to the free movement of workers within the Community.

Otherwise the Member States could avoid the principle of freedom of movement by “restricted interpretations of the concept of public service which are based on domestic law alone”.<sup>4</sup> This would obstruct the application of Community rules. The demarcation of the public service exception can not be left to the discretion of the Member States.<sup>5</sup>

The tasks carried out by specific post-holders are decisive. In the case *Commission vs. Belgium*, the European Court of Justice identified two types of posts for which freedom of movement can be excepted: those which involve direct or indirect participation in the exercise of powers conferred by public law, and those in which duties are designed to safeguard the general interest of the state or of other public authorities.

It is obvious that both criteria (the exercise of powers conferred by public law, and the responsibility for safeguarding the general interest of the state or other public bodies) together (meaning “and” instead of “or”<sup>6</sup>) determine whether posts fall within the scope of 39.4 EC.

According to the European Court of Justice the exception laid down in paragraph 4 has to be interpreted “very strictly”.<sup>7</sup>

By case law, the following jobs do not fall within the scope of the public-service exception: postal services: workers;<sup>8</sup> railways: shunters, loaders, drivers, plate-layers, signalmen, office cleaners, painter’s assistants, assistant furnishers, battery services, coil winders, armature services, night-watchmen, cleaners, canteen staff, workshop hands;<sup>9</sup> municipal councils: joiners, garden hands, hospital nurses, children’s nurses, electricians, plumbers;<sup>10</sup> state hospitals: male and female nurses;<sup>11</sup> state education: trainee teachers,<sup>12</sup> secondary school teachers,<sup>13</sup> foreign language assistants in universities;<sup>14</sup> civil research: researchers.<sup>15</sup>

The Commission decided in 1988 to implement a “strategy” for the elimination of restrictions on the ground of nationality on the basis of Communication 88/C 72/02: Freedom of movement of workers and access to employment in the public service of the Member States.<sup>16</sup>

The Commission considered that the derogation of Article 39.4 EC covered specific functions of the state and similar bodies in the following categories: the armed forces, the police and other law enforcement bodies, the judiciary, the tax authorities, and the diplomatic corps. Furthermore, the public service exception covers jobs in state ministries, regional authorities, local authorities, central banks, and other public bodies where the duties of the post in question involve the exercise of state authority (such as the preparation, implementation and monitoring of legal acts, and the

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supervision of subordinate bodies). The position of the Commission as regards the interpretation of Art. 39 4 EC has developed since 1988 and today interpretation is stricter and more precise than it was then.

In the Communication “Free Movement of Workers – achieving the full benefits and potential”, the European Commission also made clear that not all jobs in state ministries, regional authorities, local authorities and central banks fall within the scope of Art.39.4.<sup>17</sup> For example, all technical, administrative and secretarial jobs would fall outside its scope. In addition, it is important to note that not all posts that involve the exercise of public authority and responsibility for safeguarding the general interest shall be restricted to nationals. For example, “the post of an official who helps prepare decisions on granting planning permission should not be restricted to nationals of the host Member State”.<sup>18</sup>

Bossaert et al estimate that between 10% to 40 % of public service posts are “restricted posts”.<sup>19</sup> The latter figure especially seems much too high when considering the interpretation of Art. 39 4 by the ECJ. For example, this would amount to more than one million restricted jobs in France alone.

Another reason for the different interpretation of Art. 39 4 ECT can be found in the hugely different numbers and percentages of public law posts which might be considered (from a first point of view) to fall under the public employment restriction. Whereas in France, almost five million employees are considered to be civil servants under public contract (fonctionnaires titulaires), the number of Beamte in Germany is approx. 1,7 million and in the United Kingdom 500.000.<sup>20</sup> Contrary to this, in Sweden only a couple of hundred of public employees can be considered civil servants under public contract. However, from a European perspective, the question of whether employees have a public or private contract does not play a role.

Whatever the right figure, the Member States and future Member States apply the provisions of Art. 39. 4 EC very differently. In Poland, the law on the civil service of 18 December 1998 states: “Any person who is a Polish citizen may be employed with the Civil Service...”. In Romania, Art. 16 paragraph 3 of the Constitution stipulates: “the functions and the public dignities can be occupied only by persons who have

Romanian citizenship...”. Also the law on the public service in Lithuania stipulates in Article 9 that only citizens of Lithuania have access to the public service. We will not discuss here whether this broad exclusion of “foreigners” from the public service would be in accordance with the requirements of the ECJ as regards Art. 39 4 ECT. More interesting is the fact that almost all European Countries restrict access to the public service

Public service employment within the scope of article 39.4 EC

<i>European Court of Justice</i>	<i>Jobs which involve:</i> <i>a) the exercise of powers conferred by public law, and</i> <i>b) responsibility for safeguarding the general interests of the state or other public bodies</i>
<i>European Commission</i>	<i>Armed forces</i> <i>Police and other law enforcement bodies</i> <i>Judiciary</i> <i>Tax authorities</i> <i>Diplomatic corps</i> <i>Jobs in the state ministries (restricted)</i> <i>Regional authorities (very restricted)</i> <i>Local authorities (very restricted)</i> <i>Central banks (very restricted)</i> <i>Other public bodies where the duties of the post involve the exercise of state authority</i>

for nationals to certain sectors or positions. For example, the Czech Republic restricts access to the armed forces to persons with Czech nationality. In Germany all posts in the public service are open to EU nationals within the meaning of Art. 116 of the Basic Law. In derogation from this principle, only Germans may become civil servants if the position concerns the exercise of public tasks which, because of their specific content (and in accordance with the jurisprudence of the ECJ on Art. 39 4 ECT) must only be performed by Germans. Other EU Member States have similar legal provisions. For example, on the 31 January 2002 the Conseil d’Etat in

France interpreted Art. 39 4 as follows: “Doivent être regardés comme inséparables de l’exercice de la souveraineté ou comme participant directement ou indirectement à l’exer-

cise de prérogatives de puissance publique de l’ETAT ou d’autres collectivités publiques: a) d’une part, l’exercice de fonctions traditionnellement qualifiées de régaliennes: b) d’autre part, la participation, à titre principal, au sein d’une personne publique, à l’élaboration d’actes juridiques, au contrôle de leur application, à la sanction de leur violation, à l’accomplissement de mesures impliquant un recours possible à l’usage de la contrainte, enfin à l’exercice de la tutelle”. This

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interpretation includes the ministries of defence, budget, economy, finances, justice, interior, police and Ministry of Foreign Affairs. But only posts in these ministries which are in conformity with a) and b) may be restricted to nationals. For all other authorities, access to posts is open as long as a) and b) are not affected.

Most countries apply a different interpretation to that of the Conseil d'Etat, with broad restrictions applied to the (top) political, police, judiciary and diplomatic sectors.

Some Member States have clear guidelines as to which posts Art. 39.4 should apply, whereas other Member States interpret the application of the Article on a case by case basis.

According to EUROSTAT, the number of EU nationals in the Member States varies between 0,5% and 5,5% of the total population (excluding Luxembourg).<sup>21</sup> Only a few Member States provide figures for the number of EU nationals working in the public services of other Member States. What is known, though, is that the vast majority of those EU nationals working in the public sectors of other countries are teachers or researchers. The number of civil servants moving throughout the Union seems, however, to be very low. This implies that even if Art. 39.4 were deleted there would be no massive increase in mobility in Europe.

#### **D. Between globalisation and national tradition.**

##### **The legitimacy of Art. 39 4 EC**

How is it possible to justify Art. 39 4 EC if non-nationals in the Member States are allowed to work in nuclear power stations, the weapons industry or military research (as long as they pass security checks), but not in some positions in the public service? This example shows that – in the 21<sup>st</sup> century – Art. 39 EC faces tremendous difficulties when it comes to the legitimacy of paragraph 4.

So what is the reason for excluding civil servants from the rights of free movement in the 21<sup>st</sup> century? What do Member States fear? What is the sense of excluding public administrations from the free movement principle if the European Union is based on the principles of democracy, union citizenship, internal market? What do we fear if a French senior official would like to work in a senior position in Berlin? Do we fear that this person will “betray” the Germans? Will this person violate German sovereignty? One has to recall here the change of the notion of sovereignty between 1945 and 2003. For example, the Elysée Treaty between France and Germany promotes the exchange of officials at all levels and even between the Ministries of Foreign Affairs. Questions of “the need to safeguarding the national interest” are not mentioned in this bilateral

treaty. Contrary to this the Elysée Treaty as amended on 22/23 January 2003 illustrates the tremendous progress in administrative, diplomatic and legal cooperation between these two countries. Both have established (or are in the process of establishing) a common bi-lingual television (ARTE), a so-called EUROCORPS (composed of 50000 French, German, Spanish, Belgian and Luxembourgish troops). Both countries regularly exchange staff

of the national police. They envisage the possibility of having dual nationality, promoting the idea of a European Prosecutor and seeking to harmonise – in essential policy sectors – national legislation. They also consult on the preparation of important law projects. Finally, it is proposed to establish common diplomatic missions and embassies. Impressive indeed!

Another argument which is often mentioned is the need to preserve the principle of the rule of law and the principle of democracy. Could it be e.g. that an Italian, Greek or Swedish senior official moving to the British senior civil service would jeopardise or violate these principles simply because of his/her different nationality? This argument was certainly valid for a long time, at least from a theoretical point of view. Today, however, the Treaty of the European Union clearly states that all Member States must be built on the principles of democracy and the rule of law. Art. 6 1 EUT provides that “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.” These principles apply to all Member States. Moreover, Art. 17 EC provides that “Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby” and allows EU citizens to participate in local elections as well as elections to the European Parliament. Thus, the danger that foreign officials do not respect classical principles of the civil service (merely because of the fact that they are foreigners) can be almost excluded.<sup>22</sup>

Also, one of the most traditional characteristics of national sovereignty is about to change: the diplomatic sector and the diplomatic representation. Art. 20 EC provides for the diplomatic protection of EU citizens by all other diplomatic missions of the Member States. Scandinavian countries especially are “merging” their embassies into one building – a Scandinavian embassy. It is well known that the embassies of the Benelux countries, The Netherlands and Belgium, also represent

the state of Luxembourg. Moreover, Luxembourg officials are from time to time represented by Dutch or Belgian officials in Council of Ministers working groups. The rules of procedures of Council working groups explicitly provide for the possibility of delegating voting rights to other delegations.

Also, the differences in positions e.g. in the Iraq crisis and the lack of a common foreign and security policy do not lend a strong argument for the need to maintain Art. 39. 4 EC. Contrary to this, politicians of almost all Member States continue to promote the idea of a European Common and Foreign Security Policy and to further “Europeanise” the Justice and Home Affairs portfolio. Especially in the military area, Member States continue to build up common corps, such as the German-French or the German-Dutch corps, and projects are under way to create more common military bodies. On the national level, more and more foreign police officials are employed, especially in bigger cities, since they are much better suited to deal with the increasing number of foreigners (e.g. Turks in Berlin) than national policemen are. Especially in this field, developments have created new practical realities which have surpassed the legal reality. It seems that, as time passes, the classical doctrine of “sovereignty” is becoming blurred.

#### **E. Restricting certain posts to nationals.**

##### **Who is a national in the 21<sup>st</sup> century?**

In all Member States and future Member States, the concept of reserving certain positions for nationals is based on the traditional nation-state philosophy. Art. 39. 4 EC, which allows for this restriction, stems from the 1950's when it was apparently relatively easy to define sovereignty, nationality and citizenship. Nowadays, the concepts of sovereignty, nationality and citizenship have drastically changed. For example, in Italy access to the position of a senior employee in the national central bank of Italy is reserved for Italian citizens. This restriction is certainly in accordance with the case law of the Court of Justice and was at the time undisputed since Italy was “sovereign” in monetary affairs. Today, the introduction of the euro and the creation of the European Central Bank have fundamentally changed (not only) the importance of the position of a “central banker”, and within this also the question of whether this position needs to be reserved for a national. Other important developments have taken place since then. Art. 13 EC provides a legal basis against all discrimination because of race, sex, religion or ethnic origin. The introduction of this Article in the Treaty was an important step forward and a measure towards less discrimination of whatever kind in our societies. The question is, of course, what is an ethnic minority? In the case of The Netherlands, this would be, for example, employees of Surinam or the Dutch Antilles (in The Netherlands today approximately 500000 citizens are of origins of Surinam). In 2001, 7,7% of persons working in central government belonged to an ethnic minority<sup>23</sup> (The Netherlands has an ethnic minority employment quota of 8%, which should be met by each employer).

These people have – at least in theory – access to all posts. But why then should EU nationals not be treated in the same way as an ethnic minority?

The fact that almost all European countries restrict access to at least some positions in the public sector raises the question: who is a national and who is a citizen? Currently, there are two levels of EU citizenship – EU nationals who live in their country of origin, and EU nationals who have exercised their right of free movement in the EU. Today, the first category enjoys full civil, economic and political rights (and duties), whereas the second category enjoys restricted rights (and limited duties).

The prevailing interpretation of European citizenship originates from a 19th century philosophy that links implementation of citizenship and free movement to financial status. The rights of free movement are also linked with the nationality of citizens. It is up to the Member States to define the notion of nationality.

Things are more complicated when looking at the millions of people (the so-called German minorities) who migrated into Germany from Russia and Romania. Whereas other countries would define these immigrants possibly as non-nationals, Germany considers them as Germans, although most of them were not born in Germany and have a Russian or Romanian citizenship. Their status thus shifts from “foreigners” to “nationals”. Since these people have become citizens of Germany, they enjoy all the rights and duties of German citizens. At the same time, they are EU citizens and enjoy the same rights as French, Italian or Spanish citizens who are living in their countries. On the other hand, the status of Czechs living in Slovakia has changed from “national” to “foreigner”. Lithuanians living in Latvia have seen their nationality change from “Russian” to Lithuanian. In all these cases, access to certain posts may now be limited because of the change of status in the last 15 years.

If a French national is born in Germany, he might have French nationality and not German nationality, although things might be different in Ireland, where until recently all people born in the country were given Irish nationality. Ireland is an interesting case: there are about 10 times the number of Irish living in the US (people of Irish origin who have US nationality) as there are living in Ireland.

If they wanted to move to Ireland, they would receive Irish nationality relatively easily, as long as they could prove they have Irish ancestors.

The question of who is a national becomes more complicated when looking at the average number of years foreigners spent in their hosts countries and the number of cross-national marriages and inter-ethnic issues. Just like in the United States, where it becomes more and more difficult to define “blacks” and “whites”, it becomes increasingly difficult to clearly identify the “classical national” in the EU. More than 50% of all foreigners in Germany have lived in the country for more than 10 years, with 23% for 30 years and longer<sup>24</sup>. In addition, in 1960, almost every marriage in Germany

was between two Germans, with only 4% of marriages between different nationalities.<sup>25</sup> In 1995, about 15% of all marriages are so-called mixed marriages.<sup>26</sup> In 1960, only 1,3% of all children born were of a “foreign” father and mother. In 1995, this figure had risen to 19,2%.<sup>27</sup> If these children have two nationalities, new complexities emerge, since the children of – let’s say – a German father and a Spanish mother appear as Spaniards in the Spanish statistics and Germans in the German statistics.<sup>28</sup>

Today 17% of the population in The Netherlands are either born in a foreign country or have a “foreign” mother or father, but 5% of the Dutch population has no Dutch nationality.<sup>29</sup>

These figures demonstrate that it is increasingly difficult to define who is a national and what is an ethnic minority. For example: a Portuguese from East Timor or Macao is considered to be a Portuguese,<sup>30</sup> but a German Turk who is born in Germany and has never been to Turkey in his life has Turkish Nationality. These cases illustrate that our societies are becoming more and more multinational and multi-cultural. This development raises some interesting questions and reveals some paradoxes:

For example, of the approx. 800000 Algerians living in France, 300.000 also have French Nationality.<sup>31</sup> Most of them are muslims. Because of their nationality and the principle of non-discrimination they deserve equal treatment with their French compatriots and

can apply for all jobs in the French administration. But why then not Italians, Spaniards or Dutch etc. officials? In a recent judgment, the Court of Justice took a decision in relation to private posts, which involve some exercise of public authority. The judgment concerned private security guards who do not form part of the public service, and the Court therefore ruled that Art. 39 4 EC is not applicable. Although these developments have led to a fairly wide opening of the public sector to EU nationals, it is still not clear whether other private sector posts to which the state assigns public authority (e.g. captains of fishing ships, who exercise police functions) fall under Art. 39 4 EC. On the other hand, all of the above mentioned four groups (French-Algerians, Italians, Spaniards and Dutch) could apply for any senior post in the OECD in Paris. In addition, they would also be allowed to apply for any (senior) position in most international organisations (e.g. the WTO or the UN) worldwide. Although these authorities are international organisations, some of the tasks and functions they carry out are of utmost political, economic or legal importance. Consider, for example, a senior official in the WTO who is responsible for important trade negotiations with the

United States. These examples show the need for a modification of Art. 39 4 EC and not merely for more legal interpretation and case-law by the Court of Justice.

#### **F. The need for Art. 39.4 and the need to reform.**

##### **The dilemma.**

All of the arguments presented make clear that Art. 39 4 EC does not “fit” in the modern world of the 21<sup>st</sup> century.<sup>32</sup> Modifications are certainly necessary. But how far should they go? What would happen if Art. 39. 4 was entirely deleted? What are the arguments in favour of keeping at least certain restrictions? Before answering these questions it is helpful to recall certain facts: although the public administration network of the EU Member States (Directors-General of Public Administrations) has become more important over the last few years, the competence to deal with public services and HRM has stayed almost entirely in the hands of the Member States. Art. 39 4 EC can thus only be understood when taking into consideration that the EU Treaty does not provide for any competence in the field of national

public services (apart from the impact of Art. 136 EC to Art. 141 EC and some secondary legislation).

The civil service has traditionally been a national matter. Despite all the modernisation and “Europeanisation” trends, the civil services of the Member States remain very different. The emergence of a European model of public administration or even a European Administrative Space is therefore very unlikely to be seen in the near future.<sup>33</sup> Still, every Member State is keen to preserve its own concept of the civil service based on its tradition, culture and history. For example: despite the fact that almost all Member States align the pension systems for civil servants to those in the general labour market, implementation of the measures and policies is remarkably different.

Even in the area of international administrative cooperation, the Member States of the EU have never agreed to change the informal character of the European Public Administration Network (EPAN) and turn it into more formalised structures. Art. 39 4 EC is in this way a logical consequence, since it should serve the autonomy of the Member States.

It seems to be the modern paradox of our societies that people continue to expect – despite all globalisation, internationalisation and modernisation trends – their national governments to stabilise the economy, to protect them against enemies and terrorism, to insure them against unemployment, poverty and illness and to determine the amount of taxes, to improve education and to promote public safety. Despite a growing distrust in “Government” and (on the other hand) the growing

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belief that nation-states lose the capacity to “steer” national societies, it is unlikely that other structures or even international organisations (e.g. the EU) are likely to replace the classical nation state. In addition, the European Court of Justice justifies Article 39.4 with the existence of a special relationship of allegiance to the state and reciprocity of rights and duties from the foundation of the bond of nationality.<sup>34</sup> Another argument is the principle of democracy and the rule of law. Since the power of the state comes from the people, the implementation and interpretation of the law should be done by those people who represent the peoples’ nationality. Therefore the laws and their implementation should also come from the people and their nationals. This is even more true since the EU is not yet a fully fledged democratic power and the power of some of its institutions comes only indirectly from the people.

In fact, the nation-state will survive not only because of people’s expectations, but because of people’s needs. The nation-state is perceived not only as an instrument, but also as an entity with two deep human values which find an expression in nationhood: belonging and individuality. As Weiler writes in *The Constitution of Europe*: “At a societal level, nationhood involves the drawing of boundaries by which the nation will be defined and separated from others. The categories of boundary-drawing are myriad: linguistic, ethnic, geographic, religious, etc. The drawing of the boundaries is exactly that: a constitutive act, which decides that certain boundaries are meaningful, both for the sense of belonging and for the original contribution to the nation”.<sup>35</sup> As a recent Eurobarometer survey (2003) shows: 90% of the EU population feels attached to their countries, 87% to their town or village, 86% to their region and 45% to the European Union.<sup>36</sup> One reason for Art. 39 4 is therefore purely philosophical. People need “boundaries” to build their identities.

It is precisely because of this that new nations have emerged in Europe since 1989. The silent revolutions at the beginning of the nineties have demonstrated that citizens in Europe have preferred the (re-)building of traditional nation-states. Only in a second step did the integration into international structures follow – not the other way round!

The broadening European Union is facing a delicate development since it does not offer enough incentives for the people to identify with. For many, the EU with 25 Members is perceived as a technocratic monster and as an instrument that destroys “boundaries”. It is an instrument of modernity and a mechanism for change, but not one which offers stability and identification.

From this point of view, we get a new understanding of why the free movement of workers principle should not be opened up completely. It may be difficult to argue in favour of Art. 39 4 EC from a political, legal and even

economic point of view, but the cultural and philosophical argument stands!

If Art. 39 4 were abolished, all EU nationals would have access to all jobs in the Member States and also to senior jobs in all sectors and at all levels. Let’s put this to a test: could a French official represent the United Kingdom in a Council of Ministers working group in Brussels? Let’s assume the United Kingdom takes a

different position from France on a highly delicate dossier. What kind of position would this person take?

What would happen if a (former) Irish official negotiating on behalf of the German Government negotiated Art. 3 of the Water

Framework Directive 2000/60/EC? Would he be aware that this Article might be in conflict with the principle of federalism in the German Constitution (Art. 79.3 GG)? What if EU citizens of highly centralised countries move to countries in federal states (e.g. Belgium)? Would they be aware of the need to communicate and co-ordinate with several authorities and parliaments? What if a Finnish official had to negotiate a development programme for South America on behalf of the Spanish Delegation? Or a Dane deal with an Algerian case on behalf of France?

One author of this article is of German nationality, with a Dutch Mother, and could easily acquire Dutch nationality. However, even if the nationality were changed, it would be hard to imagine that a special “feeling” for the Royal Family could be developed. Rather, it seems that the author’s own identity as a Republican would endure.

Identities and values are difficult to change overnight, but these cases show that – if Art. 39 4 were abolished – the emergence of personal dilemmas and even conflicts of loyalty could not be excluded, especially in those cases where senior positions in other countries would be open to everybody.

And what about the army? That also has potential for conflicting loyalties, if one considers for example the Iraq crisis (war). Since positions in Europe are so different it seems difficult to imagine how a Frenchman could command an English corps in Iraq, even if he would agree to do so.

Another argument in favour of Art. 39.4 is the fear of cross-border migration. This argument can be well founded in some cases and especially for very small countries who are scared that the integrity of the state is put into question. What will happen in Luxembourg<sup>37</sup> or other small future Member States (Malta, Slovenia) if free movement in the civil service is allowed? Will they lose their identity? Will Luxembourg be governed by French, German, Dutch or Belgian civil servants?

We see from these arguments that, although it may be relatively easy to criticise Art. 39.4, it is also important to justify upholding some restrictions.

**In fact, the nation-state will survive  
not only because of people’s  
expectations, but because  
of people’s needs.**

### **G. Where to draw the line? National identity and the free movement of workers**

As we have seen, nationality, citizenship, sovereignty and public service are not static concepts.<sup>38</sup> They evolve and change over time, although they are very much linked to national structures, power and tradition. We all know this if we have to explain the identity of our country and the people of our country. We know that they are different from other cultures, regions and countries, but when we have to define and explain it, the difficulties become apparent. Because of these problems, there are only a few empirical studies that measure national pride, identity, nationalism and racism.<sup>39</sup>

It seems natural that everybody develops a solidarity with a group of people with the same (or similar) language, cultural heritage, symbols, religion, literature and attitudes. The importance of this need to belong can be seen if we try to prohibit it. Numerous ethnic conflicts have shown how problematic it is to merge groups (sometimes by force) with different cultural heritages.

Because of this it is important to protect and to respect local, regional and national differences. However, another question arises: are the cultural and ethnic differences in Europe such that it would be important and useful (from an economic and political viewpoint) to concentrate on the existing differences as symbolised by Art. 39 4 EC (e.g. the Dutch are different from the French), rather than on those elements which we have in common (we are all Europeans with a common cultural heritage) and the emergence of new trends and identities (e.g. by the way of a European citizenship)?

