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# About EIPASCOPE

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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.

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## EIPASCOPE dans les grandes lignes

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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.

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# Governmental, Organisational and Individual Performance.



## *Performance Myths, Performance “Hype” and Real Performance*

By Dr Christoph Demmke\*

Today, it is widely accepted that evidence about the impact and the results of many reforms is still insubstantial. Many methodological problems still exist in measuring public performance. Also, many national and comparative studies on performance management and performance measurement are more preoccupied with describing reform measures than with the rigorous empirical verification of claimed results of administrative reforms. This article discusses the state of affairs in the field of performance measurement as well as failures and successes in managing governmental, organisational and individual performance.

### 1. Introduction

Contrary to popular perceptions, the concept of performance management is not new, not an Anglo-Saxon invention and did not come only from the private sector. In his historical analysis of performance measurement, Van Dooren<sup>1</sup> identifies 14 movements since the 19<sup>th</sup> century that have promoted performance management and measurement in government. Looking back, van Dooren comes to the conclusion that “change is not the path of glory which is often portrayed”.<sup>2</sup> Yet the performance management movement was not at all useless. Rather, performance measurement also transformed over time and became more systematic, specialised, professionalised and institutionalised.

Today, it is widely accepted that evidence about the impact and the results of many reforms is still insubstantial. Many methodological problems still exist in measuring public performance. Also, many national and comparative studies on performance management and performance measurement are more “preoccupied with describing the new measures, comparing measures from various countries and assessing the impact on accountability”.<sup>3</sup> However, little effort has been devoted to rigorous empirical verification of claimed results or to the identification of causal relationships underlying them.

Of course, another reason for the difficulties in measuring performance may be found in the distinct tasks of public sector organisations. Almost 30 years ago, Drucker stated that “Public service institutions always have multiple objectives and often conflicting, if not incompatible, objectives”.<sup>4</sup> Such goals make it difficult for public organisations to

develop performance standards to serve as a basis for effective incentive systems”.<sup>5</sup> Other problems in measuring the impact of reforms on performance can be found in the fragmentation of the public sector as such, and the difficulties of obtaining better data and information about “performance” across units, departments, sectors and countries.

The purpose of this paper is to discuss the concept of performance management. How much has it changed over the course of time? What do we know and where can we see progress?

What is the difference between governmental performance, organisational performance and individual performance? How can performance be measured? What are the main determinants that influence public-sector, organisational performance and individual performance? Are recent reforms in the field of human resource management (HRM) enhancing public-sector performance?

### 2. What can be learned from history? The concept of performance management over time

Only a few decades ago, citizens were not allowed to question government authorities at all. Since the notion of social services did not exist for a long time (until the 1950s only a few countries had anti-poverty programmes, or initiatives in the field of food safety, social security or environmental protection), most existing “public services” were tax services, military services and police services. Consequently, the most important task of the state sector was to *control* society, rather than to *serve* society and its citizens. The “Leviathan” (T. Hobbes) stood above society and governments were – until the 1970s

– more concerned with the implementation of programmes than with the evaluation of their outcomes. However, this also meant that publications documenting “government’s greatest achievements”<sup>6</sup> were also rare.

The first performance management concepts emerged only in the late 19<sup>th</sup> century and date back to Woodrow Wilson’s business approach to government (1887) or to the Scientific Management movement that promoted the detailed analysis of workers’ tasks with the objective of maximising efficiency by processes according to a mathematical and logical formula (Frederick Taylor, 1911). In Germany, Max Weber published “Wirtschaft und Gesellschaft” (1922) and tried to demonstrate that the “bureaucratic organisation” was superior and more efficient than any other organisational and management structure. Consequently, most European public and private organisations designed their structures according to the bureaucratic model until, in the 1970s, more scholars (especially in the US) started to concentrate their research efforts on monitoring policy effectiveness. Many of these so-called implementation studies showed that performance fell short of policy expectations and concern shifted from the “what?” of policy outcomes to the “why?” of policy failures. At the time, Implementation Theory as a concept became famous when Pressman and Wildavsky subtitled their classic implementation study “How great expectations in Washington are dashed in Oakland; or Why it’s amazing that Federal Programs Work at all” (1984). Parallel to the emergence of implementation as a theory, the Management by Objectives approach (MBO) departed from scientific management theories. In “What Results Should You Expect? A User’s Guide to MBO” (1976), Peter Drucker defined several pre-conditions for an effective public management system. According to Drucker, the ultimate result of management by objectives is decision. “Filling out forms, no matter how well designed, is not management by objectives and self-control. The results are!”<sup>7</sup> This was a direct assault against the traditional bureaucratic career system, with its focus on rules and procedures rather than outcomes.

However, the limitations of the MBO approach became more and more evident when researchers like Thompson pointed to the fact that a “system contains more variables than we can comprehend at one time, or that some variables are subject to influences we cannot control or predict”.<sup>8</sup> In addition, many MBO systems failed because they were too rigid and not able to take account of human factors (e.g. they failed to recognise the limitations of formal systems in influencing

employees’ motivation). From here, multi-dimensional and quality-focused systems such as the Balanced-Scorecard and Total Quality Management Systems and other quality measurement systems (such as the Common Assessment Framework – CAF) were developed for public sector organisations.

## Performance measurement also transformed over time and became more systematic, specialised, professionalised and institutionalised.

Despite all the performance management theories, until the 1990s the tasks of most states expanded further (especially in the social and education sectors) and more and more people were recruited as public employees. Consequently, personnel costs and public sector budgets reached a new peak at the beginning of the 1990s. This expansion of the public services and the increasing (personnel) costs for the public services have not necessarily improved their image. On the contrary, citizens, media and politicians have expressed more and more dissatisfaction with the costly public sector and campaigned against the bureaucrats and their expensive, slow, inefficient, and unresponsive bureaucracies. Widespread public scepticism about a state sector which is too big and too costly, and numerous clichés about the poor performance of civil servants and public organisations, also implied sharp differences between public and private organisations.

When Osborne and Gaebler published “Reinventing Government” (1992) they insisted that this publication would not present original ideas. However, their suggestions for improving public organisations became very popular and were later defined as the “New Public Management Movement”. Parallel to the emergence of the New Public Management, Implementation Theory lost much of its importance, since more people believed that the New Public Management would automatically lead to better and more effective public services. The call for privatisation of public services and criticism of traditional bureaucratic organisational structures led to a new wave of “bureaucracy bashing”. Public organisations were seen as inefficient and ineffective *per se* and private sector organisations as superior and role models for the public sector. Consequently, privatisation, delegation, decentralisation, outsourcing and public-private partnerships were recommended as the best strategies for increasing organisational performance and as solutions for solving the “efficiency” and “performance” crisis of public sector organisations.

## The discussions about governmental and public sector performance changed abruptly after the terrorist attacks in New York, Madrid, London and – later – the natural disasters in New Orleans and Pakistan.

The New Public Management hype reached its peak after the fall of the Berlin Wall, when many observers called for quick privatisation, outsourcing, delegation and decentralisation of the highly rigid, hierarchical and ineffective public services in Central and Eastern

Europe. All of these recommended reforms had a strong “efficiency” focus and aimed at “doing more with less”.

The discussions about governmental and public sector performance changed abruptly after the terrorist attacks in New York, Madrid, London and – later – the natural disasters in New Orleans and Pakistan. Also, new global security threats and new risks (e.g. bird flu), have triggered renewed discussions about the need for strong public services and the protection of populations.



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In the United States, two conclusions were drawn from the September 11 attacks. First, that “the public sector” is important and “government workways are important, and indeed critical, for the nation’s well-being; and second, that defects in government operations are most readily discovered in events of crisis or scandal – all too often only after the damage has been done”.<sup>9</sup> These findings also provoked new discussions about the negative effects of radical downsizing policies in the public sector. In Europe, discussions about public sector performance moved slowly away from “doing more with less” to the demand for better services. In particular, concerns about capacity problems and staff shortages in the health and education sectors, about inefficiencies and programme failures as a consequence of privatisation, outsourcing and downsizing policies, and about the state’s responsibility in fighting increasing levels of poverty and growing income differences between rich and poor played an important role in the shift of the public management debate.

With the changing focus in the public performance debate, there was also a change in assumptions about instruments and measures are likely to induce better performance. At the beginning of the 21<sup>st</sup> century, the public discourse on both sides of the Atlantic is becoming less ideological and more pragmatic. Experts and citizens are no longer asking for “less state involvement” but for better services, more effectiveness and efficiency, respect for equity and non-discrimination issues, diversity management, the rule of law, democracy, fairness and dignity. It does not matter whether these services are delivered by the public or the private sector, public-private partnerships or new governance structures. When Milton Friedman was asked in 2001 what the former Communist states should do in order to increase the efficiency of the public sector, he replied. “Ten years ago, I would have said ‘Privatise, Privatise, Privatise’. But I was wrong. The rule of law is much more important than privatisation”.<sup>10</sup>

This example illustrates that the debates about public performance have become less ideological and have left room for important new reflections. For example: why are certain countries with a big and costly public service more efficient and effective than countries with a small public sector? The outcome of this discussion has resulted in more evidence about the need for good management, political

stability, high integrity, adherence to the rule of law, and powerful public bodies in the context of effective public institutions.

Today, more observers agree that the reasons for organisational and individual poor performance are almost always very complex. A recent Dutch study on “Bewijzen van goede dienstverlening” (evidence of good services) showed that organisational performance is very different from sector to sector. Whereas the media mostly debates problems with waiting lists in hospitals, poor school education systems, inefficiencies in social security systems, failures in security, cases of corruption, waste of money in construction etc., the successes and cases of good performance of public organisations are only rarely discussed (e.g. successes in the fields of public health, life expectancy, social security, women rights).

According to the study, organisational performance is very much the result of good networking, effective accountability systems, powerful instruments, efficient coordination mechanisms, realistic public perceptions and expectations, the quality of monitoring and control systems, institutional capacities, legal certainty and the competence of personnel.

According to an expert report to the United Nations<sup>11</sup>, important dimensions of improving public sector performance and effectiveness include:

- Responsiveness to public needs
- Equity – e.g. ensuring greater equity in the distribution of services
- Quantity – ensuring that the proper quantity of services is provided
- Quality – enhancing the quality of services
- Efficiency – enhancing the cost-effectiveness and efficiency of the provision of services
- Provision – enhancing the equity, accessibility, speed and reliability of services
- Reducing economic impediments – reducing the extent to which costs, procedures and processes impede economic and social progress
- Transparency – providing timely, relevant and complete information
- Integrity – ensuring ethical behaviour.

Despite this multidimensional approach, in many countries the issue of performance is still dominated by “black and

white" discussions. For example, perceptions in the media and the population about the role and tasks of the public service are still grounded in the centralised and unified public administration which is clearly separated from the private sector. Consequently, government, politicians or public services are still held responsible for almost any "governmental failures".

Contrary to this view, the reality within national public services looks very different, and public policies are administered through increasingly complex networks, decentralised governance structures, public-private partnerships and co-operative ventures between NGO's, consultants and government. The traditional concept of the public service as a single, unified employer is disappearing. Thus, the "old paradigm" of a clearly-separated hierarchical, career public service no longer exists. Thus, a public-private discussion on performance issues is the wrong starting point, since it is less clear who is responsible for poor quality services – government, the public service, NGO's, public private partnerships, private providers of public services or public employees.

Also, too little analysis is done of why most countries have many efficient and inefficient, effective and ineffective, public organisations at the same time and in different sectors. For example, whereas in some countries the tax administration works very well, this may not be true as regards the implementation of a programme in the field of environmental protection by the Ministry of the Environment. Likewise, some may have a very effective anti-discrimination policy, but at the same time a high level of inequality between men and women. Or performance levels can be very different from school to school, police force to police force, hospital to hospital, juvenile delinquency programme to environmental protection programme etc. Too many experts link a big public sector, a high degree of regulation, high expenditure on public employment and high taxes too easily to bad public performance.

### **3. Are the public services so bad? Why is performance management so popular?**

Today, public performance is a tremendously popular issue. A search in Google reveals 5553,000,000 hits (April 2006). Without doubt, in the field of public management the issue of public performance is the most important of all. Why has this issue become so important within the last decade? Experts have so far offered a number of explanations which can be divided into six main categories:

1. The first and most important reason for this call for better performance is the underlying conviction that governments, public services and their personnel are not performing well enough. The reasons for this are identified as too much bureaucracy and red tape, too many rules, too little delegation and decentralisation, structures which are too centralised, procedures which are too slow. Another widely believed explanation is that public employees have too much protection against being laid off, too little incentive to perform, too little pressure and too many privileges. With their structures, the story goes, public employees do not have to work hard and well. In this scenario, the public sector suffers from too many poor performers.
2. The second reason for the popularity of the performance management concept is political and ideological. Almost every political party or politician can be sure of the massive support of the electorate if measures are

announced which aim at better public performance. For example, the introduction of performance related pay is popular since it conveys the image that bureaucrats should only be paid for good performance and not automatically receive increments through "seniority". Therefore, "bashing bureaucrats" is an evergreen on the political agenda no matter whether political affiliations are more left or right. In fact, performance management can serve any political master, since everybody will agree that there is always a need and possibility for improving the performance of public organisations.

3. A third reason is that improving public performance is an important objective in the discussions about the role of Europe in global economic competition. In this discussion, public services are considered as a policy maker, regulator, service provider, investor, purchaser and employer. In all of these fields, the public sector plays an important role in economic and competition issues. Consequently, the Member States should seek to explore all possibilities in every sector for making better and more efficient contributions to sustainable growth and competitiveness.
4. The issue of performance management also has a tremendous intuitive appeal, "for it conveys that bureaucrats and public agencies are working hard and being held accountable" (Brewer). During the 3QC Quality Conference in Rotterdam in 2004, all Member States were eager to present their success stories in quality management: more customer friendly services, new standards for hospitals, electronic parking ticketing, improved waste collection, better public order policing, improved local public services through online and one-stop services, options for paying taxes online, enhanced public information and data management, more transparency etc.
5. Many citizens believe that the performance of the private sector is better than the public sector. Therefore, the public sector should try to enhance and to improve performance.
6. Stereotypes and images about public services are common all over the globe and have existed for thousands of years. Many still exist today and are the same in all Member States despite differences in culture, tradition and structure. In his dissertation, Steven van de Walle<sup>12</sup> illustrates an important paradox. When citizens consider public services as individual services which are no different to private services (e.g. banks, insurance, companies, shopping), their evaluations will probably be focused more on the service quality actually experienced<sup>13</sup> and not on whether they are services provided by the state administration. However, even if most people are satisfied with specific public services, they tend to be negative towards the public sector in general. Similarly, it seems that specific objects are always perceived more favourably than general ones. For example, it is very possible that citizens combine a positive attitude towards a specific train, with a negative attitude towards the public rail company.<sup>14</sup> The same perception is true as regards the term "public service" or "public administration". People may have positive attitudes and perceptions of specific public services (police, water supply, fire brigade, etc.), but negative attitudes towards public services in general. For example, even if people are satisfied with the motorway network, the police, the telephone service, water supply, the courts,

justice, collection of household rubbish, this does not mean that they are satisfied with the public services in general. "Katz *et al.* found that even though users were satisfied with the way service agencies handled their problem and with the fair treatment, this opinion was not necessarily generalised to all agencies or government offices. However, when citizens felt they were treated badly, they generalised their experience to the public sector as a whole".<sup>15</sup>

Today, nobody doubts that the concept of improving public sector performance is to be welcomed. Why should somebody be against improving the quality and performance of governments, organisations and public employees? Especially in times of growing awareness of cases of unacceptable and poor quality services in hospitals, schools, social and health care, risk management and in the daily lives of citizens. Thus, especially from an historical point of view, the call for performance management and the introduction of new quality management systems like the CAF or Balanced Scorecards and new performance management systems are a great step forward. There is no doubt that the benefits of being clearer about the purposes and results of quality management, both inside and outside government, are undeniable.