A further question concerns how the different European identities change over time and how they overlap. What about a French national and citizen from the city of Strasbourg and a German citizen from the city of Kehl on the other side of the Rhine, who does his/her shopping every day in Strasbourg? Do these citizens from Strasbourg and Kehl have less in common than those from Strasbourg and Toulouse or – on the other side – from Kehl and Hamburg? What about a German-speaking Italian citizen of Bolzano and an Austrian in Innsbruck? Do they have less in common than a citizen of Palermo who is applying for a job in Bolzano? What about a Spaniard from Malaga or a Brit from Gibraltar? Or what about Irish in Dublin and Brits in Belfast?

Obviously, these cases prove nothing and there are no answers to the questions. What they show, however, is that identities are never “pure”. Local, regional, national and even European identities are constantly changing and fluid. Identities are also based on emotions and are dependent on what individuals want and need,

but it is impossible to measure them scientifically. Even if cultural differences must and will to exist, “pure national identities” are unlikely to continue and are changing over time into new identities. At this point one should also not forget that the modern nation state is also a product of modern times.

Although it is unlikely that the European nation-states will soon merge into a new European superstate, the more European countries co-operate and “live together” the more they will also develop new identities. Especially in this small and densely populated Europe, languages, religions and traditions are very much related to each other. The times of cultural homogeneity are over – even in homogenous countries like Finland and Ireland. These thoughts lead us to the following conclusion: Art. 39 4 ECT in its present form does not reflect changes in national identity or in politics, culture, economics etc. It represents a view of nation, sovereignty and identity which belongs to the past.

### **H. Conclusions and Recommendations**

Art. 29 TEU states that “without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice...”. Whereas the Union and the Member States have focused on the issue of security over the past few years, this has not been the case in the area of freedom. It is now time to develop and to enhance the concept of freedom. On the other hand, the implementation of the free movement of workers Article in its present form still meets tremendous difficulties. In the past few years the inter-governmental working group (now called HRM group) of the Directors-General of Public Service were invited to examine the situation and to suggest how it could be improved. During their work, all existing obstacles to

the free movement principle (e.g. language requirements, difficulties in recognising professional experience, the recognition of diplomas, mid-career access etc.) were analysed. In addition, information was provided to the Member States, and national contact points were established to help improve the situation. The work of the group was completed under the Danish Presidency in the year 2002.

However, its mandate did not extend to making suggestions for modifying the Article.

The discussion about the pros and cons of Art. 39.4 EC has to be seen from a national and European point of view. We agree that there is no reason to transfer to the EU tasks and functions which could be better dealt with on a national basis. In addition (and as we have seen) questions of national identity and national tradition

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continue to be of utmost importance for citizens of the EU. We therefore agree with the above-mentioned Working Group V to the Members of the European Convention that some principles should remain under the exclusive responsibility of the Member States.

At the same time a number of developments have taken place in the past decades which have rendered Art. 39.4 EC old fashioned. Today the Article poses artificial obstacles to the free movement principle.

Art. 39.4 EC could therefore be reformulated as follows:

“The principle of freedom of movement of workers applies to public and private employment. However, Member States may restrict the provisions of this article only to those positions in the armed forces, the diplomatic corps, the judiciary and central and regional ministries that are entrusted with the direct preparation and decision-

making of national and international laws and judgments as well as their direct implementation and judicial interpretation”. Within this, it is important to note “that even if management and decision-making posts which involve the exercise of public authority and responsibility of safeguarding the general interest of the State may be restricted to nationals of the host Member State, this is not the case in relation to all jobs in the same field”.<sup>40</sup> For example, the post of an official who only indirectly *prepares* decisions (e.g. as a member of a national delegation in a Council of Ministers Working group) should not be restricted to nationals.

This new version would still be open to interpretation. However, we do not see convincing arguments which would justify the exclusion of other functions or sectors such as police, tax authorities, jobs in local authorities, central banks etc.

## NOTES

<sup>1</sup> The European Convention, The Secretariat, CONV 375/1/02 of 4 November 2002.

<sup>2</sup> See Case Case Grzelczyk 194/99 and Case Martinez-Salsa C-85/96.

<sup>3</sup> See Demmke, C., Die Herausforderungen der demographischen Entwicklung: Einstellungspolitik als Weg zur Bestimmung der Attraktivität der öffentlichen Beschäftigung, unpublished Study, EIPA, Maastricht 2002 (also published in English and French).

<sup>4</sup> Case 149/79 Commission vs. Belgium, paragraph 19.

<sup>5</sup> Case 149/79 Commission v Belgium, paragraph 18; Case 152/73 Sotgiu.

<sup>6</sup> This is our interpretation of the case law of the ECJ and the word “and”. We have seen no case yet where the ECJ has used the word “or”. See for example Case 307/84 Commission vs. France, paragraph 12; Case 66/85 paragraph 27.

<sup>7</sup> Case 66/85 Lawrie-Blum vs. Land Baden-Wuerttemberg.

<sup>8</sup> Case 152/73 Sotgiu, paragraph 4.

<sup>9</sup> Case 149/79 Commission vs. Belgium.

<sup>10</sup> *ibid.*

<sup>11</sup> Case 307/84 Commission vs. France.

<sup>12</sup> Case 66/85 Lawrie-Blum.

<sup>13</sup> Case 4/91 Bleis.

<sup>14</sup> Case 33/88 Allue sv Coonan.

<sup>15</sup> Case 225/85 Commission vs. Italy.

<sup>16</sup> Communication 88/c72/02 Freedom of movement of workers and access to employment in the public service of the Member States. Commission action in respect of the application of article 39.4 of the EC Treaty OJ 1988 C72/2.

<sup>17</sup> European Commission, Communication from the Commission, COM (2002) 694 final, 11.12.2002.

<sup>18</sup> Communication, *op.cit.*, p. 19.

<sup>19</sup> Bossaert et al., Civil Services in the Europe of Fifteen, Trends and Developments, Maastricht, 2001, p.4.

<sup>20</sup> see United Kingdom Cabinet Office, Civil Service Statistics 2001.

<sup>21</sup> Also, these figures do not include France and Greece. Eurostat, European Social Statistics – Population, 2002, Population Structure.

<sup>22</sup> Kaemmerer, J.A., “Europaeisierung des oeffentlichen Dienstrechts”, EuR 2001, p.39.

<sup>23</sup> Lanting, B.B.B./Pennings, F.J.L., Status and Mobility of the Public Administration Staff in The Neherlands, Final Report for the Netherlands, unpublished paper 2002, p. 24.

<sup>24</sup> Statistisches Bundesamt Deutschland, Ausländische Bevölkerung in Deutschland, 2. April 2003.

<sup>25</sup> E. Beck-Gernsheim, was kommt nach der Familie?, München 1998, p. 155.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> Beck-Gernsheim, *op.cit.*, p. 163.

<sup>29</sup> [www.isoplan.de/aid/2002-2/europa.htm](http://www.isoplan.de/aid/2002-2/europa.htm)

<sup>30</sup> Macau was Chinese territory under Portuguese administration until 1999, when administration was given over to China. East-Timor was Portuguese territory before Indonesia took it over, which Portugal never recognised.

<sup>31</sup> Le Monde, 3 March 2003, p.3.

<sup>32</sup> q.v. Prof. Alber, S., “Das europaeische Recht und seine Auswirkungen auf den oeffentlichen Dienst”, ZBR 2002, pp.229.

<sup>33</sup> Pollitt, C., Convergence: The useful Myth?, in: Public Policy and Administration, Vol. 17, No.2, Summer 2002, pp.933; Ziller, J., European Models of Government: Towards a Patchwork with Missing Pieces, in: Parliamentary Affairs, Vol. 54, 2001, pp. 102; Demmke, C., Undefined Boundaries and Grey Areas: The Evolving Interaction between the EU and the National Public Services, in: EIPASCOPE 2002, No.2, pp.8.

<sup>34</sup> Case 149/79 Commission vs. Belgium paragraph 10; Case 66/85 Lawrie-Blum.

<sup>35</sup> J.H.H. Weiler, The Constitution of Europe, Cambridge, MA, 1999, p.247.

<sup>36</sup> European Commission, Eurobarometer, Report Number 58, March 2003, p. 26.

<sup>37</sup> Commission vs. Luxembourg Case 473/93 Schutz nationaler Identitaet kleiner Mitgliedstaaten.

<sup>38</sup> Museum für Völkerkunde Hamburg (ed.), Das gemeinsame Haus Europa, Berlin 1999.

<sup>39</sup> See especially Domm, R., An Empirical Examination of National Pride, Identity, Nationalism and Racism using ISSP Data, in: EUI Working Papers, No. 7, 2001.

<sup>40</sup> Communication of the Commission, *op.cit.*, p.19. □

# Preparing for EU Membership: The Paradox of Doing What the EU Does Not Require You to Do



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## Summary

As acceding countries are progressing with their formal preparations to comply with the requirements of EU membership, they should also consider whether they have the capacity to play an active role within the EU and derive all the benefits of EU membership.

The purpose of this paper is to outline how acceding countries can become effective members of the EU. It identifies certain tasks which are not formally mandated by the EU and for which the EU provides no guidance. The application of EU directives and regulations depends on the existence of extensive institutional and administrative capacity. To build that capacity, they need to do much more than merely adopt EU law. Paradoxically, they have to do things that the EU does not ask them to do.

Their ability to derive the maximum benefits from EU membership will very much depend on their success or failure in influencing nascent EU rules, in complying with them and in re-engineering their economies so as to “exploit” as much as possible EU policies and programmes.

## 1. Identifying the challenges of being a member of the European Union

Ten countries are poised to enter the European Union. As from next year, the powers of national authorities in the acceding countries will be curtailed considerably. Many policy decisions will be taken together with the other member states within EU institutions while many of those taken locally will be subject to scrutiny by the EU. In the meantime, however, acceding countries have an important task to accomplish – they have to complete their preparations for membership of the EU.

The purpose of this paper is to explain that, as the acceding countries are progressing with their formal preparations for membership, they should also consider whether they have developed the capacity to play an active role within the EU and derive all the benefits of EU membership.

If their public pronouncements are to be accepted at face value, the governments of most of the acceding countries appear to regard entry into the EU as a fait accompli. Some politicians seem to believe that there is little left to do since the accession negotiations are over. After all, most laws required by the EU will soon be passed by their parliaments. So what is there to do more?

Until now their preparation for entry into the EU has mainly focused on the establishment of new institutions and procedures and the adoption of new laws and regulations; largely quantitative goals. From now on they will have to operate the new institutions and procedures efficiently, to enforce the rules effectively, to deal sufficiently with complaints and aggrieved persons and companies and, in general, deliver the expected service to the public; largely qualitative tasks.

Indeed, these qualitative tasks will become progressively more important. As I explain in more detail later on, being an EU member is not just about formally accepting the rules decided in Brussels. It is also about shaping them in the first place and then enforcing them vigorously. The integrity of the EU system depends on the ability and willingness of each member state to participate in common decision-making and then comply with the common rules. These roles of participation and implementation will become more significant in an enlarged EU.

The Commission, which is the “guardian” of the Treaties, has already vowed to maintain close scrutiny over the implementation performance of the 25-plus members. At the beginning of March 2003, the Commission, in an internal memorandum, found all candidates, with the exception of Slovenia, to be failing to maintain the pace of their domestic reform.<sup>2</sup> This is not so serious at this stage but it is indicative of the problems these countries may face in the future.

What is perhaps more serious is that, as instructed by the Copenhagen European Council, the Commission will publish in the autumn of this year a final and comprehensive assessment of the readiness of the acceding countries to assume the full obligations of membership. They do not have much time left to complete the adoption and application of EU rules. If they are found not to have completed those tasks, the EU may invoke the safeguard provisions included in the Treaty of Accession thereby restricting access to its internal market.

At this point in time, acceding countries are naturally preoccupied with reaching the targets defined in the

various pre-accession partnerships, filling the gaps identified by the Commission in its last regular report of October 2002 and subsequent updates, manning the newly established institutions required by the EU and finishing their legislative work.

This raises the question whether there is anything else for them to do in order to become effective EU members. The answer to this question depends, of course, on how one defines “effective membership”. I will return to this question in the next section.

### ***Objective of paper***

The purpose of this paper is to explain how acceding countries may try to become effective members of the EU. I will identify certain tasks which are not formally mandated by the EU and for which the EU provides no guidance. Previous research carried out at and published by the European Institute of Public Administration, explains in detail why the application of EU directives and regulations depends on building extensive institutional and administrative capacity.<sup>3</sup> To build that capacity, member states have to innovate and identify solutions that suit their domestic conditions and traditions.

Similarly, when trying to maximise the gains from EU membership, prospective new members also have to innovate. In fact, they need to do much more than merely adopt EU law. Paradoxically, they have to do things that the EU does not ask them to do.

The paper outlines where new members can may innovate. In a nutshell, their ability to cope with the obligations of EU membership will very much depend on their success or failure to deal with the issues of influencing nascent EU rules and in complying with them. The next section defines the concept effective membership. Then, the paper will argue that prompt compliance and rigorous enforcement are inextricably linked with domestic institutional flexibility and accountability. The rest of the paper identifies ten factors that have a decisive effect on successful membership but which are not formally part of the “*acquis communautaire*”.

## **2. The concept of “effective membership”**

Since no country would be interested in joining the EU unless it became better off, it is natural to define effective membership to mean maximisation of benefits from that membership. Although it is natural to define it in this way it is not easy at all to know when a country reaches the maximum level of benefits. Therefore, I will adopt a slightly different approach and ask what a country should do to reach that level. Given the fact that being a member of a system such as that of the EU means determining its rules, complying with them and using them to one’s own advantage, I, therefore, define effective membership to mean four things:

- ability to influence those rules so that they match as closely as possible a member’s own national interests;
- enforcing the rules rigorously;
- using all opportunities provided by the single market

- and
- maximising absorption of EU funds.

In this connection, I assume that the benefits of membership in general cannot be maximised unless the member state concerned complies with EU rules. This is a necessary rather than sufficient condition. Certainly, compliance does not by itself maximise potential benefits for the simple reason that EU rules leave much leeway to member states on how they should run their economies and deal with their social problems.

By contrast, however, EU rules are by and large designed, among other things, to protect free trade, free movement, investment, consumers and the environment. Although it is not inconceivable that under certain conditions, restriction of trade, investment or competition or tolerance of pollution could be in the national interest, I think it is safe to assume that, in general, each member is better off by maintaining an open market, safeguarding the rights of its consumers and protecting its environment. Even if under certain conditions a country would become better off by deviating from those rules, I very much doubt that all member states would be better off if they all behaved in the same way.

Therefore, in the definition adopted by this paper, there is a close link between being a successful member of the EU and being a loyal member. Loyalty, however, is not enough. Indeed, the ten factors identified later on prove this point.

## **3. Application of EU rules and institutional accountability**

Apart from completing their legislative work, it is now widely recognised that the primary task of the governments in the acceding countries is to strengthen and extend enforcement procedures and instruments across the board: from the proper use of public funds (national and EU), to environmental protection, to health and safety at the workplace, to border controls, etc. The Commission has made many such statements in all its regular reports on the progress of the candidate and now the acceding countries.

Another, probably longer-term, task of these governments is to improve the functioning of their civil services.<sup>4,5</sup> They have to be made more flexible, their different departments and agencies need to be given more decision-making autonomy and, at the same time, made more accountable.

Incidentally, this kind of restructuring and reform should also be extended to agencies and enterprises that are controlled or owned by the state. Article 295 of the EC Treaty prevents the Community to discriminate in favour or against state-owned or state-controlled enterprises or agencies involved in commercial transactions. That is why there is no EU law that requires privatisation. However, these agencies and enterprises will have to be fully subject to the rules of competition. How will they be able to compete, without receiving any aid or favour from the state, if they are shackled with antiquated practices? The implication is certainly not

that they should be sold off. Rather, the state, as their sole or main shareholder, should consider how they can gain operational and financial flexibility that will be necessary for them to function in the new environment of open markets and free competition.

Enforcement performance and the state of civil services in the acceding countries have been treated by many analysts as separate issues. In many respects they are. But in one crucial way they are closely intertwined. Decision-making autonomy is essential for rigorous policy enforcement. The enforcing authorities have to be able to take whatever measures are necessary to respond to changing market conditions, new corporate strategies and simply keep pace with criminals and fraudsters. The problem is that in closely-knit societies, as those of the acceding countries, decision-making autonomy or flexibility can also be easily abused to obtain or grant favours. That is why decision-making power should be counterbalanced with open, transparent and objective procedures.<sup>6</sup>

Both rigorous enforcement and accountable civil service imply that politicians should intervene less in the everyday business of government. This may sound paradoxical. After all, who will ensure that the civil servants do their job properly? In fact, the system, if it is properly designed, should run itself. Policy implementation and enforcement should be rule-bound and objective. Political intervention, even when it is well-intentioned, introduces problems and imperfections of its own.

The reader may think that I am exaggerating this argument. Markets, policies and public institutions do not always work perfectly – some would even say that they rarely do. Somebody, then, must intervene to correct them. I do not deny this. The point, however, is that there is intelligent policy adaptation and there is ad-hoc intervention. The difference between the two is that the former takes into account the possibility of policy failure at the early stages of policy formulation and makes provisions for regular and impartial policy reviews, while the latter relies on the initiative of higher political authority. Well, higher political authority may or may not seize the initiative and may or may not give up at the sight of the first difficulty.

What are the typical excuses for all kinds of failure to implement or enforce policies? Are they not that “there is a gap in the law”, or that “the law has not explicitly provided for this particular contingency”, or that “the department lacks resources”? Were these problems not predictable when the laws and policies in question were formulated? If they were predictable, why did no one do anything to prevent failures and remedy the very foreseeable problems?

I think the answer is that no one was responsible because no one was accountable, and no politician (i.e. the higher authority) found time or considered it worthwhile to deal with the problems. After all, very few laws have in-built policy or departmental reviews and assessments. Why, then, should anyone stick his or her neck out to do something that is not required?

One of the repercussions of the unprecedented amount of financial and technical assistance that the candidate countries have received has also been the extent and the depth of the legal reform they have undertaken. This has been partly the result of the advice offered and the many seminars that were organised by the EU and partly the impact of the presence of pre-accession advisors. All these activities have had beneficial effects but have also led legal drafters in the candidate countries to prepare very comprehensive EU-compatible laws. They have aimed for perfection whereas, I believe, they should have acknowledged the impossibility of trying to foresee all future contingencies and, instead, should have incorporated in the new laws pre-set reviews and institutional evaluations in case further reform proves necessary. That further institutional adjustment, if not outright reform, will prove necessary is, in my view, inevitable. Not only many of the rules are new to the acceding countries, the institutions responsible for enforcing them are also new. Periodic assessment of institutional performance is one of the most potent incentives to civil servants to carry out their tasks effectively.

The European Union relies on rules which must be effectively enforced. If the new member states wish to avoid being dragged before the European Court of Justice for failure to comply with EU law, their governments should try to make themselves “obsolete” by making it unnecessary for politicians to intervene to fix things. If that happens, they will have succeeded to “Europeanise” their countries in the sense that their partners in the EU will be in a position to trust that the commitments new member states make in Brussels are irreversible and immune to domestic political meddling.

This kind of “Europeanisation” would also mean that scarce resources, financial, human and material, are used efficiently and effectively. That would make a direct contribution to their economic and social development. See also the last point in the section below.

#### **4. Maximising the benefits from EU membership or the paradox of doing what the EU does not require you to do**

In the previous section I argued that the “Europeanisation” of public policy in the acceding countries should be one of their top priorities. This Europeanisation suggests that they should prepare for entry into the EU not just by going through the legal process of adopting the required EU laws. They should also modernise public services and strengthen policy implementation and enforcement.

One may argue, however, that the real issue is as much about modernisation of the government machinery and the civil service as it is about Europeanisation in the sense of getting ready to apply specific EU rules.<sup>7</sup> For example, the issues of independence and accountability of civil service are not new. They were first debated in West European countries twenty or so years with the establishment of new institutions such as autonomous

regulatory and executive agencies. This raises the question whether modernising national civil services is sufficient to maximise the benefits from EU membership. The answer is that it helps but it is certainly not enough.

As I explain below, there are issues that have nothing to do with administrative reform or adopting modern methods of governance. The EU has its own peculiarities and special features that must be taken into account. I group them into the following ten issues that the governments of the acceding countries should include in their preparations for entry into the EU.

#### *i. Minimising state liability*

Under the EU treaties, liability for breaches of EU law falls on the member states. Irrespective of whether they may have a federal political system or whether the breach may have been effected by an autonomous municipality, in the eyes of the EU law, it is always the member states which are at fault. This has significant implications. It means that the central government must be able to instruct any other public authority, be it independent, regional or local, to comply with EU requirements and court rulings. If that is not possible because, for example, of the federal political structure of the country or the autonomy of regional authorities, there should at least be a provision in national law that obliges all public authorities to respect EU law. This issue of liability was not part of the 31 chapters of the accession negotiations, but it does not follow that it can be ignored.

Perhaps one may think that since a fundamental principle of EU law is its primacy over national law, it may be sufficient to rely on that principle. However, in the absence of any explicit domestic legal provision or administrative procedure, eventual compliance will be guaranteed only by resort to proceedings, most likely before constitutional courts. That is not an efficient way of ensuring speedy compliance at all levels of government.

#### *ii. Direct effect of EU law and enforcement in national courts*

The EU system confers certain rights to individuals, both persons and companies, which can be exercised before national courts. This is the concept of the “direct effect” of EU law.<sup>8</sup> It does not matter whether a member state does not happen to have a corresponding national provision on its statute books. The national judge is obliged to enforce EU law when invoked in his or her court. Even where EU law is to have effect through transposition into the domestic national system, failure to do so or failure to do it correctly may create liability for the country concerned when the intention of the EU law is to generate explicit rights for individuals and such rights are manifestly impaired by that failure. This is the so-called “Francovich” doctrine which also enables individuals to initiate proceedings against their own authorities for any damages they may have suffered by the failure of those authorities to take measures to give effect to EU law.

The constantly expanding and evolving EU case law places a heavy burden on both national authorities and national judges. Judges in the acceding countries have already had some training on EU law. A few seminars are clearly not enough. Much more has to be done if they are to apply EU law properly, especially in those cases for which adaptation of national laws has not been necessary.

As a result of the direct effect of Community law, the introduction of new laws in the national systems of the acceding countries and the establishment of new institutions to implement those laws, court cases will multiply and their complexity will increase. For most acceding countries the specialised national regulatory authorities required by the EU are a new feature. Their decisions will also be subject to appeal before courts. In most cases, this is explicitly required by EU directives. This raises the question whether national courts can cope with the increase in their workload and whether they have the necessary expertise to deal with regulatory problems mixing law, economics and technical issues. The increase in workload can be dealt with by appointing new judges. The complexity of the cases can be addressed through the creation of specialist courts with judges specialising in certain types of cases. If, in this way, they are able to process more cases, they will also solve the problem of the heavier workload. Admittedly, however, the extra costs of establishing new courts will have to be set against the benefits from quicker and more efficient handling of cases. This is an empirical issue. It should, therefore, be considered before it is dismissed a priori. By contrast, specialisation of judges within existing structures will probably raise efficiency without imposing extra costs.

#### *iii. Training*

What applies to national judges also applies to any other officials responsible for enforcement of EU rules. EU rules and policies are constantly evolving. This means that training never stops. It should not be confined to updating officials on new policy initiatives and outcomes in Brussels. It should also seek to identify the best possible measures for implementing new EU rules and examine how other member states interpret such new rules and how they enforce older rules.

Training should also be provided to those that have to comply with EU rules, not only those that have to enforce them. Better awareness of the obligations imposed by EU rules would contribute to fewer infringements.

#### *iv. Competition of views and technical expertise*

As soon as one recognises the constant state of flux of EU rules and that, for some rules defined in the form of directives, the member states have discretion in determining the precise national implementing measures, then it becomes obvious that there is no single correct way of implementing EU law and complying with its requirements. It follows that it is important for member states to engage all relevant actors and consult widely

those that may be affected by the introduction of new regulations. At the same time, however, some EU rules are very technical. So it is necessary to build expertise that combines both legal knowledge and technical comprehension.

**v. Citizen and consumer-oriented services**

If the rights of persons or companies are infringed by national authorities, they can petition directly EU institutions, most usually the European Commission. They can also petition EU institutions in case their complaints are ignored or rejected by national authorities. They can do so anonymously or ask for confidentiality. This is not a legal process of appeal where they first have to exhaust domestic legal remedies. Aggrieved persons can contact the Commission, for example, at any stage in the domestic procedures. And, as mentioned above, aggrieved persons may also resort to domestic courts.

The implication is that public authorities in the acceding countries have to change attitude. They have to become pro-active, respond quickly to requests for information and complaints, and provide effective remedies. As also mentioned in the previous section, their decisions, even if ultimately found to be justified, must be clear and adequately reasoned. Timely response and adequate reasoning by public authorities are principles enshrined in the administrative law of most acceding countries. It remains to be seen whether their standards are on par with those of the EU and whether their public authorities have the means to be as pro-active as they should be.