7. Despite the different concepts and interpretations of quality and performance in the public sector, performance management and measurement fulfils a number of important common criteria in all Member States, such as transparency in measuring and evaluating outputs; learning through experiencing what went well and what went wrong; judgement concerning the efficiency and effectiveness of an authority or an individual; and rewarding or punishing those who perform well or do not perform well.

8. Other arguments for the introduction of performance management schemes (e.g. performance targets, objectives and standards) can be summarised as the following:

- They provide a statement of what an organisation is trying to achieve. They set out the aims and priorities for improving public services and the specific results government is aiming to deliver. Targets can also be used to set standards to achieve greater equity.
- They provide a focus on delivering results. "By starting from the outcome Government is trying to achieve, the targets encourage departments to think creatively about how their activities and policies contribute to delivering those results. They also encourage departments to look across boundaries to build partnerships with those they need to work with to be successful".<sup>16</sup>
- They "provide a basis for monitoring what is and isn't working. Being clear what you are aiming to achieve, and tracking progress, allows you to see if what you are doing is working. If it is, you can reward that success; if it isn't, you can do something about it".<sup>17</sup>

- They provide better public accountability. "Government is committed to regular public reporting of progress against targets. Targets are meant to be stretching. So not all targets can be hit. But everyone can see what progress is being made".<sup>18</sup>
- They can improve performance of public employees by a) increasing employee skills and abilities, b) promoting positive attitudes and increasing motivation and c) providing employees with expanded responsibilities so that they can make full use of their abilities.

#### 4. Comparing public performance in Europe – a new hype?

It is very tempting to compare public performance in several countries, especially in those cases where Member States realise that other Member States perform differently (better/worse) in fields like education, health or social services. Logically, the more expensive or less efficient countries could learn from the "more efficient" and "cheaper" Member States. However, as the comparative "public sector performance" study makes clear: "We should note, though, that – at the present stage – it seems difficult to perform in-depth analyses, given the limited quality of and lack of detail in the data available".<sup>19</sup>

Yet only a "few studies exist that compare bureaucratic quality and/or administrative performance internationally".<sup>20</sup> The existing comparative best practices base public sector performance mainly on quantifiable variables, e.g. the comparison of costs for the health sector, unemployment rates, economic growth, payments for social security systems etc. So far, there is no study that compares the performance of ministries, judiciaries or parliaments. The reason for this is obvious: it is still very difficult to compare the performance of qualitative services and services that have an impact on human rights.

Another important obstacle is to agree upon the choice of the right performance indicators such as the level of corruption, red tape, quality of the judiciary, the degree of accountability, political stability, rule of law, ability to implement programmes, tax compliance, etc. Although government indicators are expanding as fast as organisational performance indicators and individual performance indicators, there is still considerable confusion, (sometimes)

contradiction and overlap as regards the right indicators and targets.

At the same time, there are also many obstacles in comparing public sector performance because of uncertain or problematic data. For example, how to get evidence and comparable data on the level of corruption in different countries (or how to mea-

sure the relationship between the level of corruption and public performance).

A study from the Instituut van de Overheid (2004) notes that researchers are "fortunately quite hesitant when it comes to comparing countries directly".<sup>21</sup> There is growing awareness that the quality of bureaucracies is hard to measure and experts have different concepts when they discuss the quality of public organisations. In addition, "most (...) rely to some

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extent or completely on subjective indicators".<sup>22</sup>

An OECD report on "Management in Government: Feasibility Report on the Development of Comparative Data" (2005) points to the fact that "public management reforms have been hampered by the lack of good quality comparative information, resulting in a situation where assessing progress made and learning from other countries experiences remain limited. In consequence, public management reforms have been driven significantly by assumptions concerning "best practices" rarely specified with any precision. Although there is significant growth in broad measures of "governance", most of these data are based on subjective assessments, and have little relevance for public management".<sup>23</sup>

As tempting as public sector comparisons seem to be for many, the comparability problems are still numerous. For example, it is difficult to say that countries which are supposed to have less bureaucratic structures, e.g. Sweden, the Netherlands, the United Kingdom, Finland or Estonia are quicker, more attractive, more effective and more efficient and that public officials are more motivated and perform better than in career systems. In fact, existing comparisons in public performance generally show that countries with traditional bureaucratic systems are not performing less well than other countries. Some traditional career countries (e.g. Luxemburg, France and Germany) are still rated as the best or – at least – as high performing countries.<sup>24</sup> Today, it is accepted that both career and position systems have advantages and disadvantages at the same time. For example, countries with career systems may be flexible in many respects but also offer specific strengths, e.g. predictability, stability, rationality, predictable treatment, equitable treatment.<sup>25</sup> On the other hand, employees in the so-called position system countries may be able to enter earlier in the organisational hierarchy. Thus, they have the possibility of making quicker career advances. At the same time, they also face more uncertainty about future career prospects.

However, the difficulties in making comparisons do not mean that it is not possible to compare public performance at all. For example, it is interesting that in almost all existing comparative public performance studies "Denmark, Finland and Luxemburg are found among the top three countries according to several indicators, while Italy and Greece do badly according to most indicators".<sup>26</sup> This illustrates that, while comparative studies may suffer from many deficiencies, this does not mean that they are totally irrelevant and misleading and that things cannot get better in the future.

For example, the OECD has announced the start of an ambitious multi-annual project on the development of comparable data and indicators of good government and efficient public services. If this project succeeds, it may become easier to get more evidence on "what works and what doesn't". In the long term, this could even lead to a

convergence (at least in part) of public service structures in the future. The performance movement is here to stay.

### 5. Performance in public and private organisations

Despite these positive prospects, discussions as regards the performance of public and private organisations still take too easily the direction of a) ideological discourses or b) discussions based on simple images and stereotypes. Mostly, discussions about performance assume that concepts of private sector performance should and can be transferred to the public sector. Behind this is the assumption that private sector practices are more efficient, flexible and innovative than public sector practices. Consequently, cases of high performance of public organisations and their transfer to the private sector are rarely discussed.

Also, too few observers question whether there really are distinctions between public and private organisations at all. And, if so, in which fields, when and where.<sup>27</sup> Interestingly, the literature shows that most experts doubt that there are many differences in public and private sector performance.<sup>28</sup>

Most publications about public-private organisations confirm that "governmental organisations and managers perform much better than is commonly acknowledged".<sup>29</sup>

For example, public service organisations usually score better than private organisations as regards explicit policies relating to respect, non-discrimination, dignity in the workplace, and as regards equality. Often, public organisations also score better in involving personnel and participative modes of management and informing their employees across a range of operational aspects of their job.<sup>30</sup> More employees in the private sector indicate they hardly ever receive information about their job. Finally, there is no evidence that public organisations perform less well than private organisations.

The fact that public organisations may also perform better than private sector organisations is rarely discussed. Probably because such a statement is not popular and would not fit into the political discourse and does not match classical stereotypes. Still, "distinctions between public and private performance, and for-profit and non-profit organisations amount to stereotypes and oversimplifications".<sup>31</sup> Today, one of the most important stereotypes is that public organisations are not performing well and that private companies are performing better. The media, in particular, report on the abundant examples of waste, inefficiency and poor performance in public organisations, while little coverage is devoted to private companies. In addition, most public discussions about failures of organisations focus on the waste of taxpayers' money but rarely focus on the waste of resources in private firms, higher degrees of control by public authorities and too many rules (red tape), especially with regard to personnel procedures such as recruitment,

**A clear danger is that a new measurement culture "Government by Measurement" may lead to a reborn "scientific management", with a strong emphasis on formal systems of tight specification and measurement.**

dismissal and training.

On the other hand, there is little daily positive discussion of items such as the high performance of the public social security systems, the accuracy of payments, the services of public water suppliers, the performance of local tax administrations, the police etc. Overall, it is assumed that public and private organisations differ in performance.

In fact, comparing public and private organisations is difficult because public organisations have various complex tasks that differ from those in the private sector. For example, the public service has important work to perform on equity and equality issues, demographic and retirement issues, security and defence policies, health care, control of drugs proliferation, reforming taxes, promoting financial security, improving education and research, providing unemployment benefits, helping victims of disasters, improving government performance, promoting and protecting democracy, increasing market competition, protecting the global climate, stabilising agricultural prices, etc.

The variety of complex tasks and their changing character means that, although the public sector enjoys success, failures also occur. Furthermore, many tasks are very specific and cannot be compared to those of a private company. Consequently, public services will always be criticised for not being able to achieve these specific public objectives and tasks.

Of course, no one can be sure what the next few years will hold in terms of public service tasks, objectives, priorities and achievement. The public services of the Member States will almost certainly launch entirely new ventures (e.g. enhancing the performance of public services under the Lisbon process). Some tasks will be driven by scientific breakthroughs, others from sudden events, catastrophes and tragedies. The national public services will also continue to work to defend their countries and to secure peace in Europe, to promote economic competitiveness, increase wealth, enhance social rights, fight discrimination, offer better education, improve infrastructure, enhance transportation, promote economic growth, spread the idea of democracy, etc.

When looking at these tasks, the public services can be proud, but at the same time they also face huge challenges today and in the future. However, governments will continue working on many of their greatest deeds of the past 50 years.<sup>32</sup> Whereas in the past, they were certainly successful in increasing life-expectancy, reducing discrimination, extending the right to vote, improving education, fighting threatening diseases, etc.,<sup>33</sup> they face huge tasks for the future, e.g. fighting new diseases, protecting the global climate, avoiding new levels of poverty, anticipating demographic changes, and maintaining economic competitiveness. Consequently, public services are always confronted by new tasks and new challenges. Successes are quickly forgotten and fade easily in the memories of the people. Apparently, "we face a dilemma in combining our legitimate scepticism about public organisations with the recognition that they play indispensable roles in society".<sup>34</sup>

## 6. Conclusions

Our findings in this study show that knowledge about public and individual performance is still too limited. There is also very little evidence as to the impact on performance of public management and HRM reforms. What is sure, though, is that a new area of performance management

has started which can be characterised by a (more constructive) period of consolidation and refinement of measurement approaches and measurement instruments. It seems that New Public Management (in its purest form) has probably run its course, but it is much less clear what is coming next. One important adjustment to be hoped for is more critical scrutiny of the seemingly almost sacrosanct proposition that what is new in the field is good theory.

A clear danger is that a new measurement culture ("Government by Measurement"<sup>35</sup>) may lead to a reborn "scientific management", with a strong emphasis on formal systems of tight specification and measurement. This focus on performance targets and measurement can even "lead to a costly investment in more bureaucracy, rather than do what it is intended to do: save money. Defining targets, setting targets, measuring targets and reporting on targets cost time and money, and the more targets there are, the more they have to be adjusted again and the more resources go to performance measurement".<sup>36</sup>

Public performance measurement can also lead to an overemphasis on quantitative performance issues. Consequently, other important issues are neglected. For example, the enthusiasm for performance related pay and new performance measurement techniques within the last few years has – so far – not really paid off. According to the OECD study on performance related pay, their introduction has not led to higher motivation and performance levels of public employees.

However, there are as many positive as critical developments taking place. For example, recent studies seem to be able to contribute more hard facts to the discussions about public performance. They confirm that "management matters" and factors such as leadership have an impact on organisational performance. At the same time, well performing organisations trigger more innovative managers. Other studies (for example by Brewer) found that whereas reforms designed to build administrative capacities tend to improve performance levels, other reforms (e.g. downsizing, contracting out and privatisation programmes) tend to undercut bureaucratic performance. Brewer also showed that contextual factors such as the social, economic and political environment exert powerful effects on bureaucracies. Van Dooren comes to a balanced conclusion about the effects of performance measurement. Despite some progress in measuring performance, negative effects are that "Quantity goes at the expense of quality", that "the measured services (...) are inflated in order to obtain good results" and that "the organization loses sight of the activities that are not measured".<sup>37</sup>

This short overview of developments in the field of performance management confirms that it is a fast expanding discipline. However, historical analysis also suggests that, despite evidence for some (modest) improvements, reforms are not always for the better.

Time is required for more evidence to be gathered, especially as regards the development of indicators and their application by public servants and politicians. From the discussions in this paper, one can derive the following conclusions: in order to gain the possible benefits of performance management approaches, public organisations must address a multitude of challenges, and they need a long-term approach, realistic expectations, good data management systems and professional performance evaluation systems.

## NOTES

- \* Dr Christoph Demmke, Associate Professor – EIPA Maastricht.
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# The Compliance Problem in the European Union<sup>1</sup>



By Dr Phedon Nicolaides and Helen Oberg\*

The European Union has an implementation “deficit”. The measures adopted by the EU are not always applied – or are not applied correctly – by all Member States. This is a serious problem. If a culture of compliance is to be fostered in the EU, Member States would need to learn from the experience of those Member States that appear to be more successful at complying with EU rules. At the same time they should learn about the “typical” mistakes made by Member States so as to avoid them. The Commission is naturally placed to identify both “good” and “bad” practices and promote “best” practices.

## Introduction

The European Union has an implementation “deficit”. The measures adopted by the EU are not always applied – or are not applied correctly – by all Member States. This is a serious problem. As has been expressed by the European Commission in its Strategic Objectives for 2005-2009, “failure to apply European legislation on the ground damages the effectiveness of Union policy and undermines the trust on which the Union depends. The perception that ‘we stick to the rules but others don’t’, wherever it occurs, is deeply damaging to a sense of European solidarity.... Prompt and adequate transposition and vigorous pursuit of infringements are critical to the credibility of European legislation and the effectiveness of policies.”

One of the fundamental principles in the EC Treaty is the “loyalty” of Member States. to the Community through prompt compliance with its rules. Article 10 EC provides that “Member States. shall take all appropriate measures... to ensure fulfilment of the obligations arising out of this Treaty... They shall facilitate the achievement of the Community tasks [and]... they shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.”

Every year the Commission initiates hundreds of proceedings against Member States before the European Court of Justice in an effort to induce them to comply with their obligations.

According to the latest available annual report of the Court, which refers to 2004, the Commission initiated 193 proceedings against Member States. During the same year the Court found in 144 cases out of a total of 155 that a Member States had failed to fulfil its obligations. This

means that in more than 90% of cases the Commission was right to take action against one or more Member States.

The issue of compliance is broad and has many different aspects: legal, political, institutional (administrative) and economic. Member States may fail to comply because they are unwilling [domestic political opposition], unable [legal & administrative obstacles; lack of human and material resources], or unaware of their obligations.<sup>2</sup>

In this article we consider only two aspects of compliance that are currently on the political agenda. First, we ask whether the non-implementation problem can be remedied by a change in the legal instruments through which EU law is applied. Second, we examine whether a tougher policy towards non-complying Member States could induce them to apply EU law correctly and more quickly.

Available statistics indicate that close to 80% of the infringement proceedings before the Court of Justice concern directives. Less than 20% of court cases involve non- or mis-application of regulations.<sup>3</sup> This is true at all stages of the three-stage procedure laid down in Article 226 [i.e. letter of formal notice, reasoned opinion, opening of a court case].

The complexity of many EU rules, which in itself often makes implementation difficult, is compounded by the fact that directives require transposition by Member States.<sup>4</sup> For this reason it has been suggested that the implementation of EU law and policies could be improved if the EU relied more on regulations and less on directives.

This is a reasonable view. First, transposition introduces an extra stage in the process of applying EU rules. At a bare minimum it causes delay. The Commission classifies as infringement also failure by Member States to notify that directives have been transposed, i.e. incorporated into national law, by the set deadline. The XXIst Report on

Monitoring the Application of Community Law indicates that 60% of infringement cases refer to non-communication.<sup>5</sup>

Second, the transposition of directives through enabling national legislation offers an opportunity to Member States to add extra provisions making legislation even more complicated [the so-called “gold plating”]. More complex measures are presumably more difficult to apply and enforce.

Third, Member States have to interpret the general principles laid down in directives and develop the precise instruments and procedures through which to give them effect. These instruments and procedures may vary from Member State to Member State reflecting differences in national legal and administrative systems. The identification of the appropriate instrument that fits the purposes of each directive may lead to errors of interpretation. Similarly, newly-established procedures may suffer from teething problems.

Given that directives have certain inherent weaknesses, the natural solution to these problems appears to be beguilingly simple: just eliminate the need to transpose EU law. This is a strong argument in favour of regulations that must be applied uniformly by all Member States.

It indeed raises an important question. Does the choice of legal instrument weaken or strengthen the compliance of Member States with the requirements of EU law?

Our view is that directives cannot really be abandoned. And even if somehow they are replaced by regulations [so that transposition becomes unnecessary] legal and institutional adaptation and innovation within Member States will not be avoided.

At the same time, the Commission, in an effort to induce Member States to comply with their obligations, has adopted a policy of tougher penalties for infringements. We do not think that such a tougher approach will be an effective deterrent to non-compliance.

We begin our analysis by examining in more detail the issues arising out of the choice between directives and regulations and then consider the likely success or not of the tougher approach to infringements.

### ***The directives v regulation conundrum***

A fast-growing body of literature applying economic concepts to the assessment of law suggests that rational agents would comply with costly rules only if non-compliance would be even more costly.<sup>6</sup> This would be the case whenever the penalty for non-compliance is larger than the expenditure required for compliance.

Assuming that Member States act as rational agents, the choice of legal instrument by the EU must be irrelevant to the willingness of Member States to abide by EU law as long as there is no effect either on the probability of detection or the size of the penalty for infringements. Penalties for infringements are determined according to the severity of the violation of EU law and the length of that violation. Since the severity appears to be independent of the form of the legal instrument, it follows that the most significant factor that could influence the behaviour of Member States is the probability of detection of a violation.

Indeed, the argument in favour of regulations has to explain, first, why Member States would be more inclined

to comply with regulations than directives and, second, why misapplication of regulations can be detected more easily.

Let us consider the merits of the first issue. If there were a fundamental problem with directives, as opposed to regulations, then we should expect to see that all Member States have difficulties. Yet, the statistics on infringement of Community law reveal that a handful of (older) Member States consistently account for close to half of all cases. For the period 1997 to 2004 [that is the latest year for which statistics exist in the public domain], four countries – Belgium, France, Germany and Italy – accounted for over 45% of all infringement proceedings in the EU.<sup>7</sup>

This information on its own would suggest that the implementation deficit is not an EU-wide problem but a specific member-state problem. If Greece and Spain are added to Belgium, France, Germany and Italy,

then they reach over 60% of all cases.<sup>8</sup> This does not support the view that there is a generic problem with directives.

Since these are some of the original or older Member States, inexperience or unfamiliarity with EU rules cannot be a significant explanation.

Also, it cannot be the case that these countries are persistently outvoted in the Council and are forced to adopt rules they do not like. It is unlikely, therefore, that their problem is one of being on the losing side at the decision-making level.

What is more likely to happen is that countries which are either unwilling to comply or have internal problems in applying EU law exploit the leeway given to them by directives.

Versluis provides a taxonomy of the prevailing explanations of non-compliance.<sup>9</sup> She groups them in three

**According to the latest available annual report of the Court, which refers to 2004, the Commission initiated 193 proceedings against Member States. During the same year the Court found in 144 cases out of a total of 155 that a Member State had failed to fulfil its obligations. This means that in more than 90% of cases the Commission was right to take action against one or more Member States.**

**Table 1:**  
*Number of infringement cases brought before the Court of Justice (new actions, by Member State)*

Year	1997	1998	1999	2000	2001	2002	2003	2004	Total	Total%
<b>EU15</b>	124	118	162	157	157	168	214	193	1293	100%
<b>Belgium</b>	19	22	13	5	13	8	17	13	110	8%
<b>Denmark</b>	0	1	1	0	2	2	3	2	11	1%
<b>Germany</b>	20	5	9	12	13	16	18	14	107	8%
<b>Greece</b>	10	17	12	18	15	17	16	27	132	10%
<b>Spain</b>	7	6	7	9	15	11	28	11	94	7%
<b>France</b>	15	22	35	25	20	22	22	23	184	14%
<b>Ireland</b>	6	10	13	14	12	8	16	3	82	6%
<b>Italy</b>	20	12	29	22	21	24	20	27	175	14%
<b>Luxembourg</b>	8	8	14	11	10	12	16	14	93	7%
<b>Netherlands</b>	3	3	1	12	5	5	9	13	51	4%
<b>Austria</b>	0	4	8	8	7	15	20	14	76	6%
<b>Portugal</b>	15	5	13	10	7	10	10	7	77	6%
<b>Finland</b>	0	1	0	4	3	1	6	8	23	2%
<b>Sweden</b>	0	1	1	3	3	2	5	5	20	2%
<b>United Kingdom</b>	1	1	6	4	11	15	8	12	58	4%

Source: Eurostat

categories: intentional flouting of the rules when they are contrary to national interest, domestic administrative weakness, distinct national preferences or traditions. Consequently, the proposed remedies to non-compliance are stiffer penalties, strengthening of administrative capacity<sup>10</sup> and development of common preferences ("socialisation"). We see later whether penalties are stiff enough.

Infringement statistics reveal that most problems occur in particular policy fields. This suggests that the "acquis communautaire" is more difficult or complex in certain fields.

Let us turn now to the second issue, namely that it may be easier to detect infringements of regulations because they are more precise. Once more, however, the record indicates otherwise. There are many more cases against Member States before the European Court of Justice concerning directives than regulations.

Although it is commonly held that directives are more problematic because they force national administrations to interpret them, we unfortunately do not have any statistics that prove that they are indeed inherently more difficult. It is important to note that even the fact that directives require transposition does not necessarily mean that regulations can be put in effect with no further national action. They may also require legal adjustments and extensive administrative adaptation.

Consider, for example, Council Regulation 1/2003 that implements Article 81 and 82 of the EC Treaty. Article 35

of the Regulation stipulates that "the Member States shall designate the competition authority or authorities responsible for the application of Articles 81 and 82 of the Treaty in such a way that the provisions of this regulation are effectively complied with. The measures necessary to empower those authorities to apply those Articles shall be taken before 1 May 2004. The authorities designated may include courts. When enforcement of Community competition law is entrusted to national administrative and judicial authorities, the Member States may allocate different powers and functions to those different national authorities, whether administrative or judicial."

Although most Member States had national competition authorities in existence before 1 May 2004, the date on which the Regulation came into force, there was no requirement that such national competition authorities enforced EC law. In some Member States, there was a need for considerable institutional innovation and adaptation so as to be able to comply with that Regulation.

To summarise so far, apart from the fact that some Member States seem to break EU law more frequently than others, there is no convincing evidence that directives are inherently more difficult to apply. Directives must be transposed, but regulations too may need extensive institutional and legal changes. Since no data exist on how Member States comply with regulations, we cannot conclude that they are easier to apply.

**Table 2:**  
*Infringement cases brought before the Court of Justice (by policy area)*

	1997	1998	1999	2000	2001	2002	2003	2004	Total %
<b>Total</b>	<b>169</b>	<b>147</b>	<b>214</b>	<b>197</b>	<b>187</b>	<b>204</b>	<b>277</b>	<b>219</b>	<b>100%</b>
Agriculture and fisheries	38	14	49	37	26	32	31	29	16%
Environment, health and consumer protection	34	10	34	33	49	57	54	40	19%
Enterprises	0	0	4	13	4	10	15	11	4%
Research & education	0	0	0	0	0	0	1	0	0%
Competition	9	9	22	15	10	9	20	7	6%
Internal Market	4	19	15	21	21	23	24	30	10%
Justice and home affairs	40	45	44	31	28	36	54	51	20%
Energy and Transport	10	23	18	15	16	9	23	19	8%
Employment and social affairs	10	10	11	11	6	8	21	17	6%
Taxation and Customs union	13	12	12	13	14	12	19	5	6%
Regional policy	2	0	2	0	0	0	7	2	1%
Enlargement	1	1	0	1	1	1	1	2	0%
External relations	3	3	0	4	5	1	0	1	1%
Economy and finance	0	0	0	2	0	2	2	3	1%
Other	5	1	3	1	7	4	5	2	2%

Source: Eurostat

### ***The need for a mixture of policy tools***

A general principle of public policy is that a policy tool is abandoned not when it is imperfect – they are all imperfect to varying degrees – but when a more effective tool can be adopted. Consider what could happen if directives were abandoned.

Directives tend to contain more general principles which have to be made operational by Member States. This means that if directives were dropped, regulations would have to be made more general and their application in each particular case would be subject to a greater degree of interpretation by the Member States than at present. Hence, detection of misapplication would also become more difficult.

This immediately raises another question. Should the EU, then, rely instead on detailed rather than general regulations? The answer is no. Bilal and Nicolaidis have argued that optimum policy enforcement relies on a mixture of specific and general rules.<sup>11</sup> Specific rules require no or little interpretation and therefore are easy to apply. Their disadvantage, however, is that they tend to be narrow in scope. By contrast, general rules, which are wider in scope, need to be interpreted and determine whether and how they may apply to each particular case. This makes them costly. It follows that optimum enforcement is a balancing act between the narrowness of the rules and the ease of

applying such rules.

If the EU would replace directives with detailed regulations, it would simply replace one problem with another. Making common rules more detailed, so as to improve detection, will come at the cost of making regulation less flexible and more cumbersome.

There is also the extra cost of potentially excessive homogeneity across the EU. Directives allow Member States to experiment and to learn from each other. This is valuable in those sectors where it is not obvious which implementing method is superior. One of the propositions of the principal-agent theory is that the principal must allow some leeway and discretion to the agent whenever the tasks of the agent cannot be defined with sufficient precision.<sup>12</sup>

### ***Non-implementation can be contagious and addictive***

No or faulty implementation of EU rules is a serious problem. It undermines both the substance of those rules and confidence in the process of integration. The success of European integration depends to a significant extent on the faithfulness by which Member States comply with their contractual obligations.

Since their record is imperfect, it is natural to believe that legal action against non-complying Member States is the perfect remedy. Consider, then, what may happen if the EU

relies only on the legal proceedings initiated by the Commission in order to induce Member States to respect their obligations.<sup>13</sup>

Surprisingly, any Member State, especially the new ones, may conclude that non-compliance "pays". It takes time for the Commission to detect an infringement, initiate proceedings before the Court and get a ruling finding that infringement has indeed occurred. But even with an adverse ruling, the Member State concerned can still procrastinate. The Commission will have to initiate new proceedings and request that the Court imposes a fine on that Member State for failing to comply with the previous ruling. It is after the second ruling that the Member State will start paying and actually feeling the "pain" of non-compliance. In the mean time, it could have "gained" anything between four and eight years of non-compliance.

In July 2000 Greece became the first Member State to be fined for not complying with EU law. The Court imposed a daily fine of €20,000. It took Greece six months to comply and ended up paying a total of €4.7 million. In November 2003 Spain became the first Member State to be fined twice for the same infringement. Its penalty was modest; only €625,000 per year. In July 2005 France suffered the largest penalty ever which was both a lump-sum of €20 million and a daily fine of €320,000.

Recently the Commission announced a new tougher policy on the determination of fines for non-compliance. In the future it will ask the Court to impose both lump sums and periodic penalties for each day of non-compliance. Under the new method, fines are calculated on the basis of a formula that starts with a standard flat rate [€600] which is then adjusted upwards depending on the severity and time length of the infringement, and the size of the economy of the Member State concerned.

But even this new tougher policy may not be dissuasive enough. The following example illustrates the problem. Assume that a new Member State, say Cyprus, considers whether to comply immediately with a new EU law or just ignore it because, say, it is too costly to establish the requisite institutional structure. The reason why Cypriot authorities would be facing that dilemma is that the government is in the process of reducing its budget deficit and public debt so as to qualify for membership of the Eurozone in the next 18 months.

If we assume that the prospective infringement is average in severity [the scale is 1 to 20] and it concerns failure to put EU law on the Cypriot statute books which suggests that the time length would be short [the scale is 1 to 3] and taking into account the small size of the Cypriot economy [the scale reflects the size of GDP and the number of votes in the Council], it is likely that the daily penalty will be around €8,000. In addition, there will be a lump-sum. The minimum amount for Cyprus has been set at €350,000. This means that if it takes Cyprus, say, six months to rectify the problem, the total fine will be about €1,800,000.

If Cyprus will have to pay €1,800,000 after, say, six years of non-implementation of EU law [the assumed

period from the initiation to the conclusion of legal proceedings] that makes it about €300,000 per year. Even for a small country that amount does not appear to be too dissuasive. In the case of France which last year paid a fine of €20,000,000, the infringement concerned failure to apply a 1991 directive! The annual cost of its infringement was less than €1.5 million over that 14-year period. For a large country, too, non-compliance may be cheap.

Of course, the real costs are likely to be much higher. There is the cost of the human resources which are diverted to managing court cases. There is also the risk of national courts awarding damages [provided EU law creates rights for individuals<sup>14</sup>]. But above all, there is the cost of failing to reap the benefits of integration and common EU policies.

But to politicians who are more concerned about protecting the interests of their constituencies and keeping the political promises they have made, an amount of €300,000 per year may be a gamble worth taking. For French politicians the length of the infringement also provided some "comfort". Those who took the decision not to apply the directive in 1991 are probably no longer in office while those who have to pay the fine have the excuse that it was not their fault. The length of legal proceedings in the EU provides a natural cover for non-conforming governments.

Our conclusion, therefore, is that infringement penalties are still too small and infringement proceedings too long for them to be an effective disincentive to non-compliance.

Moreover, we think it would not be good for the public image of the EU to raise penalties even more. Although, in principle, individuals are deterred from breaking the law by the severity of potential penalties, Member States may not react in the same way precisely because those who make the decision to flout the rules are unlikely to be the ones that will have to bear the consequences. At any rate, high-profile conflicts between EU institutions and Member States will not contribute positively to the development of a climate of cooperation and may create a hostile public attitude towards the EU.