This is good news for citizens. Despite the fuss about the EU's "democratic deficit", the mere fact that the EU exists separately from its member states, I believe, forces these states to be more democratic than otherwise and makes them and their public authorities more accountable.

**vi. Information records and impact assessment**

Ability to respond quickly to requests for information is important in the context of the EU for another reason. The Commission, in its capacity as the "guardian of the treaties", has the power to ask for information from any public authority. The request is normally sent to the permanent representation of the member state concerned in Brussels. From there it goes to the national capital and then to the responsible authority at any level of government in any region. The Commission expects answers usually within a couple of weeks. To respond quickly, public authorities must keep full records with easily accessible information. Do public authorities in the acceding countries have files with complete and retrievable information?

There is one more issue concerning provision of information to Brussels with which all acceding countries will soon have to grapple. That is the notification of state aid schemes. All public authorities at all levels of government and state-controlled enterprises will have to notify to the Commission any measure that contains state aid and obtain its authorisation before they can put

it into effect. At present, all acceding countries have state aid monitoring authorities that deal with state aid domestically without notification to Brussels. In a year's time the situation will change. As far as I know none of those countries has established a coordinator of national notifications to the Commission. No EU rules exist on this point apart from the requirement that notifications should go through permanent representations in Brussels. As I explain below, however, the channelling of information to the Commission has to be coordinated. I also explain below that sometimes a country should not do things that the EU allows it to do, like granting state aid.

Moreover, the real challenge concerning EU-required information is not about collecting, storing and retrieving it. It is mostly about using or processing it before it is passed on to Brussels. The Commission announced about a year ago that in the future it will carry out assessments of the impact of proposed legislation before it forwards it to the Council and Parliament for formal adoption.<sup>9</sup> It follows that any member state that wants to influence forthcoming rules as they are being shaped it would have to be able to carry out similar impact assessments of its own. This is a significant issue and I will come back to it below when I examine the role of persuasion in the various Brussels committees.

**vii. Coordination and identification of national interest**

Coordination among public authorities will be more important than ever. Traditionally, the ministry of foreign affairs is the contact point of a government with other governments and international organisations. After entry into the EU, contacts with EU institutions and national authorities in other member states will increase exponentially.

There are four regular summits of heads of government and state and about 50-60 Council meetings per year attended by ministers. The Council has many committees and about 300 "working parties" of national officials who meet several times a year. The Commission has several hundred "expert groups" made up of national officials and chairs about 250 so-called "comitology" committees of national representatives which are responsible for managing and adjusting implemented regulations. There are literally hundreds of meetings per year.

National ministries in the acceding countries will by necessity have to deal directly with the corresponding services in the EU and other member states. Contact exclusively through their ministries of foreign affairs will become a bottleneck and, therefore, will largely be abandoned. But precisely because there will be so many national authorities involved in EU affairs there will be a great need for coordination. At minimum, coordination would aim to keep everybody concerned informed of what is going on. In addition, coordination will also be needed after new rules are adopted in Brussels in order to monitor their proper implementation within the new member states. But coordination will be found to be

indispensable to iron out domestic policy differences between ministries and arrive at a cohesive national position.<sup>10</sup>

Coordination done at the highest political level, say within cabinets or councils of ministers, should be a measure of last resort. If it is to be effective, it will have to be done largely in one or more dedicated committees at different levels, ministerial or technocratic, to be able to keep up with the load and pace of work in Brussels.

#### *viii. In charge of European affairs*

Coordination will be a full-time job. In view of the fact that that coordination also means forging policy compromises, all EU member states have a political person in charge of European affairs. That person may be a minister or, more often, a deputy minister or state secretary. Most acceding countries have similar political persons in charge of their dealings with the EU. Some do not. They should seriously consider the appointment of a European affairs minister.

#### *ix. Using persuasion to advance national interests*

In an enlarged EU every member will have correspondingly less power than what would be the case with fewer members. Some countries will have minuscule power. Compare, for example, the three votes allocated to Malta or the four of Cyprus against the 29 of Germany or France. Yet, recent research suggests that when the various committees of Community and national officials prepare new EU legislation, they listen to good arguments irrespective of the country of origin of the person who makes them.<sup>11</sup> This has been interpreted as a sign that national officials who participate in these Brussels committees transfer their loyalties to the Community. That may or may not be correct. Another less contentious way to interpret that result is that on a technocratic level conflicting views are resolved on the basis of technical arguments. This is very significant for small countries for the simple reason that their "political" power is virtually non-existent. Their only power is their skill of persuasion.

The UK, for example, one of the more diligent member states in transposing EU laws promptly and enforcing them effectively, is also one of the most active members in influencing new EU rules as they begin taking shape. In order to achieve that, it carries out its own preliminary impact assessment of draft rules. It then uses the results to determine its national position and persuade Commission and national officials in other member states to adjust the draft rules to make them less costly, more efficient, etc. This kind of intervention which aims to improve draft rules also furthers its own national interests.

For the new member states it will also be important to have a sufficient number of their nationals take positions in EU institutions. It is not that the new EU civil servants will somehow and surreptitiously protect the national interests of their home states. Their loyalty will indeed be transferred to the EU. However, they will bring into EU institutions a deeper understanding of the

economic and political systems and social conditions in the new member states.

#### *x. Achieving the right economic conditions to absorb EU funds and exploiting opportunities*

The prospective new members will be net recipients from the EU budget. At least this is the intention during the first three years of EU membership. However, in order to receive funds from Brussels they have to set up the right institutions and procedures. Moreover, in order to maximise the amount they can draw from the EU's structural funds they must release corresponding national funds. This is part of the *acquis*.

What is not part of the *acquis* is where to find that extra national money. The EU does not tell its members how to raise government resources or increase tax revenues. In fact all candidates have a major problem ahead of them. They all have budgetary deficits. This means that, since it is always politically difficult to raise taxes in order to boost tax revenue, they must reduce spending. But by reducing spending they will manage to absorb fewer structural funds because they will not be in a position to match EU money with extra national money.

Under these conditions there is only one alternative left. Public administrations, public programmes and public spending have to become more efficient to economise resources. We see now that in addition to administrative efficiency, national authorities in acceding countries must also achieve spending efficiency in order to maximise, in this case, the financial benefits of EU membership.

In this connection, it is necessary to point out that although the EU, in general, prohibits state aid, it nonetheless allows certain types of aid up to predetermined amounts. This, however, should not be seen as a licence to subsidise industry and regions, even if that is permitted. Surprising, the EU does not require member states to carry out cost-benefit analysis of the aid they grant. They only have to comply with the rules defined by the Commission. But, legal compliance is not the same as spending money prudently and to the maximum effect. So again, if they want to use their resources efficiently, member states have to do something extra that the EU does not require them to do. This is not the case, for example, in structural operations where the EU has much more extensive rules forcing member states to justify their regional programmes and evaluate their results both *ex ante* and *ex post*.

Last but certainly not least, the EU with its extensive networks between member states, its many Community programmes and its huge market offers a wide range of opportunities to both public authorities and the private sector. To public authorities it offers the possibility to learn from and cooperate with their counterparts in other countries.

For the private sector it also opens up many possibilities for cross-border joint ventures and investment and support from EU R&D programmes and SME financing. This is not the place for a full analysis of these opportunities. What is important to understand is that

there is no EU manual on how to exploit such opportunities. This requires planning and strategic preparation and investments both by public authorities and businesses.

## 5. Conclusion

The ten issues identified above have at least one common feature. There is no EU rule that tells member states what they must do. That is why another way to prepare for EU membership is not just to learn all the EU rules, but to look at how other countries have coped with the demands of membership and learn from the successes and failures of their membership.

In essence, preparation for membership requires a sort of risk analysis and market research. With respect to assessing the risks of membership, in addition to ticking off adopted legal acts, the governments of the acceding countries should also identify the things that can go

wrong. They should find out which are their weak points and take preventive action now rather than respond with remedial measures later on. Although it is never too late to carry out this risk analysis, failure to apply and enforce properly EU rules means, at best, that the Commission will eventually haul them before the EU Court of Justice. At worst, they will have failed to enjoy the full benefits of membership and protect adequately their citizens, consumers and environment.

Market research is also a useful tool for increasing the benefits of membership. Indeed, the EU has a huge internal market which offers many opportunities that can be exploited by the alert and nimble member states. Just as companies structure their internal operations so as to improve their market prospects, so should the acceding countries do to improve their prospects within the EU system.

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## NOTES

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<sup>3</sup> See "<http://www.euractiv.com/>", then click "enlargement".

<sup>4</sup> See Phedon Nicolaides, *From Graphite to Diamond: The Importance of Institutional Structure in Establishing Capacity for Effective and Credible Application of EU Rules*, (Maastricht: European Institute of Public Administration, 2002) and Phedon Nicolaides et al., *A Guide to the Enlargement of the European Union (II): A Review of the Process, Negotiations, Policy Reforms and Enforcement Capacity*, (Maastricht: European Institute of Public Administration, 1999). See also the publications of the "capacity-building" project by Phedon Nicolaides on *Enlargement of the EU and Effective Implementation of Community Rules*, (EIPA, 2000); Christoph Demmke and Martin Unfried on *European Environmental Policy*, (EIPA, 2001); Frank Bollen on *Managing EU Structural Funds*, (EIPA, 2000); Pavlos Pazaros on *Effective Implementation of the CAP*, (EIPA, 2001) and Adriaan Schout on *Organisational Analysis of the European Activities of the Ministry of Economic Affairs*, (EIPA, 2000).

<sup>5</sup> For a review of the state of public administrations in the acceding countries see Daniëlle Bossaert and Christoph Demmke, *Civil Services in the Accession States: New Trends and the Impact of European Integration*, (Maastricht: European Institute of Public Administration, 2003).

<sup>6</sup> There is also the issue of opening up employment within public administrations to persons who are nationals of other EU member states. Although under Article 39(4) of the EC Treaty, employment in public administrations may be restricted to own nationals, the European Court of Justice and the

Commission have interpreted that derogation in a narrow manner. Not all jobs in public administrations may be reserved for own nationals. It has been estimated that between 60% and 90% of all civil service jobs may be opened up to persons of other EU nationalities. See Daniëlle Bossaert et al., *Civil Services in the Europe of Fifteen*, (Maastricht: European Institute of Public Administration, 2001) and Christoph Demmke and Uta Linke, *Who's a National and Who's a European: The Legitimacy of Article 39(4)*, *Eipascope*, 2003, No. 2.

<sup>7</sup> For an explanation of the significance of decision-making autonomy and accountability in policy enforcement and regulatory supervision see Phedon Nicolaides, with Arjan Geveke and Anne-Mieke Den Teuling, *Improving Policy Implementation in an Enlarged European Union: National Regulatory Authorities*, (Maastricht: European Institute of Public Administration, 2003).

<sup>8</sup> For a more sceptical view as to whether it is possible to make such distinctions, see Christoph Demmke, *Undefined Boundaries and Grey Areas: The Evolving Interaction between the EU and National Public Services*, *Eipascope*, 2002, No. 2, p.8.

<sup>9</sup> Not all EU law has direct effect. Most directives, for example, need to be "transposed" into the national legal order before they can be legally enforced. However, even when a directive as a whole has to be transposed, some times provisions of the directive may themselves direct effect.

<sup>10</sup> See Commission Communication on Impact Assessment, COM(2002) 276, 5 June 2002.

<sup>11</sup> For an account of the importance, the objectives and methods of coordination see Adriaan Schout and Kees Bastmeijer, *The Next Phase in the Europeanisation of National Ministries*, *Eipascope*, No. 1, 2003.

<sup>12</sup> See Morten Egeberg, Guenther Schaefer and Jarle Trondal, *The Many Faces of EU Committee Governance*, *Advanced Research on the Europeanisation of the Nation State*, Working Paper No. 03/2, University of Oslo, 2003. □

# The Challenge of Being an “Active Observer” Some Experiences from Norway \*<sup>1</sup>



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## Opening reflections

I would like to start by asking “what makes it so special for politicians and civil servants to work at an EU level?” How does it differ from working in other international organisations or in the public sector at home? There are some significant differences. In addition to the working-style, the roles and the interaction between the political and permanent administrative levels are different.

In a well-established democracy there is a clear division of power and distinction of roles between the government, the permanent public administration and the parliament. The government proposes and the parliament decides. Proposals are presented according to internal rules and procedures, and decisions are taken according to the constitution. Time is devoted to evaluating the consequences of different actions and defining the political implications. Here we clearly see the first main difference between EU and national politics: namely, that when working on EU matters Member States face an externally imposed timetable. Only to a limited extent is it possible to influence the tempo, the rules of procedure and the agendas of meetings. Unless, of course, a Member State is in the “lucky” situation of holding the Presidency.

The second specific EU context is the volume of business. It is overwhelming. During the last 10 years, not only has the Treaty been changed three times, but new pillars have been added to the construction and Economic and Monetary Union has become a reality. Efforts have also been made to improve the credibility, efficiency and transparency of the system. Nobody has a total overview of the new challenges facing representatives from the Member States, and available statistical information covers only bits and pieces of this mastodont. At a later stage figures from a Nordic survey<sup>2</sup> will illustrate how bureaucrats in this part of Europe evaluate their daily lives. Just a reminder – Denmark became a Member State 30 years ago, Sweden and Finland in 1995 and Norway is closely linked to the internal market of the EC.

The range of EU activity has increased dramatically and now cuts across ministries and departments in all Member States. In the good old days (meaning before the Single European Act and the White Paper on the Internal Market at the end of the 1980s) it was possible to follow the work without too much effort. It was also possible to foresee to a certain extent the outcome of negotiations in the Council and of European Summit

meetings. Not only have new policy areas been added.

But the Union’s competence goes now deeper and wider. This can seem a paradox, since new methods of creating European law were intended to make it easier and to give more freedom to Member States. The limitations were really only the principles of the Treaty and the spirit of integration. According to the survey referred to later, an remarkable large part of the public sector in the Nordic countries feels it is much more influenced by EU matters<sup>3</sup> than four years before the survey was performed (for example, Sweden 52% and Finland 51%). Sweden and Finland were at that stage (1994) in the same situation as the 10 Acceding Countries are in now.

In broad terms, it is possible to divide the work of the EU into three different phases:

- the Policy Development Phase, where initiatives are taken by the Commission
- the Policy Decision Phase, where decisions are taken by the Council and the European Parliament
- the Policy Implementing Phase, where action is taken by the Commission and/or by the Member States themselves.

Here the Member States, and especially the new ones, face challenges. The keywords are priorities, coordination and building alliances. At the end of the day, the smaller states have exactly the same obligations as the bigger ones. New rules and regulations must be introduced, old ones must be changed and old routines which discriminate on grounds of nationality must be removed.

Already at this stage it becomes clear that the involvement of the public sector in the Member States is essential for the efficient functioning of the EU system.

The next question is, of course, “how do the Member States meet these obligations?” Here we see clear differences between the countries. It would not be correct, or even polite, to judge some countries for not reaching the optimal result in their European engagement. However, when performances are compared, it seems, that some characteristics of the internal decision-making process can be identified. First of all, there has to be a more or less centralised, unitary state structure. This goes both for the political and the administrative structure. Also, when it comes to political culture we can see the benefit of some systems. A consensual policy style, focusing on compromise and where decisions are taken after broad consultation of interest groups, seems

### Phases in the Policy Cycle of the EU

<i>Phase</i>	<i>Institution</i>	<i>Type of Committee</i>	<i>Representatives from Member States<sup>4</sup></i>
<i>1. Policy Development Phase</i>	<i>Commission</i>	<i>Expert</i>	<i>Committees/Experts from the Member States</i>
<i>2. Policy Decision Phase</i>	<i>Parliament</i>	<i>Standing Committees</i>	<i>Members of the European Parliament (MEPs)</i>
	<i>Council</i>	<i>(Council)</i>	<i>(National Ministers)</i>
		<i>COREPER (Permanents Representatives)</i>	<i>Ambassadors/Deputy Ambassadors</i>
		<i>Council Working Groups/parties etc.</i>	<i>Civil Servants from the Members States, Attachés</i>
<i>3. Policy Implementation Phase</i>	<i>Commission</i>	<i>Policy Implementation (Rule Making)</i>	<i>National Representatives</i>
		<i>Policy Application (Programmes and Money)</i>	<i>National Representatives</i>
		<i>Policy Evaluation</i>	<i>National Representatives</i>
<i>Members States implement EC Law – (Regulations, Directives and Decisions) according to national rules</i>			

to oil the machinery. It also helps achieve acceptance at home. Member States' administrative styles also play an important role. In my opinion, greater autonomy of individual ministries, together with a Prime Minister's Office (PMO) which acts as a *primus inter pares*, and an informal, ad hoc attitude towards problem-solving, together with a low degree of competitive behaviour and bureaucracy gives better results than a bureaucratic and strictly formalised system.

#### A Massive Task

The new Member States face formidable challenges<sup>5</sup> and have a massive task in coping with the system. Only two factors will be mentioned here: the work in the committees and the work at home.

Each and every working day a large number of committees convene either in the Justus Lipsius building (the Council and its preparatory committees) or in the Centre Brochette (committees assisting the Commission). Nobody really knows the total number of committees, how they function or how often they meet. A rough estimate indicates<sup>6</sup> that the EU has approximately 2000 committees, of which 2/3 are expert committees and the rest are equally divided between comitology committees and council committees. However, the actual committee meetings are only the tip of the iceberg: preparations, consultations, "coffee-breaks" and exchange of information take a considerable amount of

time outside the formal setting.

Some years ago a joint survey<sup>7</sup> analysed the situation of Nordic bureaucrats working on EU<sup>8</sup> matters. A large number (app. 1.300) of *units*<sup>9</sup> were asked the same questions. The first question was whether the units were "to a great extent" influenced by EU-membership. An average 54% gave a positive answer. This was related to work on the internal market, and suggested that EC matters play a dominant role across central administrations in the northern part of Europe. The figures on Pillars Two and Three were lower. The next question was related to the use of time. Approximately 40%, on average, answered that the unit used "very much" or "much" time on EU matters. Differences between the four countries were limited.

Participants in the survey were also asked a question about contact points: the "Who are the telephone conversations with, where are the e-mails sent and where do the meetings take place?" The survey identified the percentage of units who had contact with EU institutions or participated in committees each month or more often.

The figures<sup>10</sup> tell their own story:

<i>The Commission</i>	<i>Sweden</i>	<i>43%</i>
	<i>Denmark</i>	<i>41%</i>
	<i>Finland</i>	<i>40%</i>
<i>Expert committees</i>	<i>Sweden</i>	<i>31%</i>
	<i>Denmark</i>	<i>22%</i>
	<i>Finland</i>	<i>35%</i>

<i>Comitology committees</i>	<i>Sweden</i>	14%
	<i>Denmark</i>	8%
	<i>Finland</i>	15%
<i>Council/COREPER/CWG</i>	<i>Sweden</i>	24%
	<i>Denmark</i>	22%
	<i>Finland</i>	18%

Informal ways of communication play the dominant role, while formal, written contacts, being the traditional way of communicating in the public sector, play a more limited role for Nordic participants in the European context.

One can often get the impression from bureaucrats in the capitals that the work in Brussels is only a small (and pleasant) part of their work, and from “eurocrats” that the work in the institutions is overwhelming. The truth is, as usual, somewhere in between. Actually the “home-work” – launching new laws or changing old ones – takes exactly the same amount of time as co-ordination and negotiation. Information and contact with NGOs takes slightly less time.

Many of the Member States-in-waiting and my own country, Norway, have a lot in common. We are small countries, with a small civil service of limited capacity. We therefore have to manage the work efficiently. In terms of human resource management this means there is:

- a strong need for highly competent, linguistically skilled and committed civil servants
- a high level of responsibility and independence on the part of the individual civil servant
- a heavy workload for key players in European affairs on account of their participation in many working groups.

The ideal situation is that the country and its representatives speak with one voice. At the end of the day, it is the country as such, being a member, which is solemnly responsible for fulfilling its obligations.

And now to the crucial and difficult question of how to involve the national parliament. A famous Norwegian writer (Henrik Ibsen) said “My task is not to answer, but to question”

There are five questions to be answered:

1. How can the national parliaments and NGOs be more strongly involved in EU<sup>11</sup> matters?
2. How can the national scrutiny system be made more effective?
3. How can a stronger dialogue between EU institutions and the national parliaments be fostered?
4. How can the role of national parliaments be strengthened inside the state legislatures?
5. How can local authorities/NGOs intervene in cases concerning their field of competence? (The competencies of the regions/NGOs in the EU varies considerably)

The involvement of national parliaments, NGOs and representatives of the regions is perhaps the area where differences between Member States most clearly appear.

## Information

All the Member States face the same questions – namely, how to get information and how to treat it. Usually there are no problems related to formal information; it comes like a flood at springtime. The problem is related to informal documents – positions, working papers, drafts, “non-papers”, “room-documents” etc. To understand the situation at any particular stage of the game, it is necessary not only to have formal documentation, but also informal materials. But how can they be obtained? The answer is simply to have a network of contacts. “Today I inform you, tomorrow you inform me”, seems to be the thinking of many professional bureaucrats and lobbyists in the capitals and Brussels (not to forget Luxembourg and Strasbourg).

But what about received information from the institutions concerning EU matters? Can we keep it a secret, hoping nobody find out and starts asking impertinent questions? Here three elements have to be taken into consideration. First of all, one has to accept the tradition of the country. Many, especially northern countries, have a long tradition of letting the public (meaning the press) see nearly all documents circulating in the public sector. This is the political aspect. Secondly, the Union itself decided two years ago (during the Swedish Presidency) to adopt a Regulation on access to information<sup>12</sup> in EU matters, opening the files in the Commission, the Council and the European Parliament. This is the legal aspect. And thirdly, getting information in Brussels is not difficult: it is only a matter of time, energy and having the right contacts.

It takes years (five to seven in the best cases) between an idea being born and the Act being implemented. During this time, national civil servants have changed jobs, there have been elections for both national parliaments and the European Parliament, and you can be sure that the responsible person in the Commission has changed position. Establishing a sustainable national system for securing information is crucial. At every stage of the EU process and at the parallel national level, the status and the positions should be reflected in a “factual document” accessible to everybody involved. This document starts with the phlegmatic statement that the Commission has come up with a good idea, and is completed years later with a document describing the background, the story and the result. At every stage of the process, new information must be added.

## Influence

I understand that it is a goal of many of the Acceding Countries to influence new EU legislation at an early stage. At the same time they must understand that the Union (at this stage meaning the 15) has its own internal agenda and decision-making structure.

The Acceding Countries will in the coming year have defined roles in the 10 organs mentioned in the Treaty. In some cases contact has been established and consultative systems set up. But there are limitations. Giving a country on its way in direct access to all the internal mechanisms of the Union and to all information,

as if it were an ordinary full member, would be in conflict with the basis of the Treaty.

Interest groups (NGOs) will try to make their voice heard in any administration or legislative body and try to gain influence by using more or less valid arguments. Such activities are totally legitimate and will be seen by many as a natural part of the screening process before a decision is taken. Influencing the EU system from outside must obviously be done in a different way from how it is done at national level. First of all the mechanisms for taking decisions are different. Secondly, the structures of power are different from what we are used to on the national level. Both the Economic and Social Committee (ESC) and the Committee of the Regions (CoR) have unique positions in the Union. They are not in the position of taking formal decisions, but gain power because they are the gathering-points of national groups with different agendas. Different points of view can therefore be known at an early stage of the process. The institutions of the Union, especially the Commission, listens to the statements. Often signals are given on what reactions might be expected later from the national level. For national public administrations it is not appropriate to openly nurse close contacts with the groups of the ESC and the CoR – that must be at the discretion of the politicians – but using other channels can be useful.

The situation created by a steadily closer degree of European integration demands more systematic and targeted bilateral contacts on the political level. This is done in different ways. The Nordic countries, since they have over time established well-functioning institutions between themselves, have kept this line of communication open also on EU matters. Many of the Acceding Countries are thinking along the same lines, and are now establishing bilateral contacts with other (both old and new) members of the Union.

Relations between Member States and the Presidency are of crucial importance. But believing that such contacts can be established and influence used at the point when a country takes up its position is erroneous. Planning for the tough half-year period of the Presidency starts early, often one to two years beforehand and it dominates the central administration during the period. From the top political level clear signals are given both on the agenda, ways of working and not least the goals for the period. And all presidencies know that they will be evaluated by the success of their term. External influence toward the Presidency of the Union must be done in a systematic way and at an early stage. A more ad hoc approach during the period seldom creates a change of course or gets new points on the agenda.

It is false to see the Union's decision-making structure as following a straight line. The process has at least two other dimensions – the national one and the processes conducted in political groups. National processes differ from country to country. In some countries the elected national representatives are involved at an early stage, when suggestions are presented by the Commission and forwarded to the Council. In other countries it seems that only after the Council/European Parliament has taken

a decision, is a document sent to the national assembly informing them about what has happened.

### **Co-ordination**

Co-ordination is a key word for the success of a Member State dealing with European matters. Successful co-ordination fosters smooth European policy decision-making and implementation. The purpose of co-ordination is:

- to optimally defend the national interests and
- to strengthen the performance in the EU decision-making process.

It has therefore both an offensive (positive) and a defensive (negative) purpose. In operational terms it can be strategic (aiming at overarching objectives), selective (aiming at a precise result at a specific stage of the policy cycle) or simply procedural (oiling the machinery).

Let me stress that “co-ordination” has a much broader meaning than just calling some colleagues from other ministries for a short meeting a few hours before the plane leaves for Brussels. It is a systematic approach, trying to establish common views, which can be presented in all fora and towards all institutions, independent of which national body is involved.

The main characteristics of the many levels of co-ordination are that it is:

- between ministries at home
- with “other” national actors (national parliaments, regions, lobbies, NGOs)
- with European Parliament, European NGOs and lobbies
- considers the interests of social partners
- a way of interacting with other Member States and the Commission.

Clearly one can see that civil servants are given new roles and that there are increasingly close contacts between civil servants nationally and between the European actors. Co-ordination is a domestic operation, but it functions at the EU level. The purpose is to shape the EU policy agenda with the final goal being to foster a smooth and quick implementation of EU legislation.

Co-ordination is not only about structures and institutions, but also about attitudes. It must be based on a coherent long-term government strategy for the EU, and finally includes a ‘European reflex’ of all officials in all ministries. It is also based on good co-operation between generalists and specialists, between the travellers and those based at home.

Different factors determine the co-ordination approach. The political-administrative structure and the political culture play an important role, as do the traditional administrative style of the country concerned and the size of its civil service.

Many northern countries, including my own, have taken a decentralised approach to the co-ordination of EU affairs. A central point here is the distribution of roles between the different players:

- there is no specially-created co-ordination body,

but there is a consultative co-ordination committee, with one representative from each ministry, which meets at least once a month

- the Ministry of Foreign Affairs (MFA), assisted by the Permanent Representation, has a crucial role in supervising and channelling information between Brussels and the capital
- the responsibility for preparing, deciding on and implementing EU dossiers lies with the competent ministries (often assisted by specialised sub-committees).

Co-ordination systems are shaped to a large extent by the different domestic situations. Variety is still the main feature of national co-ordination systems and there is no trend towards a dominant model. Transposing a system from one country to another is not recommended.

### **A period for trying and failing**

All “newcomers” in the European integration process have been forced to review their administrative routines and capacities. In organisational terms this means establishing flat hierarchies and short communication channels within ministries (and with ministers). When it comes to working style, this has in general become more flexible and pragmatic with a strong focus on co-ordination structures. The new situation is characterised by its ad-hoc and problem-oriented nature. The organisational philosophy is based on the conviction that it is more in the interests of the country to agree on a negotiated solution than to block a national decision unnecessarily by stirring interministerial rivalries.

The interim period is a phase during which a country participates almost as a Member State, but does not carry the heavy burden of taking decisions. In the minds of the politicians and civil servants lies the thought that one day EU membership will become a reality and that the new legal Act decided upon now will be relevant in their home country in the future.

Being an active observer means having full status in all committees, including the right to speak (and suggest), but not to vote. Since formal voting rarely takes place, this is not a crucial point. It is always possible to express one’s standpoint without raising one’s hand.

In this period participants will receive all documents. Not one per week, but hundreds. Europe’s problem is not the volume of paper, but the complexity and the secret codes used to identify the sender, receiver, the status and at which stage the “file” has reached. For the accession countries the interim phase is also a training period. New routines must be established and language skills developed for many thousands of participants. The new routines cover the internal life of a ministry, and relations between ministries and towards the PMO, MFA, the Permanent Representation etc.

In future, negotiators are expected to come up with clear positions and they are expected to have the necessary mandates to negotiate. The aim, together with

their new partners, is to reach a common result. An interim period should ideally be a period for testing, trying and failing these routines. It is therefore a period for learning by doing and, on the home front, for implementing existing legal Acts and participating (observing) in the creation of new ones.

### **Conclusions**

The question “Is there an example of best practice in meeting the European challenge?” has already been answered with a clear NO. There are, however, some general trends.

First, the trend of similarities. All EU Member States have put into place specific mechanisms, processes and bodies for meeting the challenges. The individual ministries have adapted their internal mechanisms, organisations and procedures. At the same time the position of the MFA has been steadily weakened as regards topics on European integration (but not in general or in matters related to Inter Governmental Conferences and Pillars Two and Three). The Ministry for Foreign Affairs and the Permanent Representation are often responsible for maintaining the formal link between the capital and Brussels.

When it comes to differences, it seems clear that there are a variety of interpretations of the words “interaction” and “co-ordination” in the Member States and that the countries have different ambitions and strategies. Also, the operational roles of the MFA ministries vary and no common trend can be found, particularly when it comes to dealing with EU business.

New routines, structures, relations, ways of working and co-ordination systems are shaped to a large extent by the different domestic situations. Transposition of a system from one country to another is not recommended.

In summary, the following five mistakes are often made:

- the workload is underestimated
- players in the game forget there is an externally imposed timetable
- necessary administrative changes come too late and are not adequate
- well functioning internal routines are transposed to work on EU matters
- new relations are not established and lessons from others are not learned (making this a “one-man-show” or inventing the wheel again).

## NOTES

- \* This article is based on a speech given in Cyprus on 9 May 2003.
- <sup>1</sup> Norway has twice been a candidate country, once before the referendum of 25. September 1972 and once before the referendum of 28. November 1994. It is now closely linked to the internal market through the Agreement on the European Economic Area.
- <sup>2</sup> Dated 1998.
- <sup>3</sup> Page 83 in "Europaveje" by Bengt Jacobsen, Per Lægheid & Ove K. Pedersen (red).
- <sup>4</sup> Usually appointed by the Member States after invitation from the Commission or the Council.
- <sup>5</sup> See Dr. Adriaan Schout's and Dr. Kees Bastmeijer's article "The next Phase in the Europeanisation of National Ministries: Preparing EU Dialogues" Eipascope nr. 2003/1.
- <sup>6</sup> "Precooking in the European Union – The World of Expert Groups" by Torbjørn Larsson. An ESO report from Regjeringskansellet, Ministry of Finance in Sweden.
- <sup>7</sup> See page 146 in "EU i forvaltningen" by Ove K. Pedersen, Jurist- og Økonomiforbundets Forlag, København 2002.
- <sup>8</sup> For Norway this means the European Economic Area.
- <sup>9</sup> Meaning office, section or department, but not the Ministry as a whole.
- <sup>10</sup> See page 109 in "Europaveje" by Bengt Jacobsen, Per Lægheid & Ove K. Pedersen (red).
- <sup>11</sup> In Denmark, Folketinget has the ability to formulate its own political positions, while in Sweden, Austria and Finland there is a less binding scrutiny system. In Germany and the Netherlands the parliament is able to give the government a mandate, but rarely does so. On the other hand, the parliaments in France and the UK have no legal ability to change the government's position. In the four southern countries plus Ireland, Luxembourg and Belgium there is limited scrutiny of legislation.
- <sup>12</sup> Regulation (EC) No. 1049/2001 of 30 May 2001. □



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# Le règlement n° 1/2003 permet-il une application cohérente et uniforme des règles de concurrence prévues aux articles 81 et 82 du traité CE?



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## Summary

En décembre 2002, le Conseil a adopté le nouveau règlement (CE) n° 1/2003 relatif à la mise en œuvre des articles 81 et 82 du traité CE. Ce règlement, dont les dispositions seront applicables à partir du 1<sup>er</sup> mai 2004, prévoit trois changements fondamentaux par rapport au régime de notification et d'autorisation en matière d'ententes, instauré par le règlement n° 17/62:

1° Le passage d'un régime d'exemption à un régime dit "d'exception légale", selon lequel tout accord au sens de l'article 81, paragraphe 1, du traité CE, qui satisfait aux conditions du paragraphe 3 de cet article, est à considérer comme valide *ab initio*.

2° La suppression de la compétence exclusive de la Commission dans l'application de l'article 81, paragraphe 3, du traité et l'attribution aux autorités de concurrence et aux juridictions nationales du pouvoir d'appliquer non seulement l'article 81, paragraphe 1, et l'article 82, mais aussi l'article 81, paragraphe 3, du traité CE. 3° Enfin, l'obligation pour les entreprises d'effectuer elles-mêmes une appréciation de la compatibilité de leurs ententes avec le droit communautaire, étant entendu que cette "autoévaluation" pourra être soumise à un contrôle *ex post* par la Commission ou par les autorités de concurrence des Etats membres, le cas échéant, avec le concours des juridictions nationales.

Toutefois, appliquer les règles de concurrence communautaires de manière uniforme et cohérente ne sera pas une tâche aisée au sein d'un système de compétences parallèles. En effet, l'analyse ci-après a permis d'identifier trois problèmes majeurs dont le nouveau règlement ne semble pas tenir suffisamment compte:

- Il n'établit pas de règles claires et objectives pour ce qui concerne la répartition des affaires entre la Commission et les autorités de concurrence nationales, comportant ainsi le risque que les autorités de concurrence de plusieurs Etats membres soient saisies ou se saisissent de la même affaire sur la base de critères différents.
- Pour les entreprises, l'absence de règles de procédures communes et de sanctions harmonisées constitue une source d'insécurité juridique et de *forum shopping*.
- Le règlement impose aux juridictions nationales de nouvelles tâches d'appréciation dans le cadre de l'application de l'article 81, paragraphe 3, du traité que même la Cour de Justice n'a pas considérées comme relevant de sa compétence.

À la fin de l'article est indiquée une série de propositions de mesures d'accompagnement susceptibles de remédier aux problèmes susmentionnés.

## 1. Introduction

Lors de sa session du 16. décembre dernier, le Conseil a adopté un règlement visant à introduire un nouveau système de mise en œuvre des règles de concurrence prévues aux articles 81 et 82 du traité.<sup>1</sup> Les dispositions du règlement, destiné à remplacer l'actuel règlement n° 17/62,<sup>2</sup> seront applicables à partir du 1<sup>er</sup> mai 2004.

Le règlement, qui modifie de manière radicale les conditions de mise en œuvre de la politique de la concurrence, prévoit, en effet, la suppression de la compétence exclusive de la Commission dans l'application de l'article 81, paragraphe 3, du traité et de l'actuel système de notification retenu par le règlement n° 17. De ce fait, les autorités de concurrence des Etats membres et les juridictions nationales pourront également appliquer, à l'avenir, la disposition d'exception à l'interdiction des accords<sup>3</sup> restrictifs de concurrence contenue dans l'article 81, paragraphe 3.

Dans cet article, nous nous proposons d'examiner si, et si oui, dans quelle mesure le régime instauré par le règlement n° 1/2003 permettra, d'une part, d'assurer l'application cohérente et uniforme des règles de con-

currency et, d'autre part, d'éviter aux entreprises agissant de bonne foi de voir leurs accords faire l'objet de recours répétitifs et/ou d'un traitement différent selon les autorités ou juridictions nationales qui interviennent.

## 2. Le régime existant

Il est à rappeler que le corollaire du régime d'autorisation retenu par le règlement n° 17/62 est bien son système de notification préalable, permettant aux entreprises souhaitant obtenir une attestation négative (au regard de l'article 81, paragraphe 1, ou de l'article 82) ou bénéficier d'une exemption conformément à l'article 81, paragraphe 3, du traité CE de notifier leurs accords à la Commission. La notification n'est pas une formalité imposée aux entreprises;<sup>4</sup> or, pour permettre aux intéressés d'invoquer les dispositions de l'article 81, paragraphe 3, du traité, les accords visés à l'article 81, paragraphe 1, doivent être notifiés à la Commission.<sup>5</sup>

Pour les entreprises de bonne foi, le régime de notification a, jusqu'à présent, comporté deux avantages importants: D'une part, elles ont pu se fier à ce que leurs accords soient examinés et traités au regard du droit

communautaire par une seule instance (le principe du "one-stop-shop"); d'autre part, le régime de notification leur a garanti une prévisibilité juridique et, de ce fait, une sécurité juridique considérable.

Certes, les critiques du régime de notification préalable ont fait observer que le nombre de décisions formelles d'exemptions de la Commission, qui peuvent être invoquées devant les tribunaux nationaux, ou relatives à une demande d'attestation négative,<sup>6</sup> est plutôt limité. Ceci est surtout dû au grand nombre d'accords notifiés tous les ans à la Commission. En effet, pour lui permettre d'accélérer le traitement des nombreuses demandes d'attestation négative et/ou d'exemption dont elle est saisie, la Commission a depuis les années 1970 eu recours à un autre type d'instrument, dont l'utilisation n'est pas prévue par le règlement n° 17, à savoir les lettres administratives de classement.

Ainsi, la Commission peut informer les entreprises concernées par une lettre de classement qu'en fonction des éléments dont elle a connaissance, l'entente notifiée ne tombe pas sous le coup de l'interdiction visée à l'article 81, paragraphe 1, (lettre type attestation négative) ou bien qu'elle réunit les conditions d'application de l'article 81, paragraphe 3, du traité (lettre type exemption). Pour la Commission, les lettres de classement ont l'avantage de lui permettre d'accélérer le traitement des demandes d'autorisation qui lui sont soumises à l'examen par les entreprises. Or, pour ces dernières, les lettres administratives présentent, en revanche, l'inconvénient de ne pas lier les juridictions nationales en cas de litige.

C'est ainsi que la Cour de Justice a précisé leur valeur juridique dans une série d'arrêts du 10 juillet 1980. Elles ne constituent ni des décisions d'attestation négative ni des décisions d'application de l'article 81, paragraphe 3, du traité et n'ont par pour effet d'empêcher les juridictions nationales devant lesquelles l'incompatibilité des accords en cause avec l'article 81 du traité est invoquée, de porter, en fonction des éléments dont elles disposent, une appréciation différente sur les accords concernés. Or, si les lettres administratives ne lient pas les juridictions nationales, l'opinion communiquée par la Commission dans ces lettres constitue néanmoins un élément de fait que les juridictions peuvent prendre en compte dans leur examen de la conformité des accords en cause avec les dispositions de l'article 81 du traité.<sup>7</sup>

À première vue, il pourrait donc paraître moins rassurant pour les entreprises que plus de 90 % des cas de notification sont actuellement clôturés de cette manière informelle (par lettre administrative ou classement simple).<sup>8</sup> Il semble cependant que les acteurs économiques ont pu s'accommoder de cette pratique qui, malgré ses défauts, leur a assuré une certaine prévisibilité juridique.

La question qui se pose maintenant est celle de

savoir si le régime mis en place par le règlement n° 1/2003 assurera aux entreprises autant de prévisibilité juridique que celui instauré par le règlement n° 17/62.

### **3. Le règlement n° 1/2003 – Les principes généraux**

Aux termes des premiers considérants du règlement n° 1/2003, le régime de notification et d'exemption instauré par le règlement n° 17/62 n'est plus en mesure de satisfaire aux conditions prévues à l'article 83, paragraphe 2, point b), du traité CE selon lequel la Communauté doit tenir compte de la nécessité, d'une part, d'assurer une surveillance efficace, et, d'autre part, de simplifier dans toute la mesure du possible le contrôle administratif.

Cette référence au double objectif prévu à l'article 83, paragraphe 2, point b), du traité reflète avant tout le souci de la Commission de se libérer de la charge de travail qu'entraîne l'examen du grand nombre de notifications (environ 500) dont elle est saisie par an (et dont la plupart sont innocentes et ne posent aucun problème de concurrence) pour pouvoir en revanche recentrer son activité sur la lutte contre les restrictions les plus graves – et cela par le biais d'une application décentralisée des règles de concurrence communautaires.

Dès lors, le régime d'exemption existant sera remplacé par un système dit "d'exception légale", selon lequel les accords qui satisfont aux conditions de l'article 81, paragraphe 3, seront à considérer comme valides *ab initio*. Il ne sera

### **Le régime d'exemptions existant sera remplacé par un système dit "d'exception légale" comportant la possibilité d'un contrôle *ex post*.**

donc plus nécessaire de notifier les accords à la Commission afin que celle-ci puisse procéder à un contrôle *ex ante* de leur validité. En revanche, les entreprises devront elles-mêmes effectuer une appréciation de la compatibilité de leurs ententes avec le droit communautaire. Toutefois, il appartiendra à la Commission, dont les pouvoirs d'enquêtes viennent d'être renforcés considérablement par le nouveau règlement, et aux autorités de concurrence nationales de veiller à la bonne application du traité au sein d'un réseau de coopération, le cas échéant, avec le concours des juridictions nationales. L'auto-évaluation effectuée par les entreprises est donc soumise à un contrôle *ex post* en cas de besoin.<sup>9</sup>

En outre, le nouveau règlement prévoit la mise à jour, du cadre procédural applicable pour la mise en œuvre des articles 81 et 82 du traité CE par le biais de la codification d'une série de pratiques et de règles qui au fil des ans se sont ajoutées à la réglementation initialement établie par le règlement n° 17/62 et qui, par ailleurs, s'inspirent amplement de la jurisprudence de la Cour et du Tribunal de première instance. Il s'agit notamment des dispositions du règlement n° 1/2003 relatives aux mesures provisoires, les dispositions en matière de prescription et d'accès au dossier<sup>10</sup> ainsi que celles concernant les droits des entreprises dans le cadre de l'exercice par la Commission de ses pouvoirs d'enquête.<sup>11</sup>

Toutefois, compte tenu du but de cet article, nous examinerons ci-après principalement les dispositions du règlement n° 1/2003 qui concernent les compétences des autorités de concurrence et des juridictions nationales ainsi que la répartition de compétences entre ces dernières et la Commission.

#### **4. Dispositions visant à assurer une application uniforme des règles de la concurrence**

Le règlement n° 1/2003 met l'accent sur la nécessité de garantir des conditions de concurrence homogènes pour les entreprises sur le marché intérieur. En effet, l'application par les autorités de concurrence des États membres ou les juridictions nationales du droit national de la concurrence à des accords au sens de l'article 81, paragraphe 1, du traité CE, ne peut pas entraîner l'interdiction de ces accords, s'ils ne sont pas également interdits en vertu du droit communautaire de la concurrence.<sup>12</sup>

Afin d'assurer l'application uniforme des articles 81 et 82 du traité, le nouveau règlement prévoit que la Commission et les autorités de concurrence des États membres forment ensemble un réseau d'autorités publiques appliquant les règles communautaires de concurrence en étroite coopération.<sup>13</sup>

En outre, il y est prévu qu'un mécanisme de coopération sera mise en place entre les juridictions des États membres et la Commission, permettant, en particulier, aux juridictions nationales de s'adresser à la Commission pour obtenir des informations ou des avis au sujet de l'application du droit communautaire de la concurrence. De même, la Commission ainsi que les autorités de concurrence des États membres doivent désormais pouvoir formuler des observations écrites ou orales devant les juridictions lorsqu'il est fait application de l'article 81 ou 82 du traité.<sup>14</sup>

À l'article 16, nous trouvons l'une des dispositions essentielles du nouveau règlement qui prévoit que lorsque les juridictions nationales ou les autorités de concurrence des États membres statuent sur des accords, des décisions ou des pratiques relevant de l'article 81 ou 82 du traité qui font déjà l'objet d'une décision de la Commission, ces premières ne peuvent prendre de décisions qui iraient à l'encontre de la décision adoptée par la Commission.<sup>15</sup> Cette disposition est renforcée par l'article 3 du nouveau règlement qui consacre, au moins de façon implicite, le principe de la primauté du droit communautaire dans le cadre de décisions portant sur des accords susceptibles d'affecter le commerce entre les États membres.<sup>16</sup>

Il est à signaler, par ailleurs, que la Commission maintiendra toujours un rôle prépondérant dans

l'application des articles 81 et 82 du traité. Il ressort, en effet, de l'article 11, paragraphe 6, du règlement n° 1/2003 que les autorités de concurrence des États membres sont dessaisies de leur compétence pour appliquer les articles précités dès l'ouverture par la Commission d'une procédure en vue de l'adoption d'une décision en application du chapitre III du règlement.<sup>17</sup>

En vertu de l'article 10 du règlement, la Commission peut constater par voie de décision que l'article 81 du traité est inapplicable à un accord soit parce que les conditions de l'article 81, paragraphe 1, ne sont pas remplies, soit parce que les conditions de l'article 81, paragraphe 3, sont réunies. Aux termes du considérant 14 du règlement, de telles décisions ont pour but de clarifier le droit et d'en assurer une application cohérente dans la Communauté, en particulier pour ce qui est des nouveaux types d'accords ou des pratiques au sujet desquels la Cour et les services compétents de la Commission ne se sont pas encore prononcés.

Il ressort des travaux préparatoires du règlement que ces décisions dites "positives" ou "décisions constatant

l'absence d'infraction" arrêtées par la Commission diffèrent sensiblement des décisions d'exemption actuelles en vertu de l'article 81, paragraphe 3: Ces dernières créent des droits opposables erga omnes pour la durée de la décision, alors que l'effet juridique d'une décision positive serait plus limité.<sup>18</sup> Cela étant, il s'agira toujours des décisions au sens de l'article 249 du traité CE qui, aux termes de l'article

### **La Commission et les autorités de concurrence des États membres forment ensemble un réseau d'autorités publiques appliquant les règles de concurrence communautaire en étroite coopération.**

16 précité du règlement, lient les autorités de concurrence et les juridictions nationales et pourront, de ce fait, contribuer de manière efficace à l'application uniforme des règles de la concurrence communautaires.

S'agissant des compétences des autorités de concurrence nationales, l'article 5 du règlement précise que celles-ci sont désormais compétentes pour appliquer l'interdiction de l'article 81, paragraphe 1, du traité lorsque les conditions de l'article 81, paragraphe 3, ne sont pas remplies. A cette fin, elles pourront donc, à l'instar de la Commission, agissant d'office ou saisies d'une plainte, adopter toute décision ordonnant la cessation d'une infraction, arrêtant des mesures provisoires, acceptant des engagements ou imposant des amendes, astreintes ou toute autre sanction prévue par leur droit national. En outre, elles pourront – lorsque sur la base des informations dont elles disposent, les conditions d'une interdiction ne sont pas réunies – décider qu'il n'y a pas lieu pour elles d'intervenir. Or, à en juger par le libellé de cet article, elles ne pourront pas prendre une décision formelle constatant l'inapplication de l'article 81, comme le pourra la Commission au titre de l'article 10 précité du règlement.

Quant aux juridictions nationales, l'article 6 du règlement indique qu'elles sont compétentes pour appliquer les articles 81 et 82 du traité. Cela signifie dans la pratique que, lorsque l'interdiction de l'article 81, paragraphe 1, du traité est invoquée devant les tribunaux nationaux, ces derniers sont désormais appelés à déterminer si un accord susceptible d'affecter le commerce entre les États membres est compatible avec le traité ou s'il contient des dispositions anticoncurrentielles et est à considérer, en tout ou en partie, comme nul en vertu de l'article 81, paragraphe 2, du traité.

#### 5. Questions non réglées

Comme il ressort de ce qui précède, le nouveau règlement comporte une série d'articles visant à garantir l'application uniforme des articles 81 et 82 du traité dans un système où la Commission et les autorités de concurrence et juridictions nationales disposent de compétences parallèles.

Toutefois, le règlement nous laisse sans réponse à trois questions essentielles que nous examinons ci-après:

##### a) *Le réseau et la répartition des affaires*

Signalons, à cet égard que le texte du règlement ne nous permet pas de déterminer comment la coopération et la répartition vont s'opérer au sein du réseau des autorités de concurrence, même s'il est à supposer que la Commission, en tant que gardienne du traité, y joue un rôle prépondérant.

Certes, les dispositions prévues à l'article 13 du règlement (dont la teneur est précisée dans son considérant 18) visent à assurer que la même affaire n'est traitée que par une seule autorité, que ce soit la Commission ou l'autorité de concurrence d'un État membre.