### **Conclusion**

Implementation, compliance and enforcement are unlikely to be improved through exhortation, penalties which are not tough enough or increased reliance on regulations rather than directives. If urging Member States to act in the common interest or threatening them with legal action were sufficient, the situation would have improved a long time ago.

Shifting from one legal instrument to another is an untested approach, but apart from eliminating the need for transposition, it does not appear to have any other advantage.

The solution must be sought in other approaches. But whatever approach is chosen, it seems to us that a necessary first step is better understanding of why Member States fail to fulfil their obligations. Perhaps surprisingly, the Commission letters of first notice, reasoned opinions and

## **Yet, the statistics on infringement of Community law reveal that a handful of (older) Member States consistently account for close to half of all cases.**



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subsequent arguments before the Court of Justice and the rulings of the Court that find infringements do not explain why they have occurred.

If a culture of compliance is to be fostered in the EU, Member States would need to learn from the experience of those Member States that appear to be more successful at

complying with EU rules. At the same time they should learn about the “typical” mistakes made by Member States so as to avoid them. The Commission is naturally placed to identify both “good” and “bad” practices and promote “best” practices.

## NOTES

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<sup>1</sup> We gratefully acknowledge comments and suggestions we have received on earlier drafts by Edward Best, Simon Duke and Maria Kleis.

<sup>2</sup> There is a voluminous legal and political science literature on the implementation of EU law. For extensive reviews see, for example, J. Vervaele, *Compliance and Enforcement of European Community Law*, (The Hague: Kluwer, 1999), P. Craig, and G. De Burca, *EU Law Text, Cases and Materials*, 3<sup>rd</sup> ed., (Oxford: Oxford University Press, 2003) and J. Tallberg, Paths to Compliance: Enforcement, Management and the European Union, *International Organization*, 2002, Vol. 56, pp. 609-643.

<sup>3</sup> The terms “directive” and “regulation” refer to the legal instruments defined in Article 249 of the EC Treaty.

<sup>4</sup> Note, however, that there are multiple reasons for defective implementation of directives. These reasons range from political unwillingness to administrative weaknesses and differences in legal traditions. They also vary from Member State to Member State. For more information see E. Versluis, Explaining Variations in Implementation of EU Directives, *European Integration online Papers*, 2004, vol. 8, no. 19, accessed at <http://eiop.or.at/eiop/texte/2004-019a.htm>. Accordingly, the remedies also vary. Please see the research programme and the various papers on Better Regulation by the European Policy Centre accessed at [www.theepc.be](http://www.theepc.be).

<sup>5</sup> COM(2004) 839. Accessed at “[http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/pdf/XXI\\_rapport\\_annuel/21\\_rapport\\_annuel\\_en.htm](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/pdf/XXI_rapport_annuel/21_rapport_annuel_en.htm)”.

<sup>6</sup> See, for example, D. Friedman, *Law's Order: What Economics Has to Do with Law and Why it Matters*, (Princeton, NJ: Princeton University Press, 2000); S. Shavell, *Foundations of Economic Analysis of Law*, (Cambridge, MA: Belknap Press, 2004).

<sup>7</sup> Strangely, these countries are the ones which by any standards are regarded to be the most “communitaire” or the most fervent supporters of deeper integration.

<sup>8</sup> See “[http://europa.eu.int/comm/secretariat\\_general/sgb/](http://europa.eu.int/comm/secretariat_general/sgb/)

[droit\\_com/index\\_en.htm](http://droit_com/index_en.htm)”

<sup>9</sup> E. Versluis, *Compliance Problems in the EU: What Potential Role for Agencies in Securing Compliance?* University of Maastricht, paper presented at the 3<sup>rd</sup> ECPR conference, 8-10 September 2005, Budapest.

<sup>10</sup> The Commission, for example, has recently proposed that “one senior member of government, at Minister or Secretary of State level, is designated as being responsible for monitoring the transposition of all internal market Directives into national law.” See Commission Recommendation of 12 July 2004 on the transposition into national law of Directives affecting the internal market, OJL 98, 16/04/2005, p. 47-52.

<sup>11</sup> S. Bilal & P. Nicolaidis, Regulatory Instruments and Enforcement in Regional Blocs, *Aussenwirtschaft*, 2002, no. 2.

<sup>12</sup> See M. McCubbins, R. Noll & B. Weingast, Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies, *Virginia Law Review*, 1989, Vol. 75, pp. 431-482.

<sup>13</sup> Proceedings against failure to implement EU law may also be initiated by businesses or individuals before national courts. The difference between EU and national courts is that damages may be awarded only by national courts. We ignore this possibility in our analysis because we have no data on any awards for damages made by national courts against public authorities in the various Member States. Nonetheless, it should be noted that national courts play a significant role in proceedings that clarify the obligations of Member States. This is indicated by the fact that many landmark cases on the obligations of Member States have originated in national courts through references for “preliminary ruling”. National courts make these references in order to request the opinion of the European Court of Justice on matters of interpretation of EU law. In general references for preliminary ruling account for about half of the workload of the Court.

<sup>14</sup> Individuals can indeed take action against public authorities and demand compensation for damages they have suffered due to non- or faulty implementation of EU rules. This principle has been established by the landmark rulings in the Factortame, C-213/89, and Francovich, C-6/90, cases.

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# Areas of Grey: Tensions in EU External Relations Competences



By **Dr Simon Duke\***

The EU's competences in external relations are shared between the European Community and the more intergovernmental 'pillars' on which the Union rests. This is most obvious in the case of the Common Foreign and Security Policy (CFSP – the so-called 'second pillar'). Moreover, the demise of the cold war and the rapid growth of CFSP and its subset, the European Security and Defence Policy (ESDP), have led to some tensions in the 'grey areas' that fall in-between the Community and CFSP. The purpose of this contribution is to examine the nature and extent of these tensions and to consider various approaches to resolving, or at least diminishing, them.

The EU's competences in external relations are shared between the European Community and the more intergovernmental 'pillars' on which the Union rests. This is most obvious in the case of the Common Foreign and Security Policy (CFSP – the so-called 'second pillar'), although external relations also involves an increasingly important collection of border, organised crime and counter-terrorism issues that arise in the context of the 'third pillar' of Police and Judicial Cooperation in Criminal Matters. Moreover, the demise of the cold war and the rapid growth of CFSP and its subset, the European Security and Defence Policy (ESDP), have led to some tensions in the 'grey areas' that fall in-between the Community and CFSP. The purpose of this contribution is to examine the nature and extent of these tensions and to consider various approaches to resolving, or at least diminishing, them.

The intention is not to offer a comprehensive legal analysis of competences in external relations, since many exist, but to consider the issue from a more political and policy-oriented perspective. Since the scope of the subject still remains broad, it is therefore hoped that the use of a case study, that of Small Arms and Light Weapons (SALW), will help to illustrate some of the more general issues.

## ***Areas of grey in EU external relations***

Historically there is evidence of at least concern, if not tension, between the predominant Community aspects of external relations and the European Political Cooperation (EPC) process that emerged in 1970. By design EPC was intended to be 'distinct from and additional to the activities of the Community'.<sup>1</sup> The sense of 'otherness' would have longer-term consequences since it implied that the com-

petences of EPC and its successor, CFSP, would be framed in a 'distinct' manner and, to some, as an appendage to the Community. The October 1981 London summit referred to the importance attached by the Ten to 'the Commission of the European Communities being fully associated with political cooperation, at all levels'.<sup>2</sup> Later, the Single European Act of 1986 noted that external policies were to be 'consistent' and the Presidency and the Commission were given 'special responsibility' in this regard.<sup>3</sup> However, in a curious formulation, the preamble stressed the importance of Europe 'speaking increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interest and independence', but also that the Member States 'may make their own contribution to the preservation of peace and security...'. The juxtaposition between 'one voice' and 'own contribution' not only points backwards, to the 'otherness' of EPC, but also hints at the future difficulties that would be encountered in achieving a 'voice' in external relations.

The end of the Cold War and the Maastricht Treaty saw EPC incorporated into the Treaty on European Union (TEU) as CFSP, or the second pillar. The former EPC ministerial meetings were replaced by meetings of the Foreign Ministers meeting as the General Affairs Council (and, from 2002 onwards, as the General Affairs and External Relations Council). CFSP remained distinct in terms of its decision-making procedures and the respective rights accorded to the Member States and the Community. The TEU was attentive to the need for the Union to 'ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies'.<sup>4</sup> The Council and the Commission, in the context of the Union's single institutional framework, were given

responsibility for consistency and were required to 'ensure the implementation of these policies, each in accordance with its respective powers'.

The Community, which has legal personality, derives its competences in external relations from two sources. First, there are *express* powers specifically bestowed upon the Community by the Treaty establishing the European Community (TEC), such as Article 300 which gives the Community the power to enter into international agreements. Other prominent examples would be Article 133 (addressing the common commercial policy) and Article 310 (concerning association agreements). The Community's external powers also include a number of other significant areas such as environmental policy (which specifically mentions the 'international level' and 'worldwide environmental problems' as part of the Community remit) and education and vocational concerns where the Community will 'foster cooperation with third countries'. Second, competences in external relations may also be *implied*, meaning that they derive from the internal competences laid out in Article 3 TEC.<sup>5</sup> The Court has, over the years, shaped and extended the competences of the Community in external relations, most notably in the *Kramer* case where the authority to enter into international commitments could arise 'not only from an express attribution by the Treaty, but equally may flow implicitly from its provisions'.<sup>6</sup>

The advent of CFSP posed immediate questions of competence. For example, the common commercial policy in the TEC had not hitherto been particularly contentious, but it now raised implicit questions of how it relates to foreign policy. Similar issues arose with regard to development policy (which is one of the reasons that the Commission dislikes the notion of 'political conditionality' being ascribed to its external assistance programmes). From the outset the TEU gave rise, as we shall see below, to questions of hierarchy between the Community areas and Title V (CFSP).

The questions of competence and hierarchy were exacerbated by differences within the Commission itself, with no less than four Directorates-General (DGs) being responsible for external relations and development. The inevitable competition that resulted between the DGs and their respective Commissioners may, in part, account for the difficulties encountered in defining the Community's profile in EU external relations and in shaping the substance of its 'full association' with CFSP. Differences in bureaucratic culture and the size and composition of the EU institutions have also played a role in competences issues which is commonly under-estimated. The lighter structures within the Council General Secretariat and the more political role of Directorate-General E in particular, have allowed for more institutional adaptation and the assumption of tasks in the grey areas. The appointment of the High Representative for CFSP in October 1999, as well as the establishment of a Policy Unit which reports to him and, soon thereafter, the military and civilian crisis management institutions in the

ESDP area, have had a notable impact on the ascendancy of the Council in external relations.

Before embarking upon a more detailed look at the specific case of SALW, it is important to provide a sense of the extent to which differences or tensions exist in the so-called grey areas. This will hopefully provide useful context for the case study.

### *Shades of grey in EU external relations*

There were some areas where the potential for overlap was clearly foreseen and provision was therefore made for this in the Treaties. The most obvious example of this nature is the interruption or reduction, in part or completely, of 'economic relations with one or more third countries' [Article 301 TEC]. In this instance the Council 'shall take the necessary urgent measures' and shall act by 'a qualified majority on a proposal from the Commission'. Hence, in this particular instance the Council adopts the necessary political decision to enforce economic sanctions while the Commission oversees the implementation. The relationship between the two institutions is also clearly laid out in this instance and the emphasis is very much upon the primacy of the Council.

An associated area where there is close collaboration between the Commission and the Council is in the respect for human rights and fundamental freedoms, which is mentioned in both the TEC and the TEU. The Commission routinely integrates human rights provisions (often referred to as an 'essential elements' clause) into its agreements with external partners, with stipulations

for penalties in the event of non-compliance. One of the results of partial or total non-compliance can be the suspension of economic relations (as was the case in Liberia, Niger, Togo and Zimbabwe, to name but a few) in the manner outlined above.

Both of the above are examples of overlapping competences that were identified by the Treaties and provision was made for a consistent and coherent approach. They are also, however, rather predictable cases; other issues such as election monitoring, dual-use goods, defence industrial aspects, conflict prevention, civilian crisis management, SALW and issues of external representation pose more complex challenges, with less clear-cut responses.

Commission challenges to the Council have been mounted on a number of occasions for allegedly infringing upon Community competences in external relations. Common positions adopted in 1994 on Rwanda and the Ukraine were both criticised for the inclusion of Community matters in CFSP 'common positions'. Similar examples have been cited of the 'overly pervasive' use of CFSP instruments in the cases of electoral observation in Russia and South Africa as well as the Korean Peninsula Energy Development Organization initiative.<sup>7</sup> Other issue areas, cutting across a number of countries, such as the export of dual-use goods have also frequently surfaced as points of contention between the

## The potential for clashes over issues of competence has doubtlessly been fuelled by the multifarious challenges facing the EU in its external relations and, in particular, the rapid growth of crisis management.

Community and the second pillar. Conversely, the Council has challenged the Commission's competence to act when it supported conflict-prevention programmes in West Africa (through The Southern Africa Development Community and the Economic Community of West African States) as well as in Nepal; supported peace-building and mediation in Aceh, Liberia and Sudan; promoted peace-building efforts in Bolivia; and support for UN good offices in Colombia.<sup>8</sup> In a similar vein there are also dimensions of Security Sector Reform (SSR) that have military or (external) police dimensions which fall within the CFSP competence.