Or, le libellé de l'article 13 n'empêche pas que plusieurs autorités nationales se saisissent de la même affaire, sur la base de critères différents. Il en ressort seulement que le fait qu'une autorité traite l'affaire constitue pour les autres autorités un motif suffisant pour ne pas engager une procédure, pour suspendre une procédure, si celle-ci a déjà été engagée, ou pour rejeter une plainte au motif qu'une autorité de concurrence d'un autre État membre a déjà été saisie de l'affaire.

Il est à rappeler à cet égard, que l'article 3 du règlement permet seulement de régler la question du droit applicable dès qu'un accord, une décision d'association d'entreprises ou une pratique concertée

est susceptible d'affecter le commerce entre États membres, c.-à.-d. le droit communautaire de la concurrence, et non pas les droits nationaux de la concurrence. Or, cette disposition ne constitue pas un critère permettant de déterminer l'autorité qui doit être saisie d'une affaire déterminée. Dès lors, ce n'est que lorsque la Commission se saisit d'une affaire en engageant une procédure en vertu de l'article 11, paragraphe 6, du règlement que le respect du principe du "one-stop-shop" est assuré.

Ajoutons que contrairement aux décisions prises par la Commission, les décisions adoptées par les autorités de concurrence nationales n'ont pas d'effet juridique en dehors du territoire de ces autorités et ne lient pas davantage la Commission.<sup>19</sup>

Il convient de signaler, à cet égard, que lors de sa session du 26 novembre 2002, le Conseil "Compétitivité" a décidé d'inscrire à son procès-verbal une déclaration conjointe du Conseil et de la Commission destinée à clarifier le fonctionnement du futur réseau des autorités de concurrence afin d'assurer que les règles de concurrence de la Communauté sont appliquées de manière effective et cohérente.<sup>20</sup> Il est à supposer que cette déclaration commune sera suivie des mesures concrètes dans le cadre de la mise en application du nouveau règlement. Constatons seulement que, à ce jour, la Commission n'a publié aucun projet de mesures en ce sens.

##### b) *Risques de discrimination et de "forum shopping"*<sup>21</sup>

Quelle que soit l'approche retenue en ce qui concerne la répartition des affaires au sein du réseau, elle ne permettra pas de résoudre le problème que comporte pour les entreprises le fait que les décisions des autorités de concurrence nationales soient limitées dans leur effet au territoire de l'État membre de l'autorité ayant adopté la décision. Cette situation, qui – à première vue – semble être justifiée par l'absence d'harmonisation des règles de procédure et de sanctions nationales dans le domaine de concurrence, constitue toutefois une source d'insécurité juridique et de *forum shopping*.

On pourrait s'imaginer par exemple qu'une entreprise, dont la plainte relative à un accord déterminé, pour être non fondée, a été rejetée par l'autorité de concurrence d'un État membre, "tenterait sa chance" une deuxième fois en saisissant l'autorité de concurrence d'un autre État membre au détriment des entreprises ayant conclu l'accord.

## **On peut s'interroger légitimement si dans la pratique les juges nationaux seront en mesure d'appliquer les dispositions d'exemption prévues à l'article 81, paragraphe 3, du traité.**

## **Plusieurs autorités nationales risquent de se saisir de la même affaire sur la base de critères différents.**

Cela nous amène à évoquer un autre problème non réglé, c.-à.-d. les divergences entre les règles de procédures nationales qui, selon toute probabilité, rendront difficile l'application uniforme du droit communautaire dans un premier temps et qui, en tout état de cause, conduiront à une différence de traitement des entreprises et, de ce fait, au forum shopping.

Signalons à cet égard, que le fait même que les conséquences de la nullité d'un accord, notamment en matière de dommages intérêts, ne relèvent pas du droit communautaire, mais sont à apprécier par les tribunaux conformément au droit national,<sup>22</sup> est en soi susceptible de conduire au forum shopping, car le plaignant pourra tenter de former son action en dommages intérêts dans l'État membre dont les règles lui semblent être les plus favorables.

En somme, le risque de forum shopping reste un problème réel auquel par ailleurs – ne l'oublions pas – ni la convention de Bruxelles ni le règlement Bruxelles I semble être en mesure de remédier.<sup>23</sup>

### c) *Les compétences des juges nationaux en matière de concurrence*

Par ailleurs, on peut s'interroger légitimement si dans la pratique les juges nationaux seront en mesure d'appliquer les dispositions d'exemption prévues à l'article 81, paragraphe 3, du traité. À cet égard, il ne suffit pas de constater que les juges nationaux disposent d'ores et déjà d'une certaine expérience quant à l'application de l'interdiction de l'article 81, paragraphe 1, car, comme indiqué par la Cour dans sa jurisprudence antérieure, l'application de l'article 81, paragraphe 3, requiert nécessairement une analyse économique complexe.

En effet, dans le cadre de recours portant sur les décisions de la Commission dans des affaires d'entente, la Cour a considéré qu'il convient de relever, en premier lieu, que l'exercice des pouvoirs de la Commission dans le cadre de l'article 85, paragraphe 3, du traité repose nécessairement sur des appréciations économiques complexes, ce qui implique que le contrôle juridictionnel de ces appréciations doit se limiter, en particulier, à l'examen de la matérialité des faits et des qualifications juridiques que la Commission en déduit.<sup>24</sup> Or, comme les juridictions nationales ne bénéficient pas du privilège de pouvoir fonder leurs décisions sur une analyse économique effectuée par les services de la Commission, se pose donc la question de savoir s'il est matériellement possible pour les juges nationaux d'appliquer pleinement l'article 81, paragraphe 3, du traité CE.

Il convient d'ajouter, à cet égard, que contrairement à la Commission et les juridictions communautaires, les juridictions nationales ne sont probablement pas en mesure de tenir dûment compte des liens de la politique

de concurrence avec d'autres politiques communautaires, et ne peuvent pas davantage assurer la cohérence des objectifs poursuivis dans le domaine de la politique de concurrence avec d'autres objectifs du traité, lorsqu'elles sont appelées à appliquer son article 81, paragraphe 3. Cette tâche ne pourra être assurée convenablement que par la Commission, en tant que gardienne du traité.

En résumé, l'application de l'article 81, paragraphe 3, du traité ne se fera certainement pas sans problèmes pour les juges nationaux qui dans beaucoup de cas se verront obligés de surseoir à statuer pour saisir la Cour d'une demande préjudicielle au titre de l'article 234 du traité.

Certes, l'article 15, paragraphe 3, du règlement permettra à la Commission d'agir en tant que *amicus curiae* dans le cadre des affaires ayant trait à l'application des articles 81 et 82 du traité.<sup>25</sup> Cela étant, il n'est guère certain qu'une telle pratique permet d'éviter une augmentation importante du nombre de questions préjudicielles soumises à la Cour par les juges nationaux – ou encore qu'elle soit le moyen le plus indiqué pour remédier aux problèmes d'engorgement des services de la Commission.

## 6. Propositions

Compte tenu de ces lacunes majeures que présente le nouveau régime "d'exception légale", la mise en place d'un certain nombre de mesures d'accompagnement semble s'imposer.

En premier lieu, il conviendrait d'adopter des dispositions claires concernant l'organisation et le fonctionnement du réseau des autorités de concurrence précité comportant notamment des critères précis applicables à la répartition des affaires entre la Commission et les autorités de concurrence des États membres. On ne pourra guère se contenter de mettre en place un système facultatif de coopération entre les autorités de concurrence (et, le cas échéant, les juridictions) nationales (leur permettant, sur une base volontaire, de procéder à un échange d'informations ou de déferer des plaintes ou des recours aux autorités d'un autre État membre).

Les expériences tirées tant du domaine des ententes que du contrôle des concentrations nous montrent qu'un certain nombre d'États membres actuels ne reconnaissent que difficilement la compétence

de la Commission dans des "cas limites", et ces États membres n'accepteront guère davantage qu'une affaire susceptible d'affecter le commerce sur leur marché national soit traitée par une autorité d'un autre État membre. Il en ira probablement de même pour certains nouveaux États membres qui par orgueil national seront sûrement très attachés à ce que "leurs affaires" soient traitées par leurs propres autorités.

## **L'absence de règles de procédure communes et de sanctions harmonisées constitue une source d'insécurité juridique et de *forum shopping*.**

S'agissant des règles concernant la répartition des affaires entre les autorités de concurrence et les juridictions nationales, il est de la plus grande importance que ces règles comportent des critères clairs et objectifs, et qu'elles soient basées sur des normes quantitatives (telles que celles prévues par le règlement sur le contrôle des fusions et l'accord sur l'Espace économique européen (EEE)) plutôt que sur des critères qualitatifs, étant donné que ces derniers seront toujours susceptibles d'être interprétés différemment ou de faire l'objet de longues tractations entre les différents États membres et la Commission. Ajoutons que l'introduction d'une réglementation claire et nette permettrait de réduire considérablement le risque de forum shopping.

Une solution supplémentaire qui permettrait de lutter efficacement contre le risque de forum shopping consisterait à introduire des sanctions uniformes comme proposées par le Parlement européen<sup>26</sup> et à prévoir à plus long terme une éventuelle harmonisation du droit de concurrence des États membres, y compris notamment les règles de procédure comme l'a suggéré le Comité économique et social.<sup>27</sup>

Parallèlement, il conviendrait d'étudier une autre idée lancée par le Parlement européen qui préconise de concentrer les actions en matière d'ententes dans des tribunaux spécialisés dans tous les États membres en sorte de garantir la sécurité juridique.<sup>28</sup>

L'introduction de nouvelles voies de recours devant une instance supranationale et impartiale semble plus que jamais nécessaire. De même, il conviendrait d'en-

visager la mise en place d'une cour d'appel au niveau communautaire qui serait compétente pour connaître des décisions nationales concernant des ententes relevant du droit communautaire. De cette manière, il serait possible de tenir compte du fait que les entreprises dont les accords ont été interdits par les autorités de concurrence des États membres ou déclarés nuls par les juridictions nationales ne pourront pas recourir contre une décision d'interdiction nationale devant le Tribunal de première instance. Il est vrai que cette situation ne diffère pas de la situation actuelle. Or, il n'en reste pas moins qu'en raison de l'application décentralisée de l'article 81, paragraphe 3, du traité et de la perte pour les entreprises de leur faculté de notifier leurs accords à la Commission (dont les décisions – à la différence de celles de autorités nationales – peuvent être contestées devant le TPI) l'introduction de nouvelles voies de recours devant une instance supranationale et impartiale est devenue plus que jamais nécessaire.

Comme indiqué dans le dernier considérant (considérant 38) du règlement, le fait d'offrir une sécurité juridique aux entreprises dont l'activité est soumise aux règles de concurrence communautaires contribue à promouvoir l'innovation et l'investissement. Or, pour assurer aux entreprises la prévisibilité et la sécurité juridiques requises, il semble que la mise en application des dispositions du règlement n° 1/2003 doit se compléter par la réalisation d'une ou (idéalement) d'une combinaison de l'ensemble des mesures d'accompagnement précitées.

## NOTES

\* Peter I.B. Goldschmidt, Maître de conférences et responsable du développement à l'Institut Européen d'Administration Publique (IEAP), spécialisé notamment dans le domaine du droit communautaire de la concurrence et contrôle des fusions. Ancien avocat auprès de cabinets d'avocats à Copenhague et Bruxelles et ancien administrateur principal au Ministère de l'Industrie et du Commerce, y compris au Conseil de la concurrence danois. Expert national détaché auprès de la DG Concurrence de la Commission européenne (1989-1992).

Jakob Thomsen, historien de formation et titulaire d'un MA en droit européen; ancien conseiller politique au Parlement danois (1985-1989) et au Parlement européen (1989-1997); affecté au service de traduction du Conseil de l'Union européenne depuis 1997. Dans le présent article, l'auteur s'exprime à titre personnel et non pas au nom de son institution.

<sup>1</sup> Règlement (CE) n° 1/2003 du Conseil du 16 décembre 2002 relatif à la mise en œuvre des règles de concurrence prévues aux articles 81 et 82 du traité, JOCE L 1 du 4 janvier 2003, p. 1.

<sup>2</sup> Règlement n° 17 du 6.02.1962, premier règlement d'application des articles 85 et 86 CE, JOCE L 204 du 21.02.1966, p. 204/62, modifié en dernier lieu par le règlement (CE) n° 12167/1999 du 10 juin 1999 (JOCE L 148 du 15.06.1999, p. 5).

<sup>3</sup> Sauf indication contraire, la notion "d'accords" inclut ci-après également les "pratiques concertées" ainsi que les "décisions d'associations d'entreprises" au sens de l'article 81, paragraphe 1 du traité CE.

<sup>4</sup> Voir l'arrêt de la Cour dans les affaires jointes 100-103/80 (Musique Diffusion Française e.a. contre Commission), Rec. 1983, point 93.

<sup>5</sup> Voir l'arrêt de la Cour dans l'affaire 10/69 (Portelange), Rec. 1969, point 11.

<sup>6</sup> La question quant à savoir si (et, le cas échéant, dans quelle mesure) les autorités de concurrence ainsi que les juridictions nationales sont liées par une attestation négative n'a pas été clairement tranchée par la doctrine. Pour Valentine Korah (voir V. Korah "EC Competition Law and Practice", 7th edition, Oxford, 2000, p. 176) ainsi que pour Anne Tercinet (voir A. Tercinet, "Droit européen de la concurrence", Paris, 2000, p. 91) une attestation négative ne lie pas les juridictions nationales ou n'assure aux entreprises qu'une sécurité juridique relative. Or, selon Robert Kovar (voir R. Kovar (dir.) "Code Européen de la Concurrence" Paris, 1993, pp. 31-32), l'attestation négative lie, au moins indirectement, les autorités des États membres, et devrait, en outre, mettre fin à toute incertitude en reconnaissant que l'entente qui en bénéficie ne tombe pas sous le coup des interdictions édictées par les articles 81, paragraphe 1, ou 82. Cette question n'est pas sans importance, étant donné que, selon la Commission, les futures décisions constatant l'absence d'infraction, prévues à l'article 10 du règlement, auront la même valeur juridique que les décisions actuelles d'attestation négative. Voir *infra*, note 23.

<sup>7</sup> Voir les arrêts de la Cour du 10 juillet 1980 dans les affaires jointes 253/78 et 1-3/79 (Giry et Guerlain), point 13, dans

- l'affaire 37/79 (Anne Marty contre Estée Lauder), point 10 et dans l'affaire 99/79 (Lancôme contre Etos), point 10.
- <sup>8</sup> Voir en ce sens le livre blanc de la Commission sur la modernisation des règles d'application des articles 85 et 86 (devenus articles 81 et 82) du traité CE, JOCE C 132 du 12.5.1999, p. 12, point 34.
- <sup>9</sup> Voir les considérants 4, 6 et 7 ainsi que les articles 5 et 6 du règlement.
- <sup>10</sup> Voir notamment les articles 8, 25, 26 et 27 du règlement qui codifient les arrêts de la Cour ou du Tribunal de première instance dans les affaires 792/79 (Camera Care), 53/69 (Sandoz) et T-30/91 (Solvay).
- <sup>11</sup> Voir notamment l'arrêt de la Cour dans les affaires jointes 46/87 et 277/88 (Hoechst), Rec. 1989, p. 2859, points 18 et 19, ainsi que son arrêt récent dans l'affaire C-94/00 (Roquette Frères), point 79 et suivants.
- <sup>12</sup> Voir considérant 8 ainsi que l'article 3 du règlement visant à définir le rapport entre les articles 81 et 82 du traité et les droits nationaux de la concurrence. Il est à rappeler que, dans sa proposition initiale (COM(2000) 582), la Commission avait proposé un libellé plus clair de l'article 3: "Lorsqu'un accord, une décision d'association d'entreprises ou une pratique concertée au sens de l'article 81 du traité ou l'exploitation abusive d'une position dominante au sens de l'article 82, est susceptible d'affecter le commerce entre États membres, *le droit communautaire de la concurrence est applicable à l'exclusion des droits nationaux de la concurrence*"; (italiques ajoutés).
- <sup>13</sup> Voir considérant 15 ainsi que l'article 15 du règlement.
- <sup>14</sup> Voir considérant 21 ainsi que l'article 15 du règlement.
- <sup>15</sup> Cet article codifie la jurisprudence de la Cour de Justice dans l'affaire "Masterfoods", cf. l'arrêt de la Cour du 14 décembre 2000 dans l'affaire C-344/98 (Maasterfoods et HB), point 60.
- <sup>16</sup> Voir en ce sens l'arrêt de la Cour du 13 février 1969 dans l'affaire 14/68 (Walt Wilhelm contre Bundeskartellamt), Rec. 1969, p. 1. Dans cette affaire, la Cour a admis que les autorités nationales peuvent intervenir contre une entente, en application de leur loi interne, même lorsque l'examen de la position de cette entente au regard des règles communautaires est pendant devant la Commission, tout en soulignant que cette mise en œuvre du droit national ne saurait porter préjudice à l'application pleine et uniforme du droit communautaire. Cette jurisprudence a été reprise dans les affaires jointes 253/78 et 1-3/79, Procureur de la République contre Giry et Guerlain (point 15 et suivants).
- <sup>17</sup> Il s'agit des décisions d'interdiction (article 7), des décisions sur les mesures provisoires (article 8), des décisions avec engagements (article 9) et des décisions dites "positives" ou de constatation d'inapplication (telles que prévues à l'article 10).
- <sup>18</sup> Voir l'exposé des motifs de la proposition de la Commission (COM(2000) 582), p. 18-21 ainsi que le livre blanc cité dans la note 8 ci-dessus sur la modernisation des règles d'application des articles 81 et 82 du traité CE, p. 23, point 89, où il est indiqué que "ces décisions seront de nature déclaratoire et auront la même valeur juridique que les décisions actuelles d'attestation négative."
- <sup>19</sup> Voir les commentaires de la Commission concernant l'article 5 du règlement dans l'exposé des motifs relatif à sa proposition initiale (COM(2000) 582, p. 18).
- <sup>20</sup> Voir la communication à la presse publiée suite à la session du Conseil "Compétitivité" (marché intérieur, industrie et recherche) du 26 novembre 2002, p. 25. Un projet de déclaration commune figure dans un rapport sur l'état d'avancement des travaux (doc. n° 8383/1/02) du 27 mai 2002, pp. 66-71, publié au site web du Conseil (<http://register.consilium.eu.int>).
- <sup>21</sup> Forum shopping: en l'occurrence une pratique consistant pour les acteurs économiques à choisir la réglementation nationale qui leur est la plus avantageuse, p.ex. en recherchant la juridiction des États membres où les règles de procédure sont les plus favorables, sur la base de critères tels que les règles de preuve, *la rigidité ou la flexibilité* des autorités nationales, les systèmes de sanctions, ou encore la faculté d'obtenir des dommages et intérêts; v. cet égard notamment l'analyse de Jean-Michel et Jérôme Broche: "La proposition du réformateur du droit communautaire de la concurrence: le principe et les conséquences" in: *Revue du Marché commun et de l'Union européenne*, n° 451, septembre 2001, p. 548 et 550.
- <sup>22</sup> Voir l'arrêt de la Cour du 14 décembre 1983 dans l'affaire 319/82 (Kerpen & Kerpen), Rec. 1983, p. 4173, point 12.
- <sup>23</sup> Voir en ce sens Laurence Idot og Bernard van de Walle de Ghelcke, "Le besoin de sécurité juridique: notifications et exemptions" in: *Cahiers de droit européen*, 2001, n° 1 & 2, pp. 198-199.
- <sup>24</sup> Cf. l'arrêt de la Cour du 13 juillet 1966 dans les affaires jointes 56/64 og 58/64 (Consten & Grundig contre la Commission), Rec. 1966, p. 429. Voir également l'arrêt du Tribunal de première instance du 18 septembre 2001 dans l'affaire T-112/99, Métropole télévision (M6) e.a. contre la Commission, Rec. 2001, p. 2459, point 156.
- <sup>25</sup> Voir le point 4 ci-dessus ainsi que la considération 21 et l'article 15 du règlement.
- <sup>26</sup> JOCE C 72 E du 21.3.2002, p. 305, amendement 4.
- <sup>27</sup> JOCE C 155 du 29.5.2001, p. 78, points 2.10.3 - 2.10.6.
- <sup>28</sup> Voir la résolution du Parlement européen du 18 janvier 2000, JOCE C 304 du 24.10.2000, p. 68. □

# eEurope Awards News Update<sup>1</sup>



**Dr Christine Leitner \***  
Senior Lecturer, EIPA  
**Alexander Heichlinger \*\***  
Lecturer, EIPA



Winners of first-ever eEurope Awards for eHealth announced in presence of 33 ministers  
The 4 Prize winners for the eEurope Awards for eHealth and have been announced at a formal ceremony held in the presence of 33 Ministers and European Commissioners Erkki Liikanen and David Byrne, during the eHealth Conference in Brussels.

As reported in previous EIPA editions, the awards competitions are managed by EIPA within the framework of a contract in with the Commission. The awards were announced by Prof. Dr Gérard Druésne, Director-General of the European Institute of Public Administration – chairman of Awards Committee, and presented to the winners by Commissioners Erkki Liikanen and David Byrne, Costas Stefanis, Greek Minister for Health, and Manolis Stratakis, Greek Deputy Transport and Communications Minister.

The prize winners and runners-up were chosen by an

independent jury, assessing the 42 best practices that had already been selected to exhibit at the conference, by an independent panel of experts.

The Commission foresees a total of four eEurope Awards competitions in 2003-2005, two in eHealth and two in eGovernment, organised with the support of the European Institute of Public Administration in Maastricht (NL). The present competition for the “eEurope Awards in eHealth” was launched through a public Call to identify current best practices in the field. This led to 42 exhibits being selected from 180 applications received.

The present competition for the “eEurope Awards in eHealth” was launched through a public Call to identify current best practices in the field. This led to 42 exhibits being selected from 180 applications received.

Further information on the eEurope Awards may be found at: <http://www.e-europeawards.org/>

## Winners of eHealth Awards

Title	Description	Organisation & Place	Country
EVISAND	Virtual environment for healthcare	Consejería de Salud, Junta de Andalucía, Seville	Spain
SJUNET	National IT infrastructure for healthcare in Sweden	Carelink, Stockholm	Sweden
COHERENCE	Information system for successful hospital restructuring	Georges Pompidou European Hospital (HEGP), Paris	France
NHS Direct	NHS direct on-line website	National Health Service, Southampton	UK

## Honorable Mention given to:

Title	Description	Organisation & Place	Country
MEDCOM	The Danish healthcare network	Danish Centre for Health Telematics, Odense	Denmark
HYGEIANET	Regional health information network of Crete	Venizeleion Regional Hospital, Crete	Greece
SURGETICA	Computer assisted medical interventions & surgeries	TIMC-IMAG (CNRS & UJF), CHU, Grenoble	France
BHC Project	Boario Home Care Project	Salvatore Maugeri Foundation, Pavia	Italy



*eEurope Awards for eHealth: Award winners from Spain, showing the Trophy. EIPA commissioned Artworks with the design of the award and Swarovski with its production.*

## Second eEurope Awards for eGovernment coming up!<sup>1</sup>

### ***Personalised services and improved productivity***

*65 applications representing “the best practices of public administrations in Europe” have been selected for exhibition at the EU’s Ministerial Conference eGovernment 2003, taking place 7-8 July in Villa Erba, Como (Italy).*

Ministers responsible for public administration and for telecommunications from some 40 countries will attend the high level eGovernment conference. The Como ministerial conference is seen as a particularly important event in the calendar of the Italian Presidency.

The best practice cases will provide evidence of the changes that public administrations need to make in their own organisation and in skills of employees in order for eGovernment to deliver its full potential. An exhibition within the conference centre will show examples of the best practices already being implemented in Europe. Exhibits were selected by a panel of independent experts from 357 applications received. Municipal, regional and national administrations from 14 Member States, from 12 Accession Countries, from Switzerland and from Norway responded to the call for exhibits. The conference will culminate with a Ministerial declaration, and the presentation of eEurope Awards to the best of the exhibitors.

As reported in previous EIPA editions, the eEurope 2005 Action Plan identifies a number of key target areas in which services, applications and content should be stimulated. The provision of modern online public services in areas such as eGovernment, eHealth, and eLearning is a key element in this strategy. eEurope aims to build upon existing experiences by identifying and

exploiting good practices, and promoting them as showcases.

A total of four eEurope Awards competitions are foreseen to take place between 2003 and 2005, organised with the support of the European Institute of Public Administration in Maastricht (NL).

The competition for the “eEurope Awards in eGovernment” was launched with a call for applications to identify current best practices in this field. Having now been selected by independent evaluators, the successful applicants are being offered the opportunity to give a demonstration at the upcoming eGovernment conference. The eEurope awards themselves will be presented to the best applications by representatives of the Commission and of the Presidency, in a plenary session of the conference.

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### NOTES

\* Head of eEurope Awards Project Management Secretariat (PMS).

\*\* Deputy Head, European Centre for the Regions, Barcelona.

<sup>1</sup> Please Note that this text is based on press releases from the RAPID Database.

<sup>2</sup> The eEurope Awards team:

*Dr. Christine Leitner*, Senior Lecturer\*;

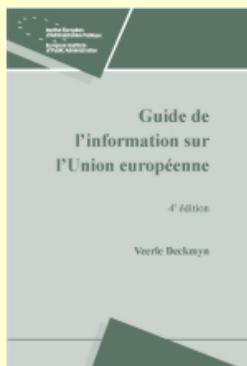
*Alexander Heichlinger*, Lecturer\*\*;

*Morten MeyerhoffNielsen*, Researcher;

*David Huysman*, Student Assistant;

*Niels Karssen*, Student Assistant. □

## *Guide de l'information sur l'Union européenne – 4e édition \**



Le présent guide a pour but d'aider le lecteur à s'orienter dans le dédale des informations publiées par l'Union européenne.

Il est axé sur les informations "primaires" produites par les institutions de l'Union européenne et comprend une section sur les informations en ligne, une décomposition des processus décisionnels avec leurs sources d'information, un guide pour les citations de documents et une liste des points de contact utiles.

Le guide présente un intérêt pour toutes les personnes concernées par les informations relatives à l'Union européenne.

- \* Veerle Deckmyn, EIPA 2003, 77 pages  
ISBN 90-6779-179-2: € 20.00  
Also available in English, German version forthcoming

## *Beyond the Chapter: Enlargement Challenges for CFSP and ESDP \**



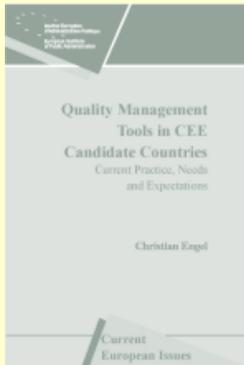
The European Union is about to embark upon an historic enlargement with ten countries due to join soon and more thereafter. The accession process involves the candidates successfully closing a number of chapters. The specific chapter on the Common Foreign and Security Policy (CFSP) was amongst the first to be closed, in part due to the specific intergovernmental nature of CFSP.

As the title suggests, *Beyond the Chapter: Enlargement Challenges for CFSP and ESDP* goes beyond the formal accession process to consider a number of interrelated challenges for the EU Member States and the candidates that will arise as a result of enlargement. The challenges relate to the EU's relations with its "new borders", the institutional adaptations that will be necessary for CFSP to work at 25 (or more), relations with significant third parties (such as Russia and the United States) and organisations (like NATO and the United Nations). In addition, the specific enlargement-related challenges for the European Security and Defence Policy are considered.

It should however be noted that *Beyond the Chapter: Enlargement Challenges for CFSP and ESDP* does not dwell exclusively on the challenges since it is acknowledged that there are many benefits that could arise for CFSP from enlargement.

- \* Simon Duke, EIPA 2003, 111 pages  
ISBN 90-6779-178-4: € 21.00

## Quality Management Tools in CEE Candidate Countries: Current Practice, Needs and Expectations \*



In the ongoing process of building a stable, more efficient and more citizen-oriented public administration, countries in Central and Eastern Europe have, over the past few years, become increasingly interested in promoting and introducing instruments of quality management in the public sector.

This study is a first attempt to analyse this process of promoting quality and the use of quality management tools in the public administrations of CEE countries, focusing on those countries that will join the EU in 2004. It addresses both the strategic approach and the objectives underlying the promotion of quality management tools in CEE candidate countries. It moreover considers the extent to which typical and well-established tools of quality management (ISO 9000 quality systems; EFQM Excellence Model; Common Assessment Framework) have actually been used by public administrations to date, and summarises experiences in this field. The study further explores the impact of the EU accession process on the promotion of quality management in CEE countries.

The main conclusion of the study is that the introduction of quality management in the public administrations of CEE countries is mainly driven by internal factors and is generally closely linked to general administrative reform initiatives and trends. In this regard, EU accession serves as a background and as a reference framework but in practice hardly plays a role in promoting the use of quality management tools. Quality management has been most beneficial where it has provided clear instructions for reform and has served the purpose of designing and managing organisational processes in a more efficient and transparent way; hence the priority given so far to the implementation of ISO 9000 quality systems. By contrast, both the administrative culture and managerial capacity in CEE countries still place hurdles on working with the methodology of organisational self-assessment and improvement.

- \* Christian Engel, EIPA 2003, 104 pages  
ISBN 90-6779-176-8: € 21.00, Only available in English

## eHealth – The Case for eHealth \*



It has been nearly 40 years since the term “computer” made its first appearance in a Medline abstract. Telemedicine was invented shortly thereafter by space and military researchers, as medical informaticists pursued their research separately in university departments.

The Internet seemed to invent patient empowerment and inspired media attention, but dot-com failures dashed our hopes, almost as quickly as they had encouraged them, before and after the turn of the 21st century.

Health systems capture our attention around the world, as they strain to maintain pace with growing demand and limited budget, while eHealth develops quietly behind the scenes.

- What is eHealth in Europe?
- What significant data has been published?
- What has been achieved?
- How many healthcare professionals and citizens are involved?
- Why should policy makers be impatient to move the eHealth agenda forward?

- \* Denise Silber, EIPA 2003, 32 pages  
ISBN 90-6779-180-6
- Free of charge on web
  - For hardcopies, postage costs will be charged

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# MASTER OF EUROPEAN LEGAL STUDIES / MASTER EN ETUDES JURIDIQUES EUROPEENNES

EIPA – Antenna Luxembourg, European Centre for Judges and Lawyers /  
IEAP – Antenne Luxembourg Centre européen de la Magistrature et des professions juridiques

Luxembourg (L), 2003-2005

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EIPA's Antenna Luxembourg, the European Centre for Judges and Lawyers, is offering in co-operation with its Partner Universities (Universities of Nancy 2 and Thessaloniki), a postgraduate programme leading to a Master's Degree in European Legal Studies (MELS).

#### Target group

- Civil servants
- EU Officials
- Lawyers, Judges, Other legal experts
- Professionals, Graduates with interest in EU law

#### Speakers

Academics and practitioners (lawyers, judges and other legal experts from the EU institutions)

#### Programme

- Introduction to the Legal Concepts of European Integration
- EU Information
- The Constitutional and Judicial System of the EU
- Human and Fundamental Rights in and outside the EU
- Fundamental Freedoms and the Internal Market
- Justice and Home Affairs
- Competition Law
- Social Law
- Consumer Law
- EU Private International Law
- Environmental Law
- Law on Intellectual Property
- E-Commerce in EC Law
- External Relations of the EC and the EU
- Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP)

#### Location

Luxembourg

#### Tuition fee

3.000 EUR

#### Working languages

English and French

#### Timetable

Lectures – 10 October 2003 to 26 June 2004 (Friday afternoons and Saturday mornings) Exams – Autumn 2004  
Master thesis – due in January 2005.

L'Antenne de l'IEAP à Luxembourg, le Centre européen de la Magistrature et des professions juridiques, organise en coopération avec ses universités partenaires (Universités de Nancy 2 et de Thessalonique), un programme post-universitaire sanctionné par un Master en études juridiques européennes (M.E.J.E.).

#### Public visé

- Fonctionnaires des Etats membres de l'UE
- Fonctionnaires de l'Union européenne
- Avocats, Juges, Autres juristes
- Professionnels, Diplômés ayant des intérêts dans le droit communautaire.

#### Intervenants

Universitaires et praticiens (avocats, juges et autres juristes des Institutions européennes)

#### Programme

- Introduction aux notions juridiques de l'intégration européenne
- Information européenne
- Le système constitutionnel et judiciaire de l'UE
- Les droits de l'homme et les droits fondamentaux au sein de l'Union européenne et en dehors
- Les libertés fondamentales et le marché intérieur
- Justice et affaires intérieures
- Droit de la concurrence
- Droit social
- Droit de la consommation
- Droit international privé communautaire
- Droit de l'environnement
- Droit de la propriété intellectuelle
- E-commerce en droit communautaire
- Les relations extérieures de la CE et de l'UE
- La Politique étrangère et de sécurité commune (PESC) et la Politique européenne en matière de sécurité et de défense (PESD)

#### Lieu

Luxembourg

#### Droits d'inscription

3.000 euros

#### Langues de travail

anglais et français

#### Duree de la information

Les cours se dérouleront du 10 octobre 2003 au 26 juin 2004 (les vendredis après-midi et les samedis matin), les examens auront lieu en automne 2004, et un mémoire est à remettre en janvier 2005.

#### Information / Renseignements:

Ms Juliette Boussuge, Programme Organiser, EIPA Antenna Luxembourg  
European Centre for Judges and Lawyers / Centre européen de la Magistrature et des professions juridiques  
2, Circuit de la Foire Internationale, L – 1347 LUXEMBOURG  
Tel: +352 426 230 304; Fax: +352 426 237; E-mail: [j.boussuge@eipa.net](mailto:j.boussuge@eipa.net)  
Website: <http://www.eipa.nl>

**Deadline (for applications) / Date limite des candidatures: 12 September 2003 / 12 septembre 2003**

## *Seminar*

# **Long-Term Care: The Challenge for an Ageing Society**

Milan (I)

10-11 July 2003

The European Training Centre for Social Affairs and Public Health (CEFASS), the Milan Antenna of the European Institute of Public Administration (EIPA), is pleased to inform you that it is organising a seminar on long-term care.

### **Background**

The European Commission has in recent years underlined the importance of long-term care (LTC). The number of old and very old people will steadily increase and reach the highest level when the 'baby boom' generation falls within that age range. In the coming years, LTC will be strictly for the elderly, as it is the population group needing longer, if not constant care.

The seminar, which will bring together high-level speakers to discuss current issues, aims to highlight the economic and demographic pressure that the welfare state puts on the EU Member States. As can be seen in recent years, the European Commission attaches great importance to long-term care, and the EU view on the subject will be presented during the seminar by a member of the European Commission. Two case studies on Germany and Denmark – countries with a long history of long-term care but very different systems – will be the starting point for the active involvement of the participants in the discussions.

The seminar is aimed at civil servants and all those involved in managing and designing long-term care at national or local level. To enhance the understanding of the different ways in which long-term care can be provided, the participants will be asked to briefly present their country's experience. In this way, the seminar will offer participants the opportunity to familiarise themselves with the EU context and will provide a good basis for group activity. The participants will be expected to consider and discuss needs and services in the field of long-term care.

### **Objectives of the seminar**

The seminar will give you the possibility to deepen your knowledge of LTC, to learn about LTC provision in other countries and to put your knowledge into practice in your own system, as well as to discuss these and related issues with other participants. The seminar will also be an occasion to meet people involved in your field, helping you to establish connections and network at a broader EU level.

### **Target Group**

The seminar is targeted at people involved in LTC organisation and/or provision (e.g. civil servants, health workers).

The maximum number of participants is 25.

The working language of the seminar will be English.

For further information and registration forms, please contact:

*Mr Michele Faldi, Coordinator, EIPA Antenna Milan*

*European Training Centre for Social Affairs and Public Health Care, CEFASS*

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*Tel.: +39 02 4390 861; Fax: +39 02 4331 7822*

*E-mail: [m.faldi@eipa-it.com](mailto:m.faldi@eipa-it.com)*

Website: <http://www.eipa.nl>

*Practitioners' Seminar*

## **Implementing INTERREG III: The Do's and Don'ts**

Maastricht (NL)  
4-5 September 2003

The aim of this seminar is to analyse the managerial requirements of INTERREG III and to discuss practical examples of the three strands of INTERREG III.

The seminar will bring together regional, national and Community senior officials in order to address important issues such as:

- Management structures and procedures;
- Financial management and control;
- Cross-border impact at programme and project level;
- Public procurement rules;
- Managing INTERREG / PHARE CBC programmes;
- Best practice in project selection.

Emphasis will be placed on the presentation of concrete cases, a rigorous analysis and the informal exchange of information and experience.

For more information and registration forms, please contact:

*Ms Lisette Borghans, Programme Organiser, EIPA*

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Website: <http://www.eipa.nl>

**The Mutual Recognition of Diplomas**  
A quest for a more effective/efficient operation

**Die gegenseitige Anerkennung von Berufsabschlüssen**  
*Auf der Suche nach einer effizienteren Vorgehensweise*

Maastricht (NL), 8-10 September 2003 / 8.-10. September 2003  
24-26 November 2003 / 24.-26. November 2003

This colloquium is the next in EIPA's successful series of colloquia on the issue of recognising foreign diplomas and qualifications, which even after 10 years of internal market is still a problematic area for the free movement of professionals and professional services. In the colloquium, at 8-10 September 2003 the situation in the architects' profession as well as in crafts and trades will be examined more closely. In the colloquium at 24-26 November 2003, the situation in the teaching and paramedic professions will be examined more closely.

The event aims to review and improve the understanding of the Community framework of the recognition of diplomas and to address the remaining problems in the application of this system by bringing together experts and practitioners. It will provide an opportunity for officials and professionals who deal with this subject on a daily basis to meet and to discuss the operation of the various national systems. The approaches and systems used by Member States will be reviewed and the upcoming reforms, such as the proposed new European directive in this field, will be discussed. Through this comparative review ideas can be developed to improve the system used, also making it possible to eliminate remaining problems in a pragmatic and unbureaucratic manner. There will be ample opportunity to exchange experiences and discuss ideas. Discussions will focus mainly on the European system and the national actions taken to implement it as well as on the practical steps that can be taken to make the system run more smoothly and efficiently. These discussions will involve officials who manage the respective systems. It will thus be the perfect occasion to seek clarifications and discuss ideas on improvements, as well as an opportunity for 'troubleshooting'.

This colloquium is designed to address the needs of a wide spectrum of officials, professionals and other interested persons, although it is primarily aimed at officials who are involved in the process of recognition of foreign diplomas and qualifications. Furthermore, the colloquium will also be useful to policy makers and advisers on EU issues, academics lecturing in EU law and policies and, of course, to those responsible for granting diplomas and developing the corresponding curricula.

The working languages of this seminar will be English and German (simultaneous interpretation will be provided).

*Dieses Kolloquium ist die neueste Ausgabe in der erfolgreichen Serie von Kolloquien des EIPA über die Anerkennung ausländischer Diplome und Berufsabschlüsse, einem auch nach 10 Jahren des Binnenmarktes problematischen Feld für die Freizügigkeit von Personen und den freien Dienstleistungsverkehr. In dem Kolloquium am 8.-10. September 2003, wird die Lage in den Berufen der Architekten sowie des Handwerks näher beleuchtet. In dem Kolloquium am 24.-26. November 2003, wird die Lage der Lehrer sowie die Lage in den paramedizinischen Berufen näher beleuchtet.*

*Ziel des Kolloquiums ist eine Verbesserung des Verständnisses und der Handhabung des EU-Systems zur Anerkennung von Diplomen und Berufsabschlüssen sowie die Lösung bestehender Probleme bei der Anwendung dieses Systems. Das Kolloquium bietet eine Gelegenheit für Beamte und alle diejenigen, die täglich mit dieser Materie befasst sind, sich zu treffen, die unterschiedlichen Wege, die die Staaten eingeschlagen haben, kennen zu lernen und ihre Arbeitsweise vergleichend zu erörtern. Die von den Mitgliedstaaten verwendeten Systeme und Methoden und die anstehenden Reformen, wie zum Beispiel der Vorschlag für eine neue europäische Richtlinie, werden ebenfalls behandelt. Erreicht werden soll die Zielsetzung des Kolloquiums durch einen intensiven Austausch von Erfahrungen und Ideen, die in mehreren Ländern entstanden sind. Durch das Zusammenbringen von Experten und Betroffenen können die verbleibenden Probleme beleuchtet und in der Folge durch praktische Maßnahmen verringert werden. Durch diesen vergleichenden Über- und Rückblick können Ideen zur Verbesserung des Systems entwickelt sowie verbleibende Probleme durch pragmatische und unbürokratische Schritte aus der Welt geschafft werden. Besonderes Augenmerk gilt dem europäischen System und den nationalen Maßnahmen, um dieses umzusetzen, sowie den praktischen Schritten, das System zu erleichtern und effizienter zu gestalten. Die Diskussionen werden mit Beamten geführt, die die entsprechenden Systeme verwalten, und das Kolloquium ist daher eine ideale Möglichkeit, um Klärungen zu erhalten, Verbesserungsvorschläge zu erörtern sowie generell Problem-beseitigung zu betreiben.*

*Das Kolloquium richtet sich dementsprechend an ein weites Spektrum von Personen: Beamte, Berufsberater und andere interessierte Kreise, die sich mit der Anerkennung ausländischer Abschlüsse befassen. Es ist darüber hinaus für Entscheidungsträger und Berater in EU-Angelegenheiten, Spezialisten und Dozenten auf dem Gebiet des EU-Rechts und natürlich diejenigen, die Diplome ausstellen und Lehrpläne erstellen, nützlich.*

*Die Arbeitssprachen sind Deutsch und Englisch. (Eine Simultanübersetzung wird zur Verfügung stehen.)*

For more information and registration forms, please contact /  
Zum Erhalt weiterer Informationen und von Anmeldeformularen wenden Sie sich bitte an:

Ms Lisette Borghans, Programme Organiser, EIPA  
EIPA, P.O. Box 1229, NL – 6201 BE MAASTRICHT

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Website: <http://www.eipa.nl>

*Workshop to prepare for the*

# **Concours of the European Institutions: Main Developments in European Integration and Community Policies**

Maastricht (NL)  
8-12 September 2003

The European Institute of Public Administration (EIPA) will hold a five-day activity in preparation for multiple-choice questions of the pre-selection test of the *Concours for the European Institutions on Main Developments in European Integration and Community Policies*, at the institute's premises in Maastricht, the Netherlands, on 8-12 September 2003.

## **Objectives**

The activity is designed primarily to help prepare candidates for the Concours for the European Institutions. Alternatively, the course can be treated as a comprehensive overview of the European Union, its institutions, developments and policies for anyone interested in updating their knowledge of the EU. The course is open to all interested.

## **Methodology and structure**

The course will be conducted by EIPA's scientific staff who have prior experience in conducting such preparation and who are specialists in the relevant fields covered. The course will consist of lectures and discussion as well as mock Multiple Choice Question tests, background reading material, relevant websites, factsheets on the main topics, as well as references for further reading.

Prior to the commencement of the activity participants will receive background readings. During the activity itself, participants will sit multiple-choice question (MCQ) tests in each of the general and specialised areas. The specially developed MCQs will help participants assess their areas of weakness and strength. Participants will also receive detailed lectures in each of the areas listed below from EIPA specialists. Following each lecture participants will receive references for further reading.

Areas covered include:

- History
- Internal Market
- Trade & External Economic Relations
- Common Agricultural Policy
- Institutions
- Justice and Home Affairs
- Environmental Policy
- CFSP
- Community Policies
- Decision-making

The seminar will be conducted in English.

For more information and registration forms, please contact:

*Ms Sonja van de Pol, Programme Organiser, 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](mailto:s.vandepol@eipa-nl.com)*

Website: <http://www.eipa.nl>

*Workshop*

# **The Enforcement of European Anti-Trust Rules**

Maastricht (NL)  
15-16 September 2003

## **Background**

The competition policy of the European Union is in a state of flux. In order to improve the implementation of the policy, especially in view of the impending enlargement of the European Union, the Council has recently adopted Regulation 1/2003 on the implementation of Articles 81 and 82 (Community anti-trust provisions).

The new Regulation will confer greater responsibility for enforcement on national authorities and national courts. More specifically, national authorities and courts will for the first time be able to consider whether an agreement between undertakings could benefit from the exception provided for in Article 81(3).

This “decentralisation” of enforcement, together with the fact that the assessment of the applicability of Article 81(3) requires considerable economic as well as legal analysis, has led to expressions of concern about potentially uneven enforcement by national authorities and possible “forum shopping” by companies seeking to challenge their competitors’ agreements in Member States that are perceived to be stricter than others. Questions have also been raised with regard to the capacity of national courts to perform the requisite economic analysis.

## **Purpose of the workshop**

The workshop aims primarily to provide a thorough analysis of how Articles 81 and 82 are applied. In addition, it will consider the views of the Commission on the kind of cooperation procedures that will be needed in an enlarged European Union. Little is known yet as to the precise nature of a future Community system of cooperation that will be necessary to ensure effective enforcement of the new Regulation.

## **Speakers**

The speakers are from different backgrounds so as to provide a variety of views and perspectives, and include Commission officials, practitioners and academics. Each speaker will prepare comprehensive documentation for distribution to the participants.

## **Participant profile**

The workshop will benefit national officials in competition authorities and in ministries working on competition-related issues, judges dealing with competition cases, and company executives.

## **Organisers and venue**

The workshop will take place at the conference facilities of EIPA in Maastricht, the Netherlands.

For more information and registration forms, please contact:

*Ms Sonja van de Pol, Programme Organiser, EIPA*  
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*Tel.: +31 43 3296 371; Fax: +31 43 3296 296*  
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Website: <http://www.eipa.nl>

*Seminar*

## **Committees and Comitology in the Political Process of the European Community**

Maastricht (NL)  
16-18 September 2003

Committees play a significant role in the various phases of the political process in the European Community. They participate in designing, deciding and implementing EC policy: expert or advisory committees help the Commission in the process of drafting legislation; Council working parties or committees prepare decisions of the ministers; and in the process of implementation, so-called 'Comitology' committees supervise the implementation of EC law.

The seminar is designed to help civil servants from the Member States and the Community institutions to gain a better understanding of the role these committees play in the policy process both from a theoretical and from a practical point of view. In the first part of the seminar a typology of committees – based on their function in decision-making – will be developed, followed by simulations and case studies of the various types of committees designed to illustrate the role they play in the policy process and the way they operate.

Particular emphasis will be placed on the new rules for Comitology committees as laid down by Council Decision 1999/468 of June 1999.

The combination of theoretical discussions and interactive learning will give participants the opportunity to improve their theoretical and practical knowledge of the work of committees in all aspects of Community policy-making and implementation

The seminar will be conducted in English.

For more information and registration forms, please contact:

*Ms Belinda Vetter, Programme Organiser, EIPA*

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Website: <http://www.eipa.nl>

## *Seminar*

# **The Presidency Challenge**

## **The Practicalities of Chairing Council Working Groups**

Maastricht (NL)  
18-19 September 2003

The European Institute of Public Administration (EIPA) in Maastricht (NL) is pleased to inform you that it is organising a seminar entitled "The Presidency Challenge". This seminar will take place in Maastricht on 18-19 September 2003.

### **Objective**

The Presidency plays a central role in managing the formulation of Council decisions. A successful Presidency depends in particular on the abilities of the working party chairmen and their teams to ensure momentum and achieve results in a complex multinational arena.

The objective of the programme is to discuss and analyse the role of chairmen and national delegates as well as the practical details involved in managing Council working parties. Moreover, it discusses the relationship between the Presidency and the institutions and provides a forum for debate on the context and preparation of the Presidency.

Finally, it offers an opportunity to participants to discuss their future work with each other, with representatives from the EU institutions and with officials who have had recent experience in chairing working parties. The seminar is deliberately interactive and consists of a mixture of simulations, workshops, case studies and lectures.

### **Target Group**

The programme is aimed at Member States that will chair the Council in the run-up to 2006. These are Ireland, the Netherlands, Luxembourg, United Kingdom and Austria. We will try to balance the number of participants from the different Member States. To ensure an interactive working environment we have limited the number of participants to 25.

Ideally, participants will be future working party chairpersons, members of the teams of chairpersons and national delegates. The focus of the seminar is on the first Pillar.

The working language of the seminar will be English.

For further information and registration forms, please contact:

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Website: <http://www.eipa.nl>

## *Seminar*

# **The Strategic Environmental Impact Assessment Directive (2001/42/EC)**

Barcelona (E)

18-19 September 2003

### **Introduction**

*On the way to 2004*

Member States and regions are currently busy with the implementation of Directive 2001/42/EC on the environmental impact assessment of plans and programmes. They will adapt existing and adopt new internal rules so as to comply with this Directive before 21 July 2004. The seminar will discuss the quality of the Directive against the background of the implementation activities in several Member States where guidance documents have already been developed, as well as the work of the European guidance group which has been drafting a document to provide a framework for the national activities.

### **Content**

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive) aims to achieve greater integration of the environmental in sectorial policies – a fundamental objective of the Treaty of Amsterdam – whilst exacting a minimum assessment of the plans and programmes that are likely to have an environmental impact before they are approved.