The potential for clashes over issues of competence has doubtlessly been fuelled by the multifarious challenges facing the EU in its external relations and, in particular, the rapid growth of crisis management. These challenges, as the High Representative for CFSP, Javier Solana, observed in his European Security Strategy, call upon the Union to 'bring together the different instruments and capabilities: European assistance programmes and the European Development Fund, military and civilian capabilities from Member States and other instruments ... Security is the first condition for development'.<sup>9</sup> Although undoubtedly correct, the issue still remains of how to combine the instruments and capabilities. The manner in which the strategy was drafted, primarily within the Council Secretariat and with little consultation with the Commission, is symptomatic of the issue. Chris Patten has already noted that the growth of CFSP and its associated structures depended upon finding a *modus vivendi* with the Community. The following reflections by Patten, made in 2000, are worth quoting with this in mind:

The important point is that – however awkward they may be – the new structures, procedures and instruments of CFSP recognise the need to harness the strengths of the European Community in the service of European foreign policy. That is why the Treaty 'fully associates' the European Commission with CFSP. We participate fully in the decision-making process in the Council, with a shared right of initiative which we shall exercise. Our role cannot be reduced to one of 'painting by numbers' – simply filling in the blanks on a canvas drawn by others. Nor should it be. It would be absurd to divorce European foreign policy from the institutions which have been given responsibility for most of the instruments for its accomplishment: for external trade questions, including sanctions; for European external assistance; for many of the external aspects of Justice and Home Affairs.<sup>10</sup>

Issues of foreign policy are one factor, but perhaps of more importance is the rapidly emerging ESDP with its various crisis-management roles; it has already been observed that some of the most sensitive competence issues have arisen in and around this area. From a legal perspective it is 'the aim and content of an envisaged operation' that determines the legal basis.<sup>11</sup> This therefore suggests that an operation is either a Community instrument, financed through the Community budget; a CFSP operation (without military or defence implications) financed through the CFSP budget; or, an ESDP

operation which falls outside the Community budget.<sup>12</sup>

The competence issue, though, is only partially a legal matter. The question of funding also influences competence issues between the pillars. Put rather directly, funding to support CFSP crisis-management operations remains limited, whereas the Community has substantial funds at its disposal. Again, to quote Patten, 'The secretariats that worked for the Council of Ministers and its High Representative for the CFSP resented the Commission's access to useful things like money'.<sup>13</sup> As we look to the future the funding issue is likely to remain at the centre of the inter-pillar competence question. The Commission's Instrument for Stability (henceforth Stability Instrument) is intended to improve the EU's response to crises by streamlining the Community and CFSP responses under the forthcoming Financial Perspective (2007-13).<sup>14</sup> The general thrust of the proposal has been welcomed by the Council and the European Parliament, although it has also met with charges that 'the Instrument oversteps Commission competences and would reduce parliamentary oversight'.<sup>15</sup> Dewaele and Gourlay lament that the 'negotiations on this new financial instrument have not been carried out in the spirit of inter-institutional solidarity, but rather been reduced to legalistic arguments over the precise delineation of institutional competences'.<sup>16</sup>

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#### ***ECOWAS and SALW: a landmark case?***

In retrospect Small Arms and Light Weapons (SALW) was one of the more likely areas for a clash between the Community and CFSP. The action brought by the European Commission against the Council of the EU on 21 February 2005 has the potential to be a

landmark case, with profound implications for the Council and the Commission.<sup>17</sup>

Before examining the case in more detail, a little background on SALW is necessary in order to understand why it has become a landmark case. The trade and spread of SALW has been recognised internationally and affects not only the security of civil populations but is also associated with terrorism and organised crime. According to UN estimates there are around 600 million light weapons in global circulation, which are responsible for 500,000 deaths per annum, 300,000 of which occur in armed conflicts. Of the 49 major conflicts in the 1990s, 47 were conducted with SALW as the major weapons.<sup>18</sup>

EU issues relating to the production, transfer and acquisition of armaments are generally a Member State competence (Article 296 TEC). In spite of this, arms trafficking was mentioned in the 1997 Amsterdam Treaty and eight broad criteria were agreed that Member States should take into account when licensing arms exports. A Programme for Preventing and Combating the Illicit Trafficking in Convention Arms was agreed to on 26 June 1997 which, although internal in focus, had important external dimensions including various weapons buy-back, collection and destruction schemes.<sup>19</sup> The 1998 EU Code of Conduct included 'full scope' sanctions (in other words, those including military, arms and any other items).<sup>20</sup> A resolution on small arms the following year reinforced the Union's

resolve to stem the spread of SALW, with a particular emphasis on southern (SADC) and western (ECOWAS) Africa.<sup>21</sup> The agreements above have been complemented by bilateral arrangements such as those with the United States and Canada. Finally, the European Council adopted a Strategy to combat the illicit trafficking of SALW and their ammunition in December 2005 and, of relevance for the case discussed below, the strategy noted that, 'Africa remains the continent most affected by the impact of internal conflicts aggravated by the destabilising influx of SALW'.<sup>22</sup>

The development of EU policy on SALW has had a slow gestation. The emergence of the Schengen area focussed attention on the issue since it implied that there was a need for cooperation on a variety of efforts to counter organised crime, terrorism and drug trafficking – all of which carried external ramifications, including the SALW.<sup>23</sup> The Member States would clearly not give up their interest in SALW-related issues, given national sensitivities in this area, alongside the continued existence of Article 296 TEC. However, the linkage with Community activities is also irrefutable. A SALW pamphlet (published by the European Commission) makes the link clear:

Countries with high levels of insecurity or violence cannot make effective use of development assistance. Therefore, assistance to conflict-prone countries or regions should be provided in order to promote security, disarmament and demobilisation as well as reintegration of ex-combatants into civil society, as an integrated part of social and economic development programmes.<sup>24</sup>

In the case of ECOWAS specifically, the members declared a moratorium on the import, export and manufacture of SALW in November 1998 and, a year later, a code of conduct. The Commission has indirectly supported the moratorium for several years, especially through a € 1.9 million conflict-prevention project approved in 1999. Ironically conflict prevention, which became a 'fixed priority' for the Union in 2001, was to be another area subject to conflicting competences and inter-institutional friction.

To return to the case, the Commission requested the annulment of a Council decision of December 2004, 'for lack of competence', regarding an EU contribution to ECOWAS in the framework on the Moratorium on SALW.<sup>25</sup> It is therefore now up to the Court of Justice to review the legality of the Council decision.<sup>26</sup> The Commission challenge was mounted on the grounds that the Council was not competent to adopt the decision referred to and that existing legislation, in this case the Cotonou Agreement, covers *inter alia* the spread of SALW.<sup>27</sup> Article 11(3) of the Agreement mentions, amongst other things, the need to address 'the excessive and uncontrolled spread, illegal trafficking and accumulation of small arms and light weapons'. The Council decision also allegedly violates Article 47 of the TEU which

states that, ... nothing in this Treaty shall affect the Treaties establishing the European Community or the subsequent Treaties and Acts modifying or supplementing them. According to the Commission's challenge the Council's Joint Action also violated Articles 177 and 181a of the TEC. Under these respective articles the Community is attributed competence for development aid and, in particular, 'within its spheres of competence, economic, financial and technical cooperation measures with third countries'. The Commission also sought a declaration of illegality for a further Council Joint Action from July 2002.<sup>28</sup>

From the Council perspective the Joint Actions referred to above were consonant with Title V of the TEU which states that, 'The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy ...' [Article 11.1]. The TEU also states that CFSP shall 'include *all* questions relating to the security of the Union ... [Article 17.1 *emphasis added*]. However, the Common Provisions of the TEU state that the Union shall be 'founded on the European Communities, *supplemented* by the policies and forms of cooperation established by this Treaty' [Article 1, *emphasis added*]. It should be noted that

the following article sets out as one of the Union's objectives to 'maintain in full the *acquis communautaire* and to build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community' [Article 2]. The two articles, when read together, would seem to imply that CFSP (and, for that matter, the third pillar) are subservient

## The action brought by the European Commission against the Council of the EU on 21 February 2005 has the potential to be a landmark case, with profound implications for the Council and the Commission.

to the Community in the sense that the development of the second pillar must respect the *acquis communautaire*. The presence of a 'single institutional framework', the need to ensure the consistency of the Union's external actions while 'respecting and building upon the *acquis communautaire*' [Article 3 TEU] and the precedence of Community law over national law, all imply that there exists a Union *acquis*, applying equally to the second and third pillars, in practice if not name.<sup>29</sup> It would be equally counter-intuitive to assume that the existence of CFSP (and the third pillar) does not modify the *acquis communautaire* and European law. According to Pascal Gauthier the requirement for consistency, a responsibility falling to the Council and the Commission, 'each in accordance with its respective powers' [Article 3 TEU], has led 'both institutions to rightly claim competence over all aspects of the Union's external activities'.<sup>30</sup>

An attempt, by deduction, to ascertain the nature of 'all aspects of security', which is of relevance to our discussions, is also likely to end in frustration. If we look at the external powers of the Community, these aspects are merely implied from the internal Community tasks laid out in Article 2 (TEC). Aside from the legal niceties, the practical, everyday, challenges of deciding where, for example, financial support strays into security policy issues, or *vice versa*, is often

unclear. So, in addition to the legal ambiguities surrounding this case, there is also the all important question of the intentions and perceptions of the respective instruments referred to above.

On the question of intentions, Bastien Nivet comments that the 'EU's intervention in ECOWAS countries and its support to ECOWAS in the field of SALWs had first developed essentially as a financial support to local and UNDP-operated existing programmes'.<sup>31</sup> Thus, the Commission-backed SALW efforts could legitimately be portrayed as a matter of Community competence, based on the Cotonou Agreement, since it was primarily financial in nature. The Council, acting through CFSP, committed the EU to 'offer a financial contribution and technical assistance to set up the Light Weapons Unit within the ECOWAS Technical Secretariat and convert the Moratorium into a Convention on small arms and light weapons between the ECOWAS Member States'.<sup>32</sup> The Council therefore wished to establish direct technical and financial assistance to the ECOWAS Secretariat itself, rather than the Commission model which was based on support directed through existing programmes; as Nivet comments, the Council's approach 'implies a shift of cooperative method'.<sup>33</sup>

The EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition, adopted by the European Council after the above-mentioned legal challenge, continues to portray SALW as primarily a CFSP concern, even going so far as to argue that, 'generally speaking, the whole range of CFSP instruments can be mobilised in support of Union SALW-related action (Personal Representatives, Special Representatives, political declarations, technical support, demarches and structured dialogues, ad hoc seminars on export controls)'.<sup>34</sup>

The story is further complicated by the fact the Union's principal vehicles to stem SALW in Africa had been through Disarmament, Demobilization and Reintegration (DDR) and SSR which it helps to finance through the European Development Fund (EDF).<sup>35</sup> The EU strategy refers to 'development and assistance programmes financed by the EDF, in the framework of EC-ACP cooperation' as one of the available external instruments.<sup>36</sup> The advent of the African Union (AU) in December 2002 at the Durban Summit contained a strong security dimension; hence the inclusion of a Peace and Security Council. At the AU Maputo summit in 2003 the heads of state proposed that a peace facility be set up using EC development co-operation agreements directed at their respective countries. The EU

accordingly agreed in July 2003 to establish a EU Peace Support Operation Facility for the AU financed from funds allocated to them via existing development co-operation agreements, matched initially by matching funding from *unallocated* EDF resources.<sup>37</sup>

The AU Peace Facility (APF) is now worth some €250 million and is managed by Africans. The overall purpose of the Facility is to create the conditions for development since, as is acknowledged by Solana in the European Security Strategy and in the Cotonou Agreement, there can be no development without security. From the Commission's perspective, 'the decision to extend the use of development funds to peace and security issues was therefore a deliberate one'.<sup>38</sup> The use of funding originally intended as Official Development Assistance for peace support operations has created controversy and, more generally, the support for AU peacekeeping missions is a change from the normal economic co-operation that has typified the Union's role on the continent. Hence, to some critics, it was seen as 'inappropriate to use development aid for military-related expenditures, which was the case with the Africa Peace Facility even if they are not considered directly "military" operations'.<sup>39</sup>

The APF carries the seeds for further confusion regarding the roles of the Community and the second pillar. Although the APF has been presented primarily as a vehicle for development, which necessitates an active Community role, the political implications of supporting sensitive peace keeping operations points to an active CFSP role (especially

that of the Political and Security Committee).

### **Formal and informal approaches to competence issues**

One of the first solutions, or perhaps a form of short-term 'non-solution', is simply to step back and let the situation evolve, with the Court's decision on the ECOWAS/SALW case as an integral part of this evolution. Indeed, it could be argued that different interpretations of competences are part of everyday life – in national administration, the work place and even the home – and the situation will gradually right itself. Whilst there is some merit to the argument, it can be challenged on the grounds that there may be a very real human cost in terms of the Union's ability to be an effective international actor, if the problems outlined above are not addressed.

A more formal approach, interrupted by the two 'No'



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votes in the 2005 referendums, was to address the competence issues through the Constitutional Treaty. The Laeken Declaration on the Future of the EU had identified the need for a redefined division of competence while, at the same time, guarding against 'creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States ...'.<sup>40</sup> The Constitutional Treaty did little to solve the issue of competences since the procedures, instruments and institutions remain much as they are currently. The innovations in the external relations area, such as the Union Minister for Foreign Affairs or the European External Action Service, may hold the potential to alter the institutional balance of powers, but they will also become part and parcel of the competences struggle and most likely its focus.

In the absence of a Constitutional Treaty, other forms of *ad hoc* cooperation in the 'grey areas' could be fostered. There are already examples of close cooperation in, for example, the current missions to Aceh and the Moldova-Ukraine border monitoring mission. Another interesting example is the joint appointment of Erwan Fouéré as Head of the European Commission delegation to the Former Yugoslav Republic of Macedonia, as well as EU Special Representative – thus avoiding the sometimes awkward relations between the Special Representative and the heads of the Commission delegations. More *de facto* collaboration has arisen in the External Service as well, since the boundaries of what is *communautaire* and what is intergovernmental have become more blurred, aided and abetted by the lack of Council Secretariat representation overseas outside of liaison offices in Geneva and New York (separate from those of the Commission).

The Commission has also realised the need for occasional specialist advice in the 'grey' areas, exemplified by the temporary assignment of a military advisor from the EU Military Staff to give advice on the Darfur region. The relatively new European Defence Agency has revived the Community's interest in the defence-industrial aspects, especially through DG Enterprise who strongly backs the objective of creating a strong and competitive European defence industry supported by cooperative research and development. In spite of these encouraging signs, the question remains as to whether they are *ad hoc* or part of a broader emerging understanding on competences.

### Conclusion

There is no simple solution to the complex issues raised above. The Constitutional Treaty, if adopted, would still leave many questions of competence in the air and may well exacerbate existing tensions. At the practical level there are a few examples of pragmatic solutions which involve the recognition of common aims but which also, in many cases, reflect the existence of limited resources. It is therefore possible that a slow neo-functionalist approach may clarify some of the competence issues in a bottom-up manner. Such a process could also be complemented by top-down effects, such as judgements of the Court of Justice. It should nevertheless be noted that the general non-applicability of the Court's jurisdiction in the CFSP area, alongside the ability to conclude international agreements to implement



Javier Solana, Secretary General of the Council of the EU and High Representative for CFSP.

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CFSP, may lead to further disputes in the numerous 'grey areas' identified above.

One of the best hopes for diminishing inter-institutional tension in the grey areas may stem from the Constitutional Treaty itself, in the form of the European External Action Service. In spite of the fact that the Service is intimately tied to the existence of a Union Minister for Foreign Affairs, there may be some logic to reviving the talks between the Council and the Commission on the Service. Although this could easily lead to charges of 'cherry picking' (and the Service is often mentioned as a potential target), it is the *process* of talking through the design of the Service that is almost as important as any outcome. The discussions on the Service will inevitably be very sensitive since they go to the very heart of the competence issue, but they are also long overdue.

### NOTES

- \* Dr Simon Duke, Associate Professor – EIPA Maastricht.
- <sup>1</sup> *Bulletin of the European Communities*, No. 10-1972, p. 18.
- <sup>2</sup> 'Report on European Political Cooperation', London, 13 October 1981, in *Bulletin of the European Communities*, Supplement 3-1981, pp. 14-17.
- <sup>3</sup> Treaties Revising the Treaties establishing the European Communities and Acts relating to the Communities (Single European Act), 11 June 1986, Title III, Article 20, Para. 5.
- <sup>4</sup> This list of external activities is however limited and would now have to include other areas such as energy, JHA, agriculture and Economic and Monetary Affairs, all of which have significant external aspects.
- <sup>5</sup> Articles 94, 95 and 308 TEC are often used to establish

- implied external competences.
- <sup>6</sup> Case 3,4 and 6, Kramer et al. (1976), ECR 1279 at 1308.
- <sup>7</sup> Gauttier, p. 28.
- <sup>8</sup> Aline Dewaele and Catriona Gourlay, *The Stability Instrument: defining the Commission's role in crisis response*, ISIS Briefing, 27 June 2005, p. 5.
- <sup>9</sup> Javier Solana, *European Security Strategy*.
- <sup>10</sup> Speech by The Rt Hon Chris Patten, Institut Français des Relations Internationales (IFRI), Paris, 15 June 2000, SPEECH/00/219.
- <sup>11</sup> As established in Case C-376/98, *Germany v European Parliament and Council* (2000) ECR-8419.
- <sup>12</sup> *Communication from the Commission to the Council and the European Parliament: Financing of Civilian Crisis Management Operations*, COM (2000)674 final, Brussels, 28 November 2001, p. 4.
- <sup>13</sup> Chris Patten, *Not Quite the Diplomat: Home Truths About World Affairs*, (London: Allen Lane, 2005), p. 157.
- <sup>14</sup> *Proposal for a regulation of the Council establishing an Instrument for Stability*, COM (2004) 630 final, 29 September 2004.
- <sup>15</sup> *The Stability Instrument: defining the Commission's role in crisis response*, ISIS Europe, 27 June 2005, p. 1.
- <sup>16</sup> *Ibid.* p. 6.
- <sup>17</sup> 'Action brought on 21 February 2005 by the European Commission against the Council of the European Union', (Case C-91/05), in *Official Journal of the European Union*, C115/10, 14 May 2005.
- <sup>18</sup> *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, adopted by the European Council, 15-16 December 2005, Council 5319/06, 13 January 2006, Para. 8.
- <sup>19</sup> *Programme for Preventing and Combating the Illicit Trafficking in Conventional Arms*, Council Doc. 9057/97, 20 June 1997.
- <sup>20</sup> *Code of Conduct on Arms Exports*, Council Doc. 8675/2/98, Rev. 2, 8 June 1998.
- <sup>21</sup> *Development Council's Resolution on Small Arms*, 21 May 1999. For full text see, <http://www.grip.org/bdg/g1787.htm>
- <sup>22</sup> *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, Para. 12.
- <sup>23</sup> This point is made by Simon Hix, *The Political System of the European Union*, (Basingstoke: Macmillan, 1999), p. 321.
- <sup>24</sup> *Small Arms and Light Weapons: The response of the European Union*, European Commission, (Luxembourg: Office for Official Publications of the European Communities, 2001), p. 8.
- <sup>25</sup> Council Decision 2004/833/CFSP, 2 December 2004.
- <sup>26</sup> Article 230 of the Treaty establishing the European Community states, in part, that the Court of Justice shall have 'jurisdiction in actions brought by a Member State, the Council or the Commission on the grounds of lack of competence ...'.  
<sup>27</sup> 7285/05, JUR, *Information Note for the attention of Coreper II*, 14 March 2005, Brussels.
- <sup>28</sup> Council Joint Action 2002/589/CFSP, 12 July 2002 on the EU 's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, OJ L 191, 19 July 2002.
- <sup>29</sup> In some respects the stipulations regarding PJCCM are even more explicit than CFSP, especially when Article 29 of the TEU states that the provisions concerning the area of freedom, security and justice, shall be exercised 'without prejudice to the powers of the European Community ...'.
- <sup>30</sup> Pascal Gauttier, *Horizontal Coherence and the External Competences of the European Union*, *European Law Journal*, Vo. 10, No. 1 January 2004, p. 27.
- <sup>31</sup> Bastien Nivet, *Security by Proxy? The EU and (sub-) regional organisation: the case of ECOWAS*, Occasional Paper, No. 63, March 2006, p. 26.
- <sup>32</sup> Quoted in Nivet, *Ibid. Loc Cit.*
- <sup>33</sup> *Ibid. Loc cit.*
- <sup>34</sup> *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, Para. 19.
- <sup>35</sup> The EDF is not part of the general Community budget, but is funded by the Member States and is covered by its own financial regulations that are ratified by the national parliaments, and is managed by a specific committee.
- <sup>36</sup> *EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition*, Para. 19.
- <sup>37</sup> 1.25% of EDF 9 (this is the ninth round) money was taken from the Cotonou country 'B' envelopes within the €10 billion long-term development envelope; amounting to around €126 million. Information from <http://www.bond.org.uk/networker/2004/aug04/apf.htm>.
- <sup>38</sup> *Securing Peace and Stability for Africa: The EU-Funded African Peace Facility*, Directorate-General for Development, Information and Communication Unit, European Commission, 2004, p.5 (at [http://europa.eu.int/comm/development/index\\_en.htm](http://europa.eu.int/comm/development/index_en.htm)).
- <sup>39</sup> European Peacebuilding Liaison Office, 'Comment on the Proposal for a Regulation of the Council establishing an Instrument for Stability', 23 May 2005, Section 1.3.2 (at <http://www.eplo.org/documents/EPLOPolicyPaperStabilityInstrument.pdf>).
- <sup>40</sup> *Laeken Declaration on the Future of the European Union*, 15 December 2001.

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# Considérations sur l'utilité des partenariats public-privé (PPP) pour améliorer le fonctionnement et l'efficacité des directives sur les marchés publics



Exposé de Michael Burnett\* devant la Commission du marché intérieur et de la protection des consommateurs du Parlement européen – "L'examen du fonctionnement et de l'efficacité des directives sur les marchés publics", Bruxelles, le 20 avril 2006

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COMMENT

## RESUME

Ce document définit les PPP, explique pour quelles raisons il est important que la commission du marché intérieur et de la protection des consommateurs les étudie et décrit de quelle manière ils s'inscrivent dans le régime européen des marchés publics.

Il identifie deux domaines essentiels dans lesquels on peut améliorer le cadre juridique des PPP et donc permettre de les utiliser plus efficacement dans les cas où on les retient comme les moyens les plus indiqués de prestation de service. Il s'agit de la nécessité d'améliorer la certitude juridique et de clarifier l'obligation d'assurer un processus transparent et concurrentiel pour la passation des marchés publics.

Le document souligne trois questions essentielles auxquelles il convient de trouver une solution au niveau européen, soit l'incohérence entre les procédures d'attribution des marchés publics et des concessions, la nécessité d'une application efficace des règles relatives aux procédures de passation des marchés publics et la véritable mise en œuvre du dialogue compétitif, nouvelle procédure de passation de marchés introduite par le dernier paquet législatif sur les marchés publics.

Il présente ainsi trois propositions pour tenter de trouver une solution à ces problèmes et qui sont:

- La normalisation des modes de passation à tous les PPP, qu'ils soient classés comme marchés publics ou comme concessions;
- La prochaine révision des directives "recours" sur les marchés publics devrait déboucher sur une approche plus normative au niveau européen, afin de réduire la diversité des procédures et des recours disponibles.
- La commission du marché intérieur et de la protection des consommateurs devrait envisager de demander à la Commission européenne d'approfondir les orientations sur la mise en œuvre pratique du dialogue compétitif (en particulier pour la période qui suit l'appel d'offre) et devrait lui offrir son soutien politique pour recueillir l'approbation concernant l'application de ces orientations dans la pratique.

Ces propositions s'inscrivent dans le prolongement du thème d'une meilleure mise en œuvre et application, qui figure dans la consultation que la Commission a récemment publiée sur l'avenir du marché intérieur.

Ce document n'entend pas essayer de trouver une réponse à la question de savoir si les PPP sont ou non politiquement souhaitables ou s'ils constituent ou non la solution la plus indiquée dans une affaire spécifique. Il est destiné à trouver les moyens de créer un cadre juridique plus efficace pour les PPP (qui sont une forme de marchés publics) et donc à les accepter comme une option viable, que les pouvoirs publics peuvent utiliser en fonction des besoins.

## Que sont les PPP?

PPP est devenu un terme largement utilisé pour décrire différents types d'accord contractuel. C'est un terme qui se distingue par le nombre élevé d'acronymes et de titres<sup>1</sup>. Toutefois, comme l'a reconnu le Fonds Monétaire International<sup>2</sup>, il n'y a pas d'accord clair sur ce que constitue un PPP.

Une bonne description des PPP vient dès lors des caractéristiques d'une telle transaction, soit:

- La création et/ou le renouvellement d'une infrastructure par le fournisseur du secteur privé. Il peut s'agir par exemple d'une route, d'un pont, d'une école ou d'un hôpital, pour lequel on utilise souvent un terrain et/ou des bâtiments qui appartiennent aux pouvoirs publics avant le PPP.
- L'utilisation par le même fournisseur du secteur privé de l'infrastructure créée ou renouvelée en vue de fournir au public un service nouveau ou existant pendant une période définie. Cette période est souvent plus longue – elle peut s'étendre sur 30 ans ou plus – que la période habituelle pour d'autres marchés publics.
- Le paiement par l'entité publique de frais périodiques au fournisseur pour la prestation du service qui utilise l'infrastructure. Les frais périodiques peuvent varier en fonction du volume de service fourni.
- L'absence d'engagement par l'entité publique à acquitter des frais périodiques jusqu'à et à condition que l'infrastructure soit utilisée pour la prestation du service.
- Le partage des risques et des avantages financiers du résultat du projet par les deux partenaires.

Cette description des caractéristiques ne couvre pas toutes les variations des PPP et les nouvelles qui continuent à apparaître. Il y a plusieurs modèles différents de financement et de propriété des infrastructures. Les concessions sont en outre désignées par la Commission<sup>3</sup> comme une forme de PPP, de sorte que le terme peut également être utilisé pour décrire l'exploitation par le fournisseur du secteur privé d'un droit à prester un service pour lequel des paiements sont effectués directement par le public comme client. Ces paiements peuvent ou non être partiellement subventionnés par un pouvoir public.

Les quatre premières caractéristiques décrites ci-dessus sont des traits distinctifs des PPP par rapport aux marchés publics traditionnels, la cinquième étant partagée par la plupart des marchés publics.

La Commission envisage le PPP essentiellement comme un partenariat entre les secteurs public et privé pour offrir un service public<sup>4</sup>.

## Pourquoi est-il important que cette commission étudie les PPP?

- **Les PPP sont importants pour la mise en œuvre des politiques européennes et ils le seront dans un avenir prévisible** parce qu'ils comblent l'écart entre le financement nécessaire pour mettre en œuvre les politiques et les fonds publics disponibles qui sont limités. Le financement de cet écart revêtira une importance particulière dans les nouveaux États membres pour les aider à se conformer par exemple à la législation européenne en matière de protection environnementale.
- **Les PPP sont souvent des transactions très visibles sur le plan politique** (projets transports et énergie, nouveaux moyens d'assurer l'éducation et les services de santé,

nouveaux réseaux informatiques pour supporter les services publics etc.). Les PPP impliquent aussi souvent des **transactions complexes, dont le processus de sélection est long et qui aboutit souvent un contrat à long terme/de grande valeur**, de sorte que les possibilités et les risques sont proportionnellement plus élevés que pour les autres marchés publics. Toute réduction du risque induite par une action au niveau européen serait une contribution utile à leur mise en œuvre.

- **Les PPP représentent un domaine d'activité dynamique.** Il y a de fortes pressions à la fois dans les anciens et dans les nouveaux États membres qui poussent les pouvoirs publics à utiliser les PPP comme un moyen d'assurer les services publics, par exemple les pressions budgétaires, les pressions liées au respect de la législation et les pressions des citoyens-consommateurs dont les attentes en matière de services sont toujours plus élevées. Les PPP ont été largement utilisés au Royaume-Uni, en Irlande, en Italie, en France, en Allemagne et en Espagne dans plusieurs secteurs et d'autres États membres augmentent également leurs niveaux d'activité. La liste des services pour lesquels les PPP ont été utilisés continue à s'allonger.

L'emploi des PPP n'est pas indiqué en toute circonstance et il devrait être évalué au cas par cas. Cependant, étant donné qu'ils sont utilisés en pratique pour la prestation de services publics, il est utile d'envisager de supprimer les obstacles à leur utilisation comme option viable par les pouvoirs publics.

## Comment les PPP s'inscrivent-ils dans le régime des marchés publics?

**En ce qui concerne le cadre juridique européen, les PPP sont une forme de marchés publics**, de sorte que le régime des marchés publics s'y applique. Les PPP peuvent être soit des marchés publics, soit des concessions. Dès lors, la réforme du fonctionnement et de l'efficacité du régime des marchés publics encouragera l'utilisation efficace des PPP, quand ils sont considérés comme la solution adéquate à un besoin spécifique de service.

**Différentes procédures de passation s'appliquent aux marchés publics et aux concessions.** Dans la nouvelle directive relative à la coordination des procédures de passation des marchés publics<sup>5</sup>, les concessions de travaux sont soumises à des conditions de concurrence moins formelles que les contrats de travaux publics et les concessions de service restent entièrement exclues du champ d'application de la directive et sont régies uniquement par la nécessité d'appliquer les principes du Traité européen<sup>6</sup>.

**La nouvelle directive relative à la coordination des procédures de passation des marchés publics de travaux, de fournitures et de services a introduit des mesures destinées à faciliter le recours aux PPP, dont une nouvelle procédure de passation de marchés connue sous l'appellation Dialogue compétitif.** Elle entend permettre à une entité publique qui n'arrive pas à établir laquelle de plusieurs solutions possibles serait la plus à même de répondre à ses besoins de discuter en confiance avec les candidats sélectionnés durant la phase de dialogue du processus d'appel d'offre, avant le lancement de l'appel d'offre final au terme duquel il ne devrait pas y avoir d'autres négociations<sup>7</sup>.

Le dialogue compétitif est destiné à être utilisé plus souvent et à être plus facile à justifier que la procédure négociée de la directive existante sur les marchés publics. Il est probable que les PPP correspondent souvent aux circonstances propices à l'application du dialogue compétitif.

La Commission considère que<sup>8</sup> le dialogue compétitif, en donnant clairement aux organismes publics la liberté de négocier les aspects techniques, juridiques et financiers des marchés, est particulièrement bien adapté aux PPP et apportera la certitude juridique nécessaire, qui est très importante pour la confiance à l'égard des contrats à long terme de type PPP. Cet avis contraste avec l'opinion plus arrêtée qu'elle défend sur les utilisations acceptables de la procédure négociée, c'est-à-dire que les négociations autorisées concernent principalement les aspects techniques du contrat et non les aspects juridiques et financiers.<sup>9</sup>

### Quels sont les principaux domaines où le cadre juridique des PPP pourrait être amélioré?

Les deux domaines essentiels où le cadre juridique pourrait être amélioré et ainsi permettre aux PPP d'être utilisés plus efficacement, sont une plus grande certitude juridique pour les parties à la transaction et une plus grande clarté sur l'obligation de mener un processus transparent et concurrentiel de passation de marché.

La **certitude juridique**<sup>10</sup> est particulièrement importante pour susciter l'intérêt pour les contrats à long terme et de grande valeur comme les PPP, qui exigent souvent des fournisseurs de service des niveaux élevés d'investissement et des engagements financiers à long terme de la part des pouvoirs adjudicateurs.

La nécessité de **procédures de passation de marchés transparentes et concurrentielles** vient des pressions exercées sur les pouvoirs publics. Ils doivent assurer l'aménagement d'infrastructures importantes le plus rapidement possible pour se conformer à la législation européenne et pour répondre aux attentes des citoyens-consommateurs en matière de services, qui sont toujours plus élevées. Quand ils sont également confrontés à des pressions budgétaires énormes, il est particulièrement important de garantir que le rapport qualité/prix<sup>11</sup> est obtenu par une passation de marché transparente et compétitive.