### **Target Group**

The seminar will bring together officials from the EU Member States and the candidate countries to discuss the individual challenges at national and regional level. Presentations on national practices will be followed by intensive workshops in order to exchange experiences.

### **Topics**

The seminar will focus on some of the challenges of the implementation exercise such as for instance devising objectives for SEA, screening, consideration of alternatives, the link to other plan and programmes, monitoring of the process and public participation.

### **Working language**

The seminar will be held in English and Spanish.

For further information and registration form, please contact:  
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*Introductory & Practitioners' Seminar*

# European Public Procurement Rules, Policy and Practice

Maastricht (NL)  
22, 23 and 24 September 2003

The European Institute of Public Administration is organising a 3-day *Introductory & Practitioners' Seminar* on "European Public Procurement Rules, Policy and Practice" which will take place at the European Institute of Public Administration in Maastricht (NL), on 22, 23 and 24 September 2003.

### **Objectives**

The prime aim of this combined *Introductory & Practitioners' Seminar* is to present and explain the EC directives on public procurement in a simple and accessible way and to enhance awareness of professional procurement practices so as to increase the efficiency of the procurement process in a manner consistent with EC rules and principles. The seminar will also update participants on the legislative reforms, and specific exercises and cases concerning actual procurement practice will be examined. Most importantly, the seminar will offer an excellent opportunity for participants to exchange experiences and concerns in dealing with public procurement, and will present ways to perfect their purchasing activities.

### **Target Group**

The seminar is intended for public officials from national, subnational and local authorities and other public bodies of the EU Member States and associated countries who wish to familiarise themselves with European public procurement rules, policy and practice, as well as for other interested persons working in this field.

### **Contents**

- European Public Procurement in the Context of the Internal Market and Enlargement
- EC Rules and Case Law
- Reforming the European Public Procurement System
- *Working Groups*: European Procurement Rules
- The Procurement Process
- Reforming Public Procurement Practice: A Case Study
- Practical Exercise on Bid Evaluation
- International Aspects of European Public Procurement
- The Procurement Process: Cases and Exercises
- Sources of Information and Discussion/Questions on European Rules, Policy, Practice

The seminar will be conducted in English.

**For background information on public procurement in Europe and  
EIPA activities related to public procurement, please consult:  
<http://www.eipa-nl.com/public/topics/topicsmenu.htm>**

or contact:

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Website: <http://www.eipa.nl>

## *Workshop*

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

Maastricht (NL)  
23-24 October 2003

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 23-24 October 2003.

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 public authorities 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. Main 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. EIPA also presents information on national procedures concerning state aid. This information is continually updated after each seminar.

The workshop uses a mixture of training tools such as lectures, cases analysis and working groups. It emphasises the acquisition of knowledge which is immediately relevant to the work of officials dealing with state aid.

The target group 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 this kinds of professional training 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 seminars of the Institute in the broader area of competition policy.

The working language of the Workshop will be English.

For more information and registration forms, please contact:

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Website: <http://www.eipa.nl>

## Understanding Decision-Making in the European Union: Principles, Procedures, Practice

### *Comprendre le processus décisionnel de l'Union européenne: Principes, procédures et pratique*

Maastricht (NL), 25-26 September 2003, 27-28 November 2003 /  
*les 25 et 26 septembre 2003, les 27 et 28 novembre 2003*

The European Union encompasses cooperation in an ever greater number of policy areas. This cooperation is taking place in an ever greater number of different ways, and involves more and more different actors. To understand EU decision-making processes, one cannot only think of a "Community method" in some fields and "intergovernmentalism" elsewhere, nor limit attention to European law. The "open method of coordination" and other forms of soft law are increasingly employed in the social sphere. At the same time, the Union is consolidating cooperation in Justice and Home Affairs and rapidly developing new external capabilities through the common European Security and Defence Policy. In this context, it is increasingly difficult as well as important to be aware of how European cooperation works in the different fields.

These two-day seminars are intended for all those interested in obtaining a broader understanding not only of how the European Institutions are evolving but also of how different types of policy are now being managed. They will be particularly useful for junior public officials and representatives of organisations involved in European programmes, who will be helped to develop rapidly in their specialisation while having a good feel for the bigger picture.

The courses start by presenting the functioning of the European institutions and their interaction in the classic policy cycle, which remains an essential starting point for understanding the Union. The sessions on decision-making in the Community legislative process include a simulation of a Council working party and a case study illustrating the operation of the co-decision procedure, as well as a practical guide to EU documentation on line. Some of the new methods of cooperation will then be examined. Finally, the evolution and operation of the Second and Third Pillars will be examined, including a case study on the European Union's crisis-management capabilities.

*La coopération au sein de l'Union européenne touche des domaines de plus en plus nombreux. Réunissant des acteurs très différents, cette coopération se traduit aujourd'hui sous diverses formes. Pour bien comprendre les processus décisionnels européens, on ne peut se contenter de considérer la "méthode communautaire" dans certains domaines et la "méthode intergouvernementale" dans d'autres, ni limiter son attention au droit européen. On voit émerger la "méthode ouverte de coordination" et d'autres formes de droit non contraignant sur le terrain social. Dans le même temps, l'Union est en train de consolider la coopération dans les domaines de la justice et des affaires intérieures et de développer rapidement de nouvelles capacités externes à travers la politique européenne commune en matière de sécurité et de défense. Dans ce contexte, il s'avère donc de plus en plus difficile mais nécessaire d'appréhender le fonctionnement de la coopération européenne dans les différentes sphères.*

*Ces séminaires de deux jours s'adressent à tous ceux qui veulent acquérir une meilleure compréhension des institutions européennes et de leur évolution, et de la façon dont les différentes politiques communautaires sont gérées à l'heure actuelle. Ils seront particulièrement enrichissants pour les jeunes fonctionnaires et représentants d'organisations participant à des programmes européens, qui pourront ainsi bénéficier d'un soutien pour évoluer rapidement dans leur domaine de spécialisation tout en disposant d'une vision plus large.*

*Les séminaires débiteront par une présentation des institutions européennes et de leur interaction dans le cycle politique classique, point de départ essentiel pour comprendre l'Union. Les sessions consacrées à la prise de décisions dans le processus législatif communautaire comporteront une simulation d'une réunion d'un groupe de travail du Conseil, une étude de cas illustrant le fonctionnement de la procédure de codécision, de même qu'un guide pratique de la documentation européenne en ligne. L'on examinera également certaines nouvelles méthodes de coopération. Enfin, les séminaires s'intéresseront à l'évolution et au fonctionnement du deuxième et du troisième pilier, notamment à partir d'une étude de cas sur les capacités européennes de gestion des crises.*

The seminars will be held in English with simultaneous translation in French.

*Les séminaires se tiendront en anglais, avec traduction simultanée en français.*

For more information and registration forms, please contact /  
*Pour toute demande d'information ou inscription, adressez-vous à :*

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*Seminar*

## **Family Law in Europe: Is there Strength in Diversity?**

Antenna Luxembourg of the  
European Institute of Public Administration  
European Centre for Judges and Lawyers

Luxembourg (L)  
29-30 September 2003

### **Objective**

The purpose of this seminar is to provide a forum in which to discuss the status of, and recent developments in, family law in Europe. The evolution of society's – and thus the law's – recognition of the growing number of 'non-traditional' relationships and families will be addressed, as will the significance of family law to the functioning of the Internal Market (e.g. – with respect to the free movement of persons, and provisions with respect to social law and policy). This will be done through a review of European, national and international laws and jurisprudence, including that of the European Court of Human Rights and well as the European Court of Justice.

### **Method**

The seminar will be conducted through an assembly of panels, which will address various aspects of family law in Europe: rights and obligations arising out of marital and non-marital relations, the consequences of dissolution of such relationships, legal rights of – and responsibilities towards – children, and the role of private versus public law in this area. The panelists will discuss these issues among themselves as well as in a general discussion with the participants.

### **Target Group**

Judges, lawyers, civil servants (from Member States and EU institutions), academics, and persons working in the area of family law and individual rights.

### **Price**

650 EUR

For more information, please contact:

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## Making the Internal Market Work

Procedures to deal with queries, applications and complaints, and the use of administrative cooperation between authorities to avoid liability

### *Assurer le fonctionnement du marché intérieur*

*Les procédures destinées à gérer les demandes et les plaintes, et le recours à la coopération administrative entre les autorités pour éviter la responsabilité*

## Den Binnenmarkt zum Funktionieren bringen

Verfahren zur Behandlung von Anfragen, Anträgen und Beschwerden und die Nutzung von Verwaltungskooperation zur Vermeidung von Schadensersatzansprüchen

Maastricht (NL), 29-30 September 2003 / les 29 et 30 septembre 2003 / 29./30. September 2003

This seminar will examine the various steps taken to facilitate the work of national officials when they have to take the EU into account and where administrative cooperation between corresponding authorities across national borders is desirable. After all, similar issues and problems have probably already arisen elsewhere and it is useful to avoid mistakes that others have already made. Also, if information from abroad can clarify matters, decisions can be taken with greater confidence. In this way, errors in the implementation of EU law can be avoided, which should be of great interest to any authority: following the ruling in the *Francovich* case, it should be clear to all authorities, be they national, regional or local, that the European Court of Justice requires them to pay for any damage they or their officials cause through errors in applying EU law – even if this occurs by accident or oversight. Practical measures to tackle all these aspects will be presented and examined from all sides, with representatives of the private sector (business and consumer organisations) presenting their needs and wishes regarding such cooperation procedures. It is thus the perfect occasion to seek clarifications and discuss ideas on improvements, as well as an opportunity for “troubleshooting”.

The seminar is designed to address the needs of a wide spectrum of officials, professionals and other interested persons, although it is primarily aimed at officials involved in the establishment and management of the abovementioned procedures and cooperation. The seminar will also be useful for policy makers, advisers on EU issues and academics lecturing in EU law and policies.

The working languages of this seminar will be English and German (simultaneous interpretation will be provided). French will be added should there be sufficient demand.

*Ce séminaire vise à examiner les différentes démarches adoptées pour faciliter le travail des fonctionnaires nationaux lorsqu'ils doivent intégrer la dimension européenne dans leurs activités et qu'une coopération s'avère très utile entre les autorités correspondantes au-delà des frontières nationales. Il est probable que des questions et problèmes de même nature aient déjà été traités ailleurs. D'où l'importance de coopérer pour ne pas commettre les erreurs que d'autres ont déjà commises. Grâce aux informations obtenues de l'étranger, on peut également clarifier certains points et prendre des décisions en toute connaissance de cause. Ainsi cette démarche permet d'éviter des erreurs dans l'application du droit communautaire. Ceci s'adresse tout particulièrement aux administrations : selon la jurisprudence de la Cour dans l'affaire Francovich, les autorités à tous les niveaux (national, régional ou local) ont l'obligation de verser un dédommagement pour les préjudices qu'elles ont elles-mêmes causés, ou leurs fonctionnaires, par des erreurs dans l'application du droit communautaire – que ce soit par inadvertance ou par négligence. Un certain nombre de mesures pratiques seront présentées et analysées sous différentes perspectives, notamment avec des représentants du secteur privé (entreprises et associations de consommateurs) qui feront part de leurs besoins et souhaits quant aux procédures de coopération. Ce sera par conséquent une excellente occasion d'obtenir des précisions, d'échanger des idées sur les possibilités d'amélioration et de trouver des solutions aux problèmes.*

*Ce séminaire est conçu de manière à répondre aux besoins d'un large éventail de participants. S'il s'adresse avant tout aux fonctionnaires impliqués dans la mise en place et la gestion des procédures de coopération dans ce domaine, il est également destiné aux fonctionnaires, professionnels et autres personnes intéressées. Par ailleurs, il sera aussi d'un grand intérêt pour les décideurs et les conseillers en affaires européennes, de même que pour les universitaires qui enseignent le droit et les politiques communautaires.*

*Le séminaire se déroulera en anglais et allemand (avec traduction simultanée). La traduction en français sera également assurée si la demande est suffisante.*

Dieses Seminar untersucht die verschiedenen Schritte, die ergriffen wurden, um die Arbeit von nationalen öffentlich Bediensteten zu erleichtern, wenn diese die Europäische Union in ihrer Arbeit berücksichtigen müssen oder eine enge Verwaltungskooperation zwischen sich entsprechenden Behörden über nationale Grenzen hinweg wünschenswert ist. Ähnliche Fragen und Probleme sind höchstwahrscheinlich schon anderenorts entstanden, und es ist daher nützlich, die Fehler, die andere gemacht haben, zu vermeiden. Der Erhalt von Informationen aus dem Ausland kann darüber hinaus zu einem besseren Verständnis verhelfen, damit eine Entscheidung mit größerer Sicherheit getroffen werden kann. Hierdurch können Fehler in der Anwendung von EU-Recht vermieden werden. Dies sollte von großem Interesse für jede Behörde sein: Den Behörden – egal ob auf nationaler, regionaler oder lokaler Ebene – sollte dabei klar sein, dass sie – laut EuGH und seinem Urteil im Rechtsstreit *Francovich* – Schadensersatz leisten müssen, falls sie oder ihre Bediensteten EU-Recht fehlerhaft anwenden – auch wenn dies nur durch Unachtsamkeit oder aus Versehen geschieht. Es werden praktische Maßnahmen vorgestellt und aus unterschiedlicher Perspektive beleuchtet. Vertreter des Privatsektors (sowohl der Wirtschaft wie auch der Verbraucher) stellen die Anforderungen und Wünsche vor, die sie an solche Verfahren richten. Das Seminar ist daher eine ideale Gelegenheit, Klärungen zu suchen und Verbesserungsvorschläge zu erörtern sowie Probleme zu lösen.

Das Seminar richtet sich an ein breites Spektrum von öffentlich Bediensteten, Fachleuten und interessierten Personen, primär jedoch an Bedienstete, die an der Einrichtung und Verwaltung solcher Verfahren und einer Zusammenarbeit beteiligt sind. Darüber hinaus ist das Seminar auch für Entscheidungsträger und Berater in EU-Angelegenheiten nützlich sowie für Akademiker, die Recht und Politik der EU lehren.

Die Arbeitssprachen dieses Seminars sind Englisch und Deutsch (mit Simultanübersetzung). Französisch wird bei genügend hoher Nachfrage ergänzt.

For more information and registration forms, please contact / Renseignements et inscriptions auprès de /

Zum Erhalt weiterer Informationen und von Anmeldeformularen wenden Sie sich bitte an:

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Seminar / Séminaire

## The Legal System and the Charter of Fundamental Rights of the EU

The hidden parts of an iceberg that influence the precise meaning of EU legislation

### *Le système juridique européen et la Charte des droits fondamentaux de l'UE*

*La partie cachée de l'iceberg qui influence le sens précis de la législation européenne*

Maastricht (NL)

1 October 2003 / le 1<sup>er</sup> octobre 2003

After 10 years of the Internal Market, there is now a close interaction both between the EU and the Member States as well as between the Member States themselves, touching on almost all areas.

However, all too often the European element of an activity of a public authority is overlooked. As a result, the EU perspective is not considered, leading to a breach of the rules imposed by the European Union and, ultimately, to illegal action by the authority concerned.

Furthermore, the rules emanating from the EU are considered and handled from a national point of view, which may lead to errors in their interpretation and application. This in turn may result in the authority concerned committing illegal acts.

This seminar will look more closely at the structure of the EU's legal system, and in particular its interaction with and influence on national legal systems. Since the rules laid down at EU level override any conflicting national rules, the fundamental principles and rights (which guide the interpretation of EU rules in case of ambiguities and thereby their content) will be presented, as well as the position, status and content of human rights under EU law. This seminar thereby aims to make it easier for national officials to understand the status of European rules, to interpret them correctly and thus avoid errors in their application. Consequently, it should become easier for participants to deal with rules coming from the EU and to ascertain their precise meaning.

This seminar is designed to address the needs of a wide spectrum of officials, professionals and other interested persons working with legislation, rules and procedures emanating from the EU. The seminar will also be useful for policy makers and advisers dealing with EU issues and for academics teaching EU law and policies. Finally, it should be of interest and use to anyone whose work involves issues with cross-border elements or contacts with other EU Member States.

*Dix ans après le lancement du marché intérieur, on observe une étroite interaction entre l'Union européenne et les Etats membres, mais aussi entre les Etats membres eux-mêmes, dans pratiquement tous les domaines.*

*Cependant, il arrive trop souvent que la dimension européenne des activités d'une administration publique ne soit pas prise en compte. Cela peut aboutir à une violation des règles imposées par l'Union européenne et donc à un manquement de l'administration concernée.*

*Dans d'autres cas, les règles émanant de l'Union européenne sont considérées et interprétées du point de vue national, ce qui peut conduire à des erreurs d'interprétation et d'application. Ici encore, l'administration en question risque de commettre une infraction.*

*Ce séminaire examinera de près la structure du système juridique européen, son interaction avec les systèmes juridiques nationaux et son influence sur ceux-ci. Etant donné la primauté du droit européen sur le droit national, la question des principes et des droits fondamentaux – qui à leur tour déterminent le contenu des règles européennes en guidant leur interprétation en cas d'ambiguïté – et la position, le statut et le contenu des Droits de l'Homme en vertu du droit européen seront également présentés. Ce séminaire tentera d'aider les fonctionnaires nationaux à mieux comprendre le statut des règles européennes et à en assurer une interprétation correcte pour éviter les erreurs d'application. Le but est de permettre aux participants de gérer plus facilement les règles de l'UE et d'établir leur sens précis.*

*Ce séminaire est conçu de manière à répondre aux besoins d'un large éventail de participants. Il s'adresse aussi bien aux fonctionnaires qu'aux professionnels et à toute personne intéressée travaillant dans le domaine de la législation, des règles et des procédures de l'UE. Par ailleurs, il sera aussi d'un grand intérêt pour les décideurs et les conseillers en affaires européennes, de même que pour les universitaires qui enseignent le droit et les politiques communautaires. Enfin, il devrait être utile à tous ceux qui sont appelés à traiter de questions transfrontalières ou à gérer des contacts avec d'autres Etats membres de l'UE, puisque cela implique inévitablement le droit européen.*

The working languages of this seminar will be English.

*Le séminaire se tiendra en anglais.*

For more information and registration forms, please contact / Renseignements et inscriptions auprès de:

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*Training course*

## **Europe on the Internet**

Maastricht (NL)

2-3 October 2003

A practical training course to help those who have a need in their work to find information about the institutions and policies of the European Union and the wider Europe. The course will demonstrate that it is possible to find quickly and efficiently much useful information on the internet both from official and non-official sources. Areas covered will include: legislation; case-law; keeping up-to-date; policies; contact information; sources of finance; bibliographical information; country information; searching techniques.

The course will consist of a number of detailed talks and demonstrations of the most useful websites followed by opportunities for participants to develop hands-on expertise. As an optional part of the course, on the second day participants will have the opportunity to compile a list of key information sources on the web in a subject relevant to their work or interests under the guidance of the conference trainers.

The training course will be conducted in English.

For more information and registration forms, please contact:

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### *Nouveau Programme*

L'IEAP annonce dès maintenant l'organisation d'un

## **FORUM EUROPÉEN pour DIRIGEANTS PUBLICS**

des administrations centrales, régionales et locales

En septembre 2003, l'IEAP annoncera une nouvelle série de quatre séminaires d'une journée et demie destinés aux fonctionnaires dirigeants des administrations publiques en Europe. Ces séminaires aborderont des thèmes européens et des préoccupations de gestion publique.

Le processus continu d'intégration européenne et d'élargissement de l'Union européenne a pour effet de renforcer les besoins de mécanismes efficaces de coordination interne et de capacité de délivrer les meilleurs services aux citoyens et aux responsables politiques. L'objectif du Forum européen pour Dirigeants publics est de renforcer la compréhension des défis posés aux autorités publiques et à leur personnel par ces besoins nouveaux et de proposer des méthodes pour les rencontrer.

De plus amples renseignements sont également disponibles sur notre site Internet: [www.eipa.nl](http://www.eipa.nl). Pour toute question ou remarque, veuillez contacter Mme Araceli Barragán, Organisatrice des programmes, e-mail: [a.barragan@eipa-nl.com](mailto:a.barragan@eipa-nl.com) (concernant l'organisation pratique), ou M. Robert Polet, Chef de projet, e-mail: [r.polet@eipa-nl.com](mailto:r.polet@eipa-nl.com) (au sujet du contenu des séminaires).

## *Seminar*

# **The Efficient Management of the EU Structural Funds**

Maastricht (NL)  
2-3 October 2003

The European Institute of Public Administration (EIPA) is organising a seminar on the theme “The Efficient Management of the EU Structural Funds”. The seminar will take place on 2-3 October 2003 at EIPA’s premises, located in the centre of Maastricht, the Netherlands. The seminar will be conducted in English; simultaneous interpretation into German will be provided if there are a sufficient number of participants who require it.

The objective of this seminar is twofold: (1) to bring together practitioners at European, national and sub-national level as well as academic experts in order to share experiences and identify cases of good practice in the management of EU Structural Funds; (2) to discuss possibilities to streamline administrative procedures in view of the next reform of the Structural Funds.

The speakers at the seminar will be high-level representatives of the European Commission as well as of various Member States’ authorities and prominent academics.

The seminar is intended for practitioners from national and sub-national authorities and other public bodies of the EU Member States and associated countries working with EU structural instruments, as well as for academic experts.

As the seminar will be of a participatory nature, the participants will be strongly encouraged to actively take part in several discussions throughout the entire programme. Moreover, the participants will have ample opportunities to informally exchange points of view related to the topics of the seminar both with the respective speakers as well as among themselves.

For further information and programme, please contact:

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## *4<sup>th</sup> Seminar on Financial Services*

# **EU Banking and Financial Law: Time Is Running out for the Completion of the Single Market for Financial Services**

Maastricht (NL)  
6-7 October 2003

In May 1999, the European Commission presented an important Communication entitled “Implementing the Framework for Financial Markets: Action Plan”. Since its publication, it has become known as the Financial Services Action Plan (FSAP). It identifies a range of issues that call for urgent legislative action from the EU if the full benefits of the euro and an optimally functioning financial market are to be ensured. Research conducted for the European Commission predicts that the integration of EU financial markets will bring significant benefits to businesses, investors and consumers. The recent Brussels European Council (March 2003) confirmed that the urgency is such that only 9 months are left to complete the remaining legislative proposals.

In 1999, the following priority areas for legislative measures were identified: creating a single EU wholesale market, ensuring open and secure retail markets, and finally, creating state-of-the-art prudential rules and supervision. Now, in mid-2003, a number of important initiatives have been completed, while others are still in various stages of progress. The latest progress report on the FSAP (June 2003) concludes that while progress towards adopting the necessary legislative measures to create an integrated market remains on the right track, it is crucial to adopt all the legislative measures heralded by the Action Plan by 2005. This means that precious little time is left: 5 proposals need to be adopted by the European Parliament and the Council by the first quarter of 2004, while 11 further Commission proposals are still expected.

The *objective* of this EIPA seminar is to examine the state of progress and to scrutinise the legislative proposals and their likelihood to be adopted in time for the 2005 deadline. In addition, this seminar will address those new issues (such as the Enron scandal) which also merit attention and regarding which new initiatives will be taken: the areas of financial reporting, corporate governance and statutory audits. Finally, non-legislative proposals are also being discussed in various financial arenas and will also need to be included to complete the overview of regulatory measures intended for financial markets.

Expert speakers from the Commission, academia and the financial services sector will comment on the progress made and will provide documentation of interest both to policy makers, lawyers and the private sector.

The seminar will be held in English.

For more information and registration forms, please contact:

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*Seminar / Séminaire*  
**European Negotiations**

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***Négociations européennes***

Maastricht (NL)

6-10 October, 24-28 November 2003 /

*du 6 au 10 octobre, du 24 au 28 novembre 2003*

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 and registration forms, please contact:

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*Forum*  
*The European Parliament and Regional Affairs*

**The European Constitution:  
What Regional Model for the Europe of the 25?**

Barcelona (E)  
9-10 October 2003

The European Centre for the Regions, the Barcelona Antenna of the European Institute of Public Administration (EIPA-ECR), with the collaboration of the Barcelona Delegation of the European Parliament Office in Spain, are pleased to inform you that they are organising a forum entitled "The European Constitution: What Regional Model for the Europe of the 25?", which will take place in Barcelona (E) on 9-10 October 2003.

**Introduction**

In the context of the current debate on the future of the European Union, one of the elements being addressed is the role of the regions, i.e. their political, legislative, social and economic competences. At the same time, the planned EU enlargement in 2004 is an unprecedented event on account of its scope and the diversity it involves in terms of the number of candidates, geographical area, population, history and cultures involved. Both processes are worth linking and analysing in detail.