### Quels sont les problèmes spécifiques essentiels à résoudre pour satisfaire ces besoins et de quelle manière faut-il les résoudre?

Il y a trois problèmes essentiels à résoudre actuellement pour améliorer la certitude juridique et pour promouvoir des procédures transparentes et compétitives de passation de marchés.

#### 1. La nécessité de normaliser le mode de passation des marchés publics et des concessions dans la directive européenne sur les marchés publics.

Comme cela est noté ci-dessus, les modes de passation pour les PPP qui sont classés comme marchés publics dans la directive sur les marchés publics sont différents de ceux qui sont classés comme concessions. Les concessions de travaux publics sont soumises à des conditions de concurrence moins formelles que les contrats de travaux

publics. Dans la passation des concessions de travaux, les pouvoirs adjudicateurs sont seulement tenus de se conformer à certaines règles concernant la publicité, les délais et les sous-traitants, les conditions prévues quand le concessionnaire confie le marché à des tierces parties. Les concessions de service sont spécifiquement exclues du champ d'application actuel de la directive sur les marchés publics.

#### Cela peut-il encore se justifier?

Du point de vue des principes du Traité, ou pour encourager le rapport qualité/prix, il y a peu de raisons pour traiter différemment les marchés publics et les concessions. L'existence potentielle de risque supplémentaire pour le fournisseur dans une concession (ce qui la différencie d'un marché public) n'est pas suffisante en soi. Dans sa récente communication sur les PPP et les concessions dans le droit communautaire, la Commission déclare que "il est difficile de comprendre pourquoi les concessions de services qui sont souvent utilisées pour des projets complexes et de grande valeur sont entièrement exclues de la législation communautaire secondaire."<sup>12</sup>

#### Pour quelle raison est-ce important?

La Commission a souligné le fait que dans certaines transactions, il n'a pas été facile au début d'une procédure de passation de marchés d'être sûr qu'il fallait les traiter comme un marché public ou comme une concession et que l'évaluation initiale des risques acceptés par le fournisseur pouvait changer suite aux négociations pendant la procédure de passation de marchés<sup>13</sup>. Cela crée une **incertitude juridique**, c'est-à-dire le risque de problème dérivant de l'utilisation de la mauvaise procédure de passation de marché, en particulier vu le nombre grandissant de cas traités par la CEJ dans le domaine des marchés publics.

L'existence de procédures différentes crée des **occasions d'éviter la transparence et la concurrence dans les marchés publics**, dans la façon dont le contrat est structuré, notamment parce que de nombreux PPP peuvent être classés comme concessions de service. Ce manque de transparence et de concurrence pourrait avoir un impact sur la capacité des pouvoirs publics à assurer l'aménagement d'infrastructures dans les délais souhaités et à un prix abordable.

#### 2. Garantir l'amélioration de l'applicabilité des recours pour infraction aux directives sur les marchés publics, dans la révision des directives sur les recours en matière de marchés publics, qui a été proposée par la Commission en mai 2006.

Les directives actuelles sur les recours en matière de marchés publics datent de 1989 pour le secteur des marchés publics et de 1992 pour le secteur des réseaux. Elles expliquent comment les personnes mécontentes de la conduite d'un exercice de passation de marché public peuvent obtenir réparation. Plusieurs affaires portées devant la CEJ et autres procédures d'infraction de la Commission contre les États membres ont souligné les nombreux aspects de la diversité de pratiques entre les systèmes juridiques nationaux de l'Union, ce qui peut rendre la situation des soumissionnaires mécontents plus difficile pour obtenir réparation en cas de problème<sup>14</sup>.

Une directive plus normative sur les recours en matière de marchés publics, qui réduirait la diversité des procédures de recours et la disponibilité de recours spécifiques, supprimerait un obstacle potentiel aux adjudications transfrontières et serait un atout contre la fragmentation du marché intérieur. Elle peut avoir un impact significatif sur les PPP, qui étant de grande valeur, offrent l'avantage d'attirer une concurrence à l'échelle européenne.<sup>15</sup>

**3. La nécessité de promouvoir l'application de la nouvelle procédure de passation de marchés incluse dans la directive sur les marchés publics (dialogue compétitif), de façon à améliorer la compétitivité pour les contrats importants tels que les PPP.**

L'essentiel pour obtenir un bon rapport qualité/prix dans les contrats importants est de maintenir la concurrence le plus possible jusqu'à la signature du contrat. Une bonne pratique, pas toujours suivie, a généralement été de ne pas sélectionner le soumissionnaire avant d'arrêter toutes les conditions importantes touchant au prix et à la réalisation d'un projet, alors qu'il y avait toujours concurrence.

On constate que certains praticiens pourraient interpréter que la procédure autorise la continuation de la pratique actuelle de négociations importantes avec le commissionnaire dans un environnement où il n'y a qu'une seule offre.

La Commission a récemment produit une Fiche explicative utile sur l'application du dialogue compétitif<sup>16</sup>, mais qui pourrait également être complétée par des conseils pratiques pour limiter encore davantage les démarches autorisées dans la période qui suit l'offre, en définissant plus précisément les termes "précisions, clarifications, perfectionnements" et la condition "le soumissionnaire identifié comme ayant remis l'offre économiquement la plus avantageuse peut être amené à clarifier des aspects de son offre ou à confirmer les engagements figurant dans celle-ci"<sup>17</sup>.

Ces conseils supplémentaires renforceraient l'intention du dialogue compétitif, qui est de sauvegarder la bonne pratique actuelle et de minimiser l'importance des changements apportés au contrat après la remise des offres et ce, plus encore après la sélection du soumissionnaire ayant remis l'offre la plus avantageuse.

## NOTES

\* Michael Burnett, Maître de conférences – IEAP Maastricht

<sup>1</sup> Par exemple, le *Private Finance Initiative* (PFI) britannique est une forme de PPP, tout comme l'est le *Betreibermodell* en Allemagne.

<sup>2</sup> "Partenariats public-privé", Département des affaires fiscales du FMI, mars 2004, p. 6.

<sup>3</sup> Voir "Livre vert sur les partenariats public-privé et le droit communautaire des marchés publics et des concessions" COM (2004) 327, Commission européenne, avril 2004, p. 9.

<sup>4</sup> Par exemple dans "Guidelines for successful Public-Private Partnerships", Commission européenne, Direction générale de la politique régionale, mars 2003, p. 16.

<sup>5</sup> Directive 2004/18/CE relative à la coordination des procédures de passation des marchés publics de travaux, de fournitures et de services.

<sup>6</sup> Pour les contrats de service, il y a une distinction entre les services entièrement réglementés (ce qu'il est convenu d'appeler les services Partie A) et les services moins réglementés (les services Partie B). La distinction repose sur l'importance potentielle d'intérêt transfrontière et donc sur l'impact significatif sur le marché intérieur. Les conditions relatives à la concurrence pour les services Partie B sont moins formelles. Par exemple, les directives sur les marchés publics n'exigent pas l'annonce du contrat dans le Journal officiel de l'Union européenne. Comme cela est indiqué à l'annexe 19 de la directive sur les marchés publics, ces services sont potentiellement sujets à la reclassification comme services entièrement réglementés, mais sans délai particulier. Parmi ceux-ci: l'éducation, la santé et les services de loisirs pour lesquels les PPP sont à présent utilisés dans certains États membres.

<sup>7</sup> Voir directive 2004/18/CE, article 29. Il pourra être utilisé

pour les "marchés particulièrement complexes", où le pouvoir adjudicateur – le terme utilisé pour les pouvoirs publics soumis à la directive – estime que le recours à la procédure ouverte ou restreinte (nécessitant des spécifications prédéterminées) ne permettra pas d'attribuer le marché. Contrairement à la procédure négociée, qui est le mode de passation généralement utilisé jusqu'à présent dans de telles situations, il n'y a pas nécessairement lieu que cette procédure soit utilisée seulement dans des cas exceptionnels. La directive relative à la coordination des procédures de passation des marchés publics de travaux, de fournitures et de services envisage que le dialogue compétitif soit, par exemple, utilisé pour confier des marchés de réalisation d'importantes infrastructures de transport intégrées, la réalisation de grands réseaux informatiques ou la réalisation de projets comportant un financement complexe et structuré, dont le montage financier et juridique ne peut pas être prescrit à l'avance.

<sup>8</sup> "Livre vert sur les partenariats public-privé et le droit communautaire des marchés publics et des concessions" COM (2004) 327, Commission européenne, avril 2004, p. 10.

<sup>9</sup> "Livre vert sur les partenariats public-privé et le droit communautaire des marchés publics et des concessions" COM (2004) 327, Commission européenne, avril 2004, p. 9.

<sup>10</sup> Définie à cette fin comme l'assurance que le processus, s'il est mené selon des règles connues et bien définies, aboutira à un résultat probablement inégalable.

<sup>11</sup> Défini par exemple par le Trésor public au Royaume-Uni comme "la combinaison optimale de coût complet et de qualité (ou aptitude à l'emploi) pour répondre au besoin de l'utilisateur".

<sup>12</sup> Communication de la Commission au Parlement européen,

au Conseil et au Comité des régions concernant les partenariats public-privé et le droit communautaire des marchés publics et des concessions, COM (2005) 569, Commission européenne, novembre 2005, p. 8. Selon l'auteur, la Commission a développé une bonne analyse des problèmes, mais a ensuite conclu dans la Communication (voir p. 5) que les parties prenantes étaient assez opposées à un régime réglementaire couvrant l'ensemble des PPP contractuels, sans distinction selon leur qualification de marchés publics ou de concessions. Par conséquent, la Commission n'envisage pas de les soumettre à des procédures d'attribution identiques." Or, l'opposition des parties prenantes ne devrait pas nécessairement être une raison suffisante pour ne pas adopter un moyen plus transparent de réagir à la nécessité de certitude juridique.

<sup>13</sup> "Livre vert sur les partenariats public-privé et le droit communautaire des marchés publics et des concessions" COM (2004) 327, Commission européenne, avril 2004, p. 12.

<sup>14</sup> Quand elle a lancé la consultation sur les changements éventuels à apporter à la directive sur les recours en matière de marchés publics, la Commission a déclaré que "la situation insatisfaisante résultant en particulier du fonctionnement

très variable des procédures nationales de recours d'un État membre à l'autre, ainsi que les développements jurisprudentiels récents, appellent une clarification voire une précision du cadre législatif existant, afin d'assurer une sanction effective, proportionnée et dissuasive des violations du droit communautaire des marchés publics, en particulier des violations les plus graves (attribution directe de contrats sans publicité préalable)".

<sup>15</sup> Accomplir le changement nécessitera l'impulsion de la commission. Quand elle a lancé la consultation, la Commission a déclaré que "les modifications envisagées ne devraient viser qu'à adapter et améliorer certaines dispositions des directives recours sans changer la philosophie et les principes qui ont inspiré leur adoption. Ainsi, le principe de l'autonomie procédurale des États membres ne sera-t-il pas remis en cause. Les États membres conserveront notamment la possibilité de fixer la juridiction ou l'autorité indépendante compétente selon leur droit procédural national pour connaître des recours relevant du droit communautaire des marchés publics."

<sup>16</sup> Fiche explicative–Dialogue compétitif–Directive classique, DG marché intérieur, Janvier 2006.

<sup>17</sup> Voir article 29 de la directive sur les marchés publics.

# Upcoming Events September 2006

more details at: <http://www.eipa.eu>

LOCATION	PROJECT NO.
<b>BARCELONA</b> 14-15 September 2006 European Information and Communication Management – Open vs Secret Europe: Getting the right balance between transparency and confidentiality	<b>0662901</b>
<b>BRUSSELS</b> 4 September 2006 European Information and Communication Management – One-day Seminar on European Information	<b>0611802</b>
<b>LUXEMBOURG</b> 18-19 September 2006 European Public Managers Programme – Second Seminar: European Law Monitoring	<b>0622502</b>
28-29 September 2006 Seminar: Press Relations of Courts, Magistrates and Lawyers	<b>0621901</b>
<b>MAASTRICHT</b> 11-12 September 2006 Seminar: European Environmental Policy. The Making of Environmental Policies in Brussels: Working Groups, Negotiations, Current Agendas	<b>0630902</b>
14-15 September 2006 Seminar: Implementing Plan-D – How to Communicate Europe Effectively	<b>0620103</b>
18-21 September 2006 Introductory & Practitioners Seminar: European Public Procurement Rules, Policy and Practice	<b>0630804</b>
18-22 September 2006 Tutorial – EU Recht für Nichtjuristen	<b>0632406</b>
25-29 September 2006 EIPA Tutorial – EU Law for Non-Lawyers	<b>0631906</b>
28-29 September 2006 Seminar: Food Crises – Effective Management Approaches in the EU	<b>0632702</b>
28-29 September 2006 Seminar: Understanding Decision Making in the European Union: Principles, Procedures and Practice	<b>0612203</b>



# The Role of EIPA in the EU-CONSENT Network of Excellence.

## *Studying the Impact of Enlargement on the EU Institutions*

By Dr Edward Best, Thomas Christiansen, Pierpaolo Settembri and Araceli Barragan\*

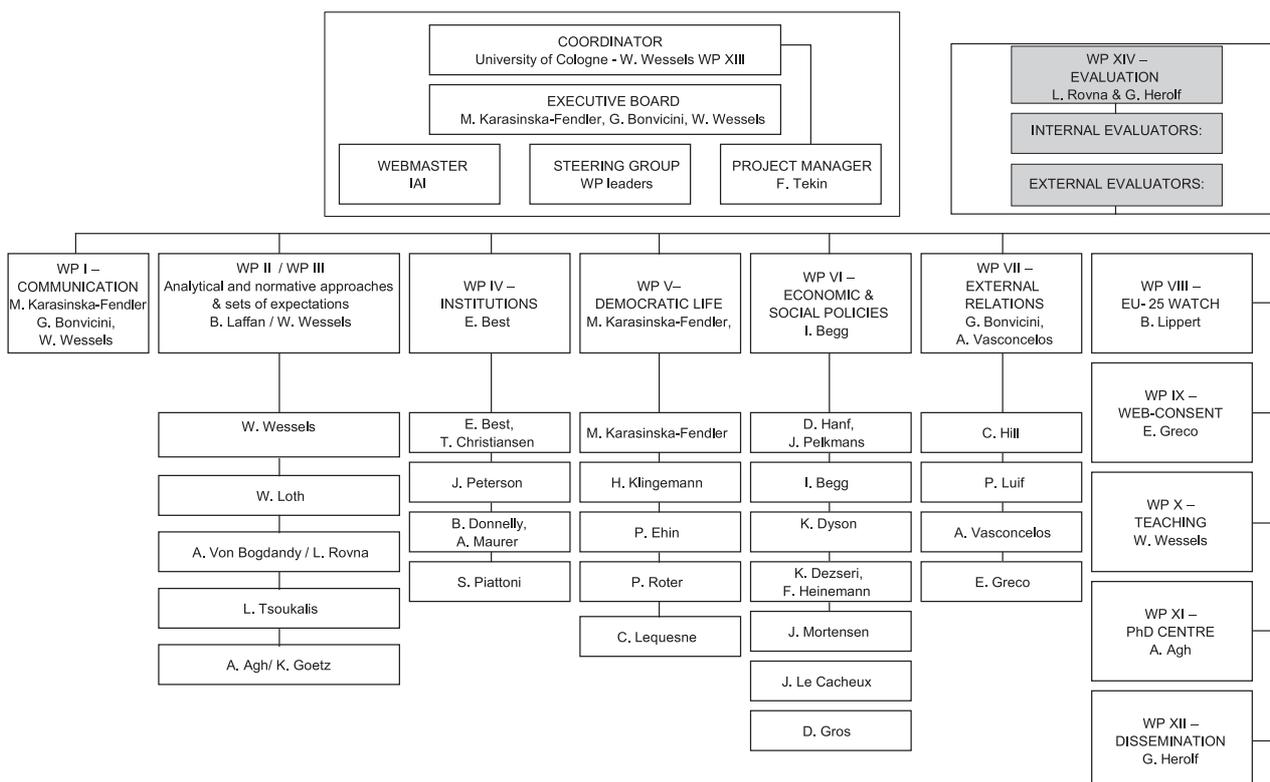
Since 1 June 2005, EIPA has been part of an EU Network of Excellence for joint research and teaching supported by the European Commission's 6th Framework Programme and coordinated by Professor Wolfgang Wessels at the University of Cologne. The project, which has a duration of four years, brings together 48 institutional partners, including 25 universities, from 22 EU Member States and three candidate countries. It focuses on the evolution of the European Union in the context of enlargement, exploring interactions between deepening and widening in the Union's institutions, policies and politics.