**Objective**

This event aims to bring these two processes together and provide a comprehensive analysis of the political, social and economic impact which the forthcoming European constitution and enlargement will have on the regions in the future European context. The aim is to broaden the debate and the analysis so as to provide a comprehensive picture of this new geopolitical, economic and social situation.

This Forum aims to provide a platform for debate between elected representatives, experts and advisers from the European Parliament and regional and local administrations. It will allow the participants to exchange views on current topics related to European integration, the objective being to increase interinstitutional understanding and mutual knowledge as well as to improve the implementation of the subsidiarity principle and bring Europe closer to the citizens.

**Target Group**

Members of and experts within the European Parliament; members of and legal advisers to the regional parliaments; members of the regional governments; local representatives; experts as well as other people interested in the topic.

The Forum will be conducted in English, Spanish and Catalan, and simultaneous interpretation will be provided.

For further information and registration form, please contact:  
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Website: <http://www.eipa.nl>

## *Seminar*

# **State Aid Policy Practice in The European Community: An Integrative and Interactive Approach**

Barcelona (E)  
10 October 2003

### **Introduction**

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 public authorities from using state aid to support inefficient industries and offer unfair incentives to attract mobile capital.

### **Objectives**

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. Main 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. EIPA also presents information on national procedures concerning state aid. This information is continually updated after each seminar.

The workshop uses a mixture of training tools such as lectures, cases analysis and working groups. It emphasises the acquisition of knowledge which is immediately relevant to the work of officials dealing with state aid.

### **Target group**

The target group 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.

### **Working language**

The seminar will be held in Spanish.

For further information and registration form, please contact:  
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*Seminar*

# **The Implementation of European Environmental Legislation: The Water Framework Directive**

Maastricht (NL)  
27-28 October 2003

On 22 December 2000, “Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy” – or in short the *Water Framework Directive* – entered into force. The process of transposition and implementation raises a number of shared technical challenges for the Member States, the Commission, the Observer and Candidate Countries and other stakeholders, and the first deadlines are looming (e.g. for economic analysis). Against the background of the different deadlines given by the directive, the seminar will present and discuss current activities at European, national and regional level. This will be a follow-up of last year’s very intensive and interactive seminar on the topic.

In contrast with other implementation processes, the Member States, Norway and the Commission in 2001 launched a *Common Implementation Strategy* for the Water Framework Directive. The key activities of this strategy are developing guidance and information sharing, as well as data management, application, testing and validation. The seminar gives an overview of these key activities and will go into detail on the developments in fields such as economic analysis, heavily modified water bodies, pilot river basins, public participation and pressure, and impact analysis. What are the experiences of officials involved in the different preparatory activities? What has happened so far in the Member States? What is the view of the Commission on the first results of the strategy? What about the participation of the Regions, and how do Observer, Candidate Countries and NGOs feel about the process? The participants will have the opportunity to exchange their views and raise their questions in intensive workshops chaired by officials involved in the process.

The seminar is intended for officials at European, national, regional and local level who deal with water policy and issues relating to the implementation of European legislation.

The working language will be English.

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*Seminar*

# **Gender Equality and Decision-Making**

Barcelona (E)  
10-11 November 2003

The European Institute of Public Administration and the European Centre for the Regions are pleased to announce the seminar “*Gender Equality and Decision-Making*”, which will be held in Barcelona on 10-11 November 2003.

A balanced participation of women and men in the decision-making process is not only necessary to achieve gender equality – a fundamental principle of democratic societies – but also benefits the functioning of society as a whole. Under-representation of women in public and private bodies still persists, which means that policies and actions need to be developed to increase the participation of women in the public sphere and in economic and social areas.

This seminar will bring together policy makers, public managers from all levels of administration, representatives of economic and social organisations and managers from private enterprises to exchange best practices with regard to the participation of women in decision making. The seminar will offer the participants an insider’s view of various international, national and sub-national experiences in the field and will provide a platform for them to share their experience through debates in thematic working groups.

The working languages of the seminars will be English and Spanish.

For further information and registration form, please contact:  
*Ms Natalia Doménech, Programme Organiser, EIPA Antenna Barcelona*  
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Website: <http://www.eipa.nl>

## Administrative Cooperation to Facilitate the Enforcement of Professional Standards and Rules of Conduct

The cross-border enforcement of professional ethics, standards and rules of conduct; ensuring the continuous protection of consumers

### *La coopération administrative: un moyen de faciliter l'application de la déontologie, des normes professionnelles et des règles de conduite*

*L'application transfrontalière de la déontologie, des normes professionnelles et des règles de conduite, et l'assurance d'une protection constante des consommateurs*

### Verwaltungszusammenarbeit zur verbesserten Durchsetzung von Berufsstandards und Verhaltensregeln

Grenzüberschreitende Durchsetzung von Berufsethik, Standards und Verhaltensregeln und die Schaffung eines nahtlosen Schutzes für die Nutzer von Dienstleistungen

Maastricht (NL), 10-12 November 2003 / du 10 au 12 novembre 2003 / 10.-12. November 2003

This seminar will examine various steps taken to facilitate the work of national officials where it concerns enforcing professional standards and rules of conduct among "migrants". Particular care has to be taken to ensure that consumers are effectively protected without there being a breach of the rules governing the internal market. This balance can only be struck if the authorities in all countries concerned cooperate effectively so that neither a vacuum nor obstacles to free movement arise. At the seminar, practical measures will be presented and examined from all sides, with representatives of the private sector (business and consumer organisations) presenting their needs and wishes regarding such cooperation-procedures. These measures are to be taken either at European level, at national level or by professional bodies in several countries (being precursors to the professional platforms referred to in the proposal for a new EU Directive on the recognition of foreign diplomas and qualifications). The seminar is thus the perfect occasion to seek clarifications and discuss ideas on improvements, as well as an opportunity for "troubleshooting".

The seminar is designed to address the needs of a wide spectrum of officials, professionals and other interested persons, although it is primarily aimed at officials involved in the establishment and management of the abovementioned procedures and cooperation. The seminar will also be useful to policy makers and advisers on EU issues and academics lecturing in EU law and policies.

The working languages of this seminar will be English and German (simultaneous interpretation will be provided). French will be added should there be sufficient demand.

*Ce séminaire vise à examiner les différentes démarches adoptées pour faciliter le travail des fonctionnaires nationaux lorsqu'ils doivent veiller au respect de la déontologie, des normes professionnelles et des règles de conduite par les "migrants". Ils doivent en particulier s'assurer que les consommateurs bénéficient d'une protection efficace, sans enfreindre les règles du marché intérieur. Le seul moyen de concilier ces deux objectifs est de mettre en place une coopération efficace entre les autorités dans tous les pays concernés afin d'éviter un vide ou des obstacles à la libre circulation. Durant le séminaire, un certain nombre de mesures pratiques seront présentées et analysées sous différentes perspectives, notamment avec des représentants du secteur privé (entreprises et organisations de consommateurs) qui feront part de leurs besoins et souhaits quant aux procédures de coopération. Ces mesures seront mises en œuvre tant au niveau européen qu'au niveau national ou par des organismes professionnels dans divers pays ayant un rôle précurseur dans le domaine des plates-formes professionnelles (telles qu'envisagées par la proposition de nouvelle directive européenne sur la reconnaissance des diplômes et qualifications professionnelles obtenus à l'étranger). Ce sera par conséquent une excellente occasion d'obtenir des précisions, d'échanger des idées sur les possibilités d'amélioration et de trouver des solutions aux problèmes.*

*Ce séminaire est conçu de manière à répondre aux besoins d'un large éventail de participants. S'il s'adresse avant tout aux fonctionnaires impliqués dans la mise en place et la gestion des procédures de coopération dans ce domaine, il est également destiné aux fonctionnaires, professionnels et autres personnes intéressées. Par ailleurs, il sera aussi d'un grand intérêt pour les décideurs et les conseillers en affaires européennes, de même que pour les universitaires qui enseignent le droit et les politiques communautaires.*

*Le séminaire se déroulera en anglais et allemand (avec traduction simultanée). La traduction en français sera également assurée si la demande est suffisante.*

Dieses Seminar untersucht daher verschiedene Schritte, die ergriffen wurden, um die Arbeit von nationalen öffentlich Bediensteten zu vereinfachen wenn es um die Einhaltung von Berufsstandards und Verhaltensregeln durch „Migranten“ geht. Besondere Sorgfalt muss aufgebracht werden, damit die Verbraucher – ohne eine Verletzung der Regeln des Binnenmarkts – wirksam geschützt werden. Eine solche Abwägung kann nur korrekt erfolgen, wenn es eine wirksame Zusammenarbeit zwischen den Behörden aller betroffenen Ländern gibt, damit weder ein Vakuum noch Hindernisse für die Freizügigkeit entstehen. Bei diesem Seminar werden praktische Maßnahmen vorgestellt und aus verschiedener Perspektive beleuchtet. Vertreter des Privatsektors (sowohl der Wirtschaft wie auch der Verbraucher) stellen die Anforderungen und Wünsche vor, die sie an solche Verfahren richten. Die Maßnahmen werden entweder auf europäischer oder auf nationaler Ebene getroffen oder auch durch Berufsorganisationen verschiedener Mitgliedstaaten (die somit Vorgänger der Berufsplattformen bilden würden, die im Vorschlag für eine neue EU-Richtlinie über die Anerkennung ausländischer Diplome und Berufsabschlüsse erwähnt werden). Dieses Seminar ist daher die ideale Gelegenheit, Klärungen zu suchen, Verbesserungsvorschläge zu erörtern sowie Probleme im Allgemeinen zu lösen.

Das Seminar richtet sich an ein breites Spektrum von öffentlich Bediensteten, Fachleuten und anderen interessierten Personen, primär jedoch an Bedienstete, die an der Einrichtung und Verwaltung solcher Verfahren und einer Zusammenarbeit beteiligt sind. Darüber hinaus ist das Seminar auch für Entscheidungsträger und Berater in EU-Angelegenheiten nützlich sowie für Akademiker, die Recht und Politik der EU lehren.

Die Arbeitssprachen des Seminars sind Englisch und Deutsch (mit Simultanübersetzung). Französisch wird bei genügend hoher Nachfrage ergänzt.

For more information and registration forms, please contact / Renseignements et inscriptions auprès de /

Zum Erhalt weiterer Informationen und von Anmeldeformularen wenden Sie sich bitte an:

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## *Eleventh “Schengen” Colloquium*

### **“New Borders, New Networks: Handling the Expansion of the AFSJ”**

Maastricht (NL), 17-18 November 2003

The European Institute of Public Administration (EIPA) is organising its eleventh annual “Schengen” Colloquium on 17 and 18 November 2003. This event will focus on two key challenges facing the Area of Freedom, Security and Justice which are especially topical in view of current developments in international security.

The first is how to ensure adequate control of the EU’s external borders. The Schengen acquis has been formally integrated, but vital work continues to ensure that systems operate properly in practice. This is all the more important in view of the imminent enlargement of the Union to 25 Members, which will create new external borders posing particular challenges. The first part of the Colloquium will therefore focus on the ongoing evaluation process, cooperation in ensuring adequate border control in the future, and management issues related to immigration and visa policies.

The second challenge concerns the internal structures that are being created. In particular, the Colloquium will look at the functioning and competencies of the recently-created EUROJUST unit and its interaction with the European Judicial Network and EUROPOL. What problems have been encountered? What solutions can be identified? And what new issues will these networks face in an enlarged EU?

For more information and registration forms, please contact:

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## *Conference*

### **Keep Ahead with European Information**

Maastricht (NL), 20-21 November 2003

The European Institute of Public Administration (EIPA) and the European Information Association (EIA) are jointly organising the sixth annual conference “*Keep Ahead with European Information*” to be held at EIPA, Maastricht, on 20 and 21 November 2003.

The conference is aimed at experienced European information professionals. It will look at new and important issues, products and services of interest to those who work daily with European information.

The conference is open to officials working in the EU and other European and international organisations, information professionals working with EU information as well as related organisations, and anyone else interested in the issues to be discussed.

The working language of the conference will be English.

For more information and registration forms, please contact:

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*Seminar*

**Europe 2004:  
Towards a Culture of Multi-Level Participation  
in the European Union**

Barcelona (E)  
27-28 November 2003

**Introduction**

The culture of participation in European affairs is changing. With its White Paper on Governance, the European Commission has tried to strengthen the culture of dialogue and consultation in the European Union. Promoting this participation is however the responsibility of all levels of government.

In this seminar we will present this new culture of consultation and participation developed in the different European institutional frameworks, in the Member States and, more particularly, in the regions and municipalities of Europe.

Local authorities are called upon to play an increasingly important role in the shaping and implementation of Community policies. Non-governmental organisations and social and economic actors are also playing an increasingly relevant role. The Convention and the IGC 2004 are good examples of the concept of a political and civil “chain” (or multi-level governance): the participation of all the relevant actors, from the conceptual phase of a legislative proposal to its implementation.

**Objectives**

On the first day of the seminar, the strategy followed by the different European institutions with regard to the culture of multi-level participation will be analysed. Furthermore, the role of Parliaments and civil society in the European integration process will be discussed. On the second day, we will look at the mechanisms provided by new technologies to bring Europe closer to the citizens. We will also review the role of regional entities, looking into new issues such as the broadening of the participation of the regions in comitology committees, and the future impact of the Charter of Fundamental Rights of the EU.

In this seminar, the European Centre for the Regions – the Barcelona Antenna of the European Institute of Public Administration – aims to stimulate the participants’ active involvement through the creation of various discussion fora. The relevant documentation, which will be distributed on the first day, will serve as a basis for the participants in the different discussion fora.

**Target group**

This seminar is aimed at a broad audience: all those who to a greater or lesser extent have to deal with Europe-related issues, e.g. foundations, associations, NGOs, members of parliaments, lawyers, public and private consultants, those implementing public policies, etc. We will give the audience an overview of the key issues regarding the different channels of participation in Europe, and present, from different perspectives, the way ahead for multi-level participation.

**Working language**

The seminar will be held in Spanish.

For further information and registration form, please contact:  
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# Institutional News

## \* Board of Governors

At its meeting of 23-24 June 2003, held in Milan at EIPA's Antenna, the European Training Centre for Social Affairs and Public Health Care (CEFASS), EIPA's Board of Governors approved the following appointments:

### *Italy*

Mrs Laura MENICUCCI, Director of the Department for Coordination and Institutional Affairs, has been appointed substitute member of EIPA's Board of Governors, replacing Mr Stefano PIZZICANNELLA, Director of the Division for Public Administration Modernisation Policies and Director of the International Affairs Division within the Department of the Public Service of the Presidency of the Council of Ministers.

### *Romania*

In the framework of the cooperation agreement signed with the Romanian Government in December 2002, Mr Pavel NĂSTASE, Secretary of State and Director-General of the *Institutul National de Administratie (INA)*, has been appointed as full member of EIPA's Board of Governors and Mrs Verginia VEDINAŞ, Deputy Director of the INA, as substitute member.

Furthermore, EIPA was informed by the Dutch Ministry of the Interior and Kingdom Relations that until the appointment of a successor of Mr Martin VAN RIJN, who has been appointed Director-General for Health, Mr Peter VAN DER GAAST, Head of the International Civil Service Affairs Division within the Ministry of the Interior and Kingdom Relations, will be attending the meetings of the Board of Governors.

# EIPA Staff News

## \* Newcomers

### **Maastricht**

- Robin SMAIL (UK), joined EIPA in May 2003 as a Senior Lecturer.

# Visitors to EIPA



*Photograph taken on the occasion of the visit of H.E. Mr. Mario Branco Pensa, Ambassador of Italy to The Netherlands with Prof. Dr Gérard Druesne, Director-General of EIPA, on 2 April 2003.*

## EIPA Forthcoming and New Publications

### FORTHCOMING PUBLICATION

**Wegweiser EU-Information – 4. Auflage**  
*Veerle Deckmyn*  
EIPA 2003, 75 pages: € 20.00

### NEW PUBLICATIONS

**Guide de l'information sur l'Union européenne – 4e édition**  
*Veerle Deckmyn*  
EIPA 2003, 77 pages: € 20.00

**The Case for eHealth**  
*Denise Silber*  
EIPA 2003, 32 pages: free of charge on web, for hardcopies, postage costs will be charged.

**Beyond the Chapter:  
Enlargement Challenges for CFSP and ESDP**  
(Current European Issues Series)  
*Simon Duke*  
EIPA 2003, 111 pages: € 21.00 – Also available in German

**Quality Management Tools in CEE Candidate Countries:  
Current Practice, Needs and Expectations**  
(Current European Issues Series)  
*Christian Engel*  
EIPA 2003, 104 pages: € 21.00 – Only available in English

# EIPA Recent Publications

## **Guide to European Union Information – 4th Edition**

*Veerle Deckmyn*

EIPA 2003, 75 pages: € 20.00

## **Civil Services in the Accession States:**

### **New Trends and the Impact of the Integration Process**

*Danielle Bossaert and Christoph Demmke*

EIPA 2003, 107 pages: € 21.00 – Also available in German

## **Improving Policy Implementation in an Enlarged European Union: The Case of National Regulatory Authorities**

(Current European Issues)

*Phedon Nicolaidis with Arjan Geveke and*

*Anne-Mieke den Teuling*

EIPA 2003, 117 pages: € 21.00 – Only available in English

## **Regionale Verwaltungen auf dem Weg nach Europa:**

### **Eine Studie zu den Instrumenten und Praktiken des**

### **Managements von “Europa” in ausgesuchten Regionen**

*Christian Engel und Alexander Heichlinger*

EIPA 2002, 239 pages: € 27.20 – Nur auf Deutsch erhältlich

## **From Luxembourg to Lisbon and Beyond:**

### **Making the Employment Strategy Work**

(Conference Proceedings)

*Edward Best and Danielle Bossaert (eds)*

EIPA 2002, 127 pages: € 27.20 – Only available in English

## **Increasing Transparency in the European Union?**

(Conference Proceedings)

*Veerle Deckmyn (ed.)*

EIPA 2002, 287 pages: € 31.75 – Only available in English

## **The Common Agricultural Policy and the Environmental Challenge: Instruments, Problems and Opportunities from Different Perspectives**

(Conference Proceedings)

*Pavlos D. Pezaros and Martin Unfried (eds.)*

EIPA 2002, 251 pages: € 31.75 – Only available in English

## **Managing Migration Flows and Preventing Illegal Immigration:**

### **Schengen – Justice and Home Affairs Colloquium \***

(Conference Proceedings)

*Cláudia Faria (ed.)*

EIPA 2002, 97 pages: € 21.00 – Mixed texts in English and French

## **From Graphite to Diamond:**

### **The Importance of Institutional Structure in Establishing**

### **Capacity for Effective and Credible Application of EU**

### **Rules**

(Current European Issue)

*Phedon Nicolaidis*

EIPA 2002, 45 pages: € 15.90 – Only available in English

## **Organised Crime: A Catalyst in the Europeanisation**

### **of National Police and Prosecution Agencies?**

*Monica den Boer (ed.)*

EIPA 2002, 559 pages: € 38.55 – Only available in English

## **The EU and Crisis Management:**

### **Development and Prospects**

*Simon Duke*

EIPA 2002, 230 pages: € 27.20 – Only available in English

## **The Dublin Convention on Asylum:**

### **Between Reality and Aspirations**

*Cláudia Faria (ed.)*

EIPA 2001, 384 pages: € 11.35 – Mixed texts in English and French

## **Pouvoir politique et haute administration:**

### **Une comparaison européenne**

*Jean-Michel Eymeri*

IEAP 2001, 157 pages: € 27.20 – Disponible en français uniquement

## **Civil Services in the Europe of Fifteen:**

### **Trends and New Developments**

*Danielle Bossaert, Christoph Demmke, Koen Nomden,*

*Robert Polet*

EIPA 2001, 342 pages: € 36.30 – Also available in French and German

## **Asylum, Immigration and Schengen Post-Amsterdam:**

### **A First Assessment \***

(Conference Proceedings)

*Clotilde Marinho (ed.)*

EIPA 2001, 130 pages: € 27.20 – Mixed texts in English and French

## **Meeting of the Representatives of the Public**

### **Administrations of the Euro-Mediterranean Partners in the**

### **Framework of the Euro-Mediterranean Partnership**

Proceedings of the Meeting; Barcelona, 7-8 February 2000

*Eduard Sánchez Monjo (ed.)*

EIPA 2001, 313 pages: € 36.30 – Also available in French

## **Finland's Journey to the European Union**

*Anti Kuosmanen (with a contribution by Frank Bollen*

*and Phedon Nicolaidis)*

EIPA 2001, 319 pages: € 31.75 – Only available in English

## Capacity Building for Integration

### \* **European Environmental Policy: The Administrative Challenge for the Member States**

*Christoph Demmke and Martin Unfried*

EIPA 2001, 309 pages: € 36.30

(Only available in English)

### \* **Managing EU Structural Funds: Effective Capacity for Implementation as a Prerequisite**

*Frank Bollen*

EIPA 2000, 44 pages: € 11.35

(Only available in English)

### \* **Organisational Analysis of the Europeanisation**

### **Activities of the Ministry of Economic Affairs:**

### **A Dutch Experience**

*Adriaan Schout*

EIPA 2000, 55 pages: € 15.90

(Only available in English)

### \* **Effective Implementation of the Common Agricultural Policy: The Case of the Milk Quota Regime and the Greek Experience in Applying It**

*Pavlos D. Pezaros*

EIPA 2001, 72 pages: € 15.90

(Only available in English)

### \* **Enlargement of the European Union and Effective Implementation of its Rules (with a Case Study on Telecommunications)**

*Phedon Nicolaidis*

EIPA 2000, 86 pages: € 18.15

(Only available in English)

\* Details of all previous Schengen publications can be found on EIPA's web site <http://www.eipa.nl>

All prices are subject to change without notice.

A complete list of EIPA's publications and working papers is available on <http://www.eipa.nl>

## *About EIPASCOPE*

EIPASCOPE is the Bulletin of the European Institute of Public Administration and is published three times a year. The articles in EIPASCOPE are written by EIPA faculty members and associate members and are directly related to the Institute's fields of work. Through its Bulletin, the Institute aims to increase public awareness of current European issues and to provide information about the work carried out at the Institute. Most of the contributions are of a general character and are intended to make issues of common interest accessible to the general public. Their objective is to present, discuss and analyze policy and institutional developments, legal issues and administrative questions that shape the process of European integration.

In addition to articles, EIPASCOPE keeps its audience informed about the activities EIPA organizes and in particular about its open seminars and conferences, for which any interested person can register. Information about EIPA's activities carried out under contract (usually with EU institutions or the public administrations of the Member States) is also provided in order to give an overview of the subject areas in which EIPA is working and indicate the possibilities on offer for tailor-made programmes.

Institutional information is given on members of the Board of Governors as well as on changes, including those relating to staff members, at EIPA Maastricht, Luxembourg, Barcelona and Milan.

The full text of current and back issues of EIPASCOPE is also available on line. It can be found at: <http://www.eipa.nl>

## *EIPASCOPE dans les grandes lignes*

EIPASCOPE est le Bulletin de l'Institut européen d'administration publique et est publié trois fois par an. Les articles publiés dans EIPASCOPE sont rédigés par les membres de la faculté de l'IEAP ou des membres associés et portent directement sur les domaines de travail de l'IEAP. A travers son Bulletin, l'Institut entend sensibiliser le public aux questions européennes d'actualité et lui fournir des informations sur les activités réalisées à l'Institut. La plupart des articles sont de nature générale et visent à rendre des questions d'intérêt commun accessibles pour le grand public. Leur objectif est de présenter, discuter et analyser des développements politiques et institutionnels, ainsi que des questions juridiques et administratives qui façonnent le processus d'intégration européenne.

En dehors des articles, EIPASCOPE contient également des informations sur les activités organisées par l'IEAP et, plus particulièrement, ses séminaires et conférences ouverts qui sont accessibles à toute personne intéressée. Notre bulletin fournit aussi des renseignements sur les activités de l'IEAP qui sont réalisées dans le cadre d'un contrat (généralement avec les institutions de l'UE ou les administrations publiques des Etats membres) afin de donner un aperçu des domaines d'activité de l'IEAP et des possibilités qu'il offre pour la réalisation de programmes sur mesure adaptés aux besoins spécifiques de la partie contractuelle.

Il fournit également des informations institutionnelles sur les membres du Conseil d'administration ainsi que sur les mouvements de personnel à l'IEAP Maastricht, Luxembourg, Barcelone et Milan.

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