The goals of the project are not only to encourage and assist the production of "excellent" research output among the partners by means of 'integrating activities' and shared research activities. They are also to mobilise young researchers (PhD mobility programme and biannual PhD school), and to contribute to public knowledge about EU deepening and enlargement through dissemination activities

(public events and common publications), and a multilingual glossary, bibliographies and core curricula, and virtual study units, all of which will be placed on the website: <http://www.eu-consent.net/>.

The network is divided into 14 Work Packages. Some horizontal dimensions of the Network's mission – communication, dissemination etc. There are four thematic Work Packages, looking at

- **Institutions and Political Actors**, coordinated at EIPA
- **Democracy, Legitimacy and Identities**, coordinated by Maria Karasinska-Fendler (Europa Institute, Lodz)
- **Economic and Social Policies**, coordinated by Ian Begg (London School of Economics)
- **Political and Security Aspects of the EU's External Relations**, coordinated by Gianni Bonvicini (Institute of International Affairs, Rome) and Alvaro de Vasconcelos (Institute for Strategic and International Studies, Lisbon).



EIPA leads the Work Package on "Institutions", which aims to assess the impact of enlargement on the institutions and political actors of the European Union. It consists of 4 Teams, specialised on thematic areas:

- Team 6 – Leadership:  
Edward Best and Thomas Christiansen (EIPA, Maastricht)
  - The Council of Ministers
  - The European Council
  - The European Agencies
  - Institutional Cooperation in Implementation
- Team 7 – Leadership:  
John Peterson (University of Edinburgh)
  - The Commission and the European Civil Service
- Team 8 – Leadership:  
Brendan Donnelly (The Federal Trust, London)  
Andreas Maurer (Stiftung für Wissenschaft und Politik, Berlin)
  - The European Parliament and Political Actors
  - a sub-team is also set up to deal with the Court of Justice
- Team 9 – Leadership:  
Simona Piattoni (Università Degli Studi Di Trento)
  - Multilevel Governance and the Role of the Regions
  - Institutionalised Participation of Economic and Social Actors

Over the next two to three years, the Work Package "Institutions" intends to build up a picture of the real institutional impact of expansion of the EU. This is an ambitious undertaking requiring cautious preparation. While each institution and actor needs to be treated in its own terms, a common basic framework for analysis is necessary to ensure consistency across the thematic teams.

The aim is therefore simultaneously to engage in a broader reflection about the dynamics of institutional change in the EU (and the overall evolution of the EU), while also designing detailed empirical research on developments in each of the institutions and institutionalised mechanisms of actor participation.

This research, moreover, must necessarily take into account inter-institutional dynamics, as well as the interaction between various levels of analysis:

- the functioning of each of the European "Institutions" as organisations;
- the operation of networks;
- the generation and application of European rules; and
- the evolution of the European political/institutional system as a whole.

A general analytical framework has thus been drafted during the first months of the project and will be refined in the course of the preliminary phase of the work.<sup>1</sup> On the basis of this common approach, each team is encouraged to identify the pressures for change which can be specifically attributed to enlargement, as compared to other dynamics of institutional change, and to assess whether these are simply assimilated, whether institutional arrangements are adapted, or whether some form of transformation takes place. In this light, the Work Package "Institutions" evaluates whether enlargement brings about more fundamental change in the nature of each institution/ actor and of the institutional system as a whole, and reflects on the implications of these studies for theories of integration and institutional change.

The Work Package on "Institutions" aims to produce a series of working papers and two through two edited volumes on the institutional impact of enlargement, to be delivered at the end of the second and fourth year of the project.

#### NOTES

- \* EU-Consent – EIPA Team:

Dr Edward Best,  
Leader of WP "Institutions"  
and co-leader of Team 6



Thomas Christiansen,  
Co-leader of Team 6



Pierpaolo Settembri,  
Responsible for co-ordination  
of EU-CONSENT at EIPA



Araceli Barragán,  
EU-CONSENT  
Programme Organiser



<sup>1</sup> The work is accessible at: [http://www.eu-consent.net/library/Team6\\_AnalyticalFramework.PDF](http://www.eu-consent.net/library/Team6_AnalyticalFramework.PDF)

The following activities took place during the first year of activities.

4 October 2005, Maastricht

Initiative: WP IV

**Workshop: Towards a Common Analytical Framework**

8-9 February 2006, Edinburgh

Initiative: Team 7

**Workshop: The Commission and the European Civil Service**

24-25 February 2006, Trento

Initiative: Team 9

**Workshop: European Institutions after the 2004 Enlargement: The Committee of the Regions, The Economic and Social Committee and The Social Dialogue**

13 March 2006, Brussels

Initiative: Team 6

**Workshop: Measuring the Management of Council Business**

30 March 2006, London

Initiative: Team 8

**Workshop: The Role of the European Parliament in the Development of a European Political Space**

4 May 2006, Budapest

Initiative: WP IV

**Workshop: Meeting of the team leaders**

24 May 2006, Berlin

Initiative: WP IV

**Workshop: The Political Development of the Enlarged Union**



# Upcoming Events October 2006

more details at: <http://www.eipa.eu>

LOCATION	PROJECT NO.
<b>BARCELONA</b> 19-20 October 2006 Seminario Cumpliendo con Europa: la nueva contratación pública	0665003
<b>LUXEMBOURG</b> 12-13 October 2006 Annual Conference on Legal Aspects of Money	0655201
26-27 October 2006 Seminar: Free Movement of Labour	0650601
<b>MAASTRICHT</b> 2-3 October 2006 Internal Market Seminar: Part 1: Free Movement of Goods	0634201
3-4 October 2006 Seminaire: Lobbying dans le processus décisionnel communautaire – Stratégies et outils	0610802
3-4 October 2006 Internal Market Seminar: Part 2: Free Movement of Professionals and Services and the Protection of Consumers of Services	0634301
5-6 October 2006 Seminar: Corporate Governance: Recent Developments	0632101
5-6 October 2006 European Information and Communication Management – Europe on the Internet Finding your way through the European Information jungle	0611002
9-11 October 2006 Public Private Partnerships (PPP) – Practitioners’ Seminar: Making Best Use of Public Funds	0630603
9-11 October 2006 European Negotiations I: Techniques to Manage Procedures, People and Package Deals to Survive European Negotiations	0610903
16-17 October 2006 Seminar: Introduction to the System for the Recognition of Foreign Diplomas	0631501
18-20 October 2006 Colloquium on the Recognition of Foreign Diplomas and the Repercussions of these Rules on National Education Policies Focusing on the Situation of Teachers and the Paramedical Professions	0631502
19-20 October 2006 Seminar: Latest Trends in Working Conditions in Public Administrations	0621301
23-24 October 2006 Seminar: Effective National Implementation (Working Title)	0624102
23-27 October 2006 Seminar: Der politische Entscheidungs- und Umsetzungsprozess in der Europäischen Union und seine Bedeutung für die Bundesländer	0630702
26-27 October 2006 Seminar: State Aid Policy and Practice in the European Community – An Integrative and Interactive Approach	0631204
26-27 October 2006 Advanced Seminar: Key Issues in Comitology Today	0610004
30-31 October 2006 Seminar: Developing the Project Pipeline for EU Structural Funds	0630203



# Interoperability at Local and Regional Level – A Logical Development in eGovernment

By Sylvia Archmann and Morten Meyerhoff Nielsen\*

## Introduction

The digitisation of processes and services within public administrations has for some time been of increasing importance as a means to increase the efficiency and quality of services. It is therefore paramount that IT systems and databases can communicate with one another in a manner that ensures that data transfers can be interpreted by the recipient.

The importance of this is illustrated by the high priority placed on eGovernment actions in the eEurope 2005 Action Plan and the Ministerial Declaration following the high-level Ministerial eGovernment Conference (Como, Italy) in July 2003, which recognised that the "...cooperation required to develop pan-European services depends in part on the interoperability of information and communication systems used at all levels of government...". This, in addition to the 2003 eGovernment Communication<sup>1</sup> identifying the need for the development of an interoperability framework to support the delivery of eGovernment services to citizens and enterprises, led the European Commission to launch the Modinis<sup>2</sup> calls for tenders in 2004.

## The Modinis programme

The Modinis projects form an integral part of the i2010 programme, the aim of which should be seen in the context of attaining the Lisbon (and eEurope) objectives and implementing Council Conclusions.<sup>3</sup> Put more pragmatically, IT solutions must be interoperable in order to communicate in a productive manner and a number of questions can be outlined in this regard:

- What is eGovernment interoperability?
- Why is it so important?
- What does the Modinis "Study on Interoperability at Local and Regional Level" (Modinis 2) set out to do?

## eGovernment interoperability

The Modinis 2 project defines eGovernment interoperability as the ability of public authorities' information communication technology (ICT) systems and business processes to share information and knowledge within and across organisational boundaries in order to better support the provision of public services as well as to strengthen support

to public policies and to democratic processes.<sup>4</sup>

In order to analyse eGovernment interoperability, Modinis 2 endorses the interoperability aspects introduced by the European Interoperability Framework (EIF),<sup>5</sup> namely:

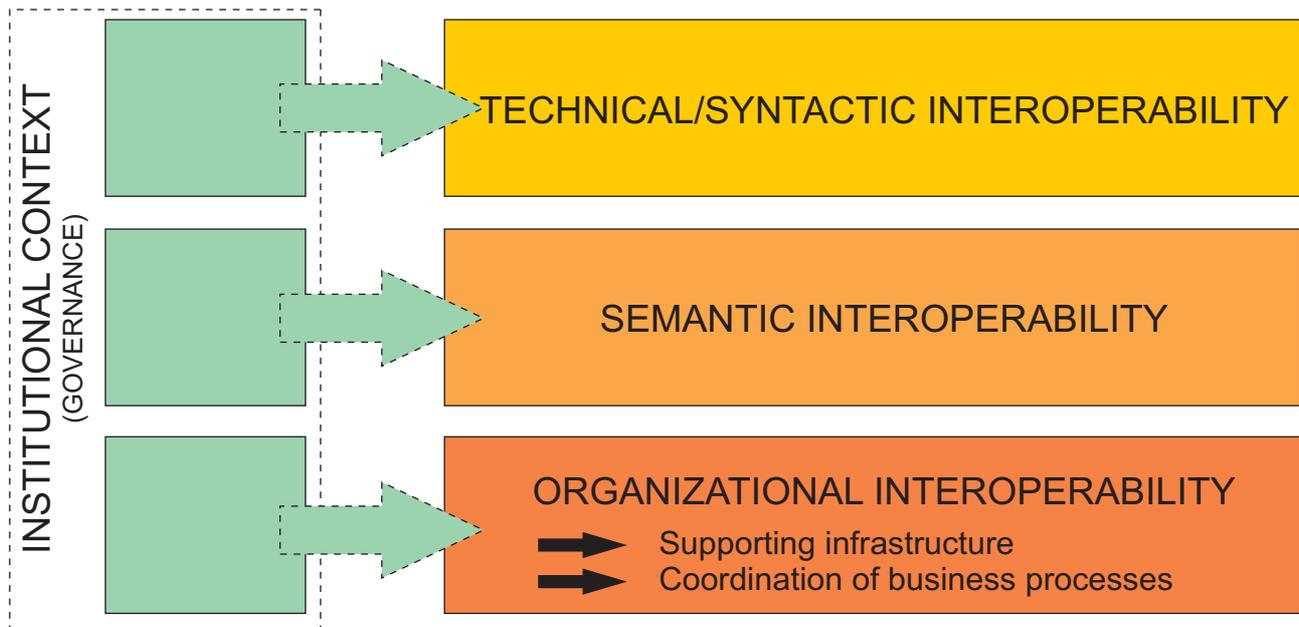
- Technical interoperability aspects
- Semantic interoperability aspects
- Organisational interoperability aspects.

However, organisational interoperability is defined in a broader sense than in EIF. Thus, the following understanding is:

- Technical interoperability "... covers the technical issues of linking computer systems and services" (as per the EIF).
- Semantic interoperability ensures that "...the precise meaning of exchanged information is understandable by any other application that was not initially developed for this purpose. Semantic interoperability enables systems to combine received information with other information resources and to process it in a meaningful manner" (as per the EIF).
- Organisational interoperability in EIF is concerned with "... defining business processes and bringing about the collaboration of administrations that wish to exchange information and may have different internal structures and processes, as well as aspects related to requirements of the user community." For the purpose of this study, we have broadened the scope of organisational interoperability to also cover the political, legal and structural conditions that are relevant to the development and use of interoperable applications. We call this additional set of aspects "Broader organisational interoperability aspects". To distinguish it from the narrower set included in EIF, we call the latter "Service/process-related interoperability aspects".<sup>6</sup>

In summary, in its analysis of key success factors, barriers and the provision of recommendations on eGovernment interoperability, Modinis 2 will consider the following categorisation:

- Interoperability is not an end in itself, but a tool to solve the problems of different stakeholders. The manner in which interoperability solves a given problem varies according to the type of eGovernment area and services. With respect to eGovernment online service provision, Modinis 2 has identified five different settings in which the advantages of interoperable ICT systems are evident:



**Figure 1:**  
*Layers/Elements of an Interoperability Architecture (Modinis 2)*

- Between different services referring to the same customer, namely bundling services (e.g. according to life events or problem scenarios) to save resources or to improve service quality (one-stop government).
- Between different stages of a supply chain that is producing one or more services, namely when a single service cannot be produced completely by one single agency, there is a need for interoperability between data and workflow contributions from other agencies/back offices.
- Between single agencies in different geographical areas, namely interoperability referring to the direct data transfer from the system of one administration to the system of another administration (mainly geographical).
- Between directories of services or documents, namely interoperability between local directories, common metadata about the services as well as algorithms for locating the right agency. One crucial issue concerns common descriptors for services and agencies.
- In auxiliary services (identity management, digital signature, etc.).<sup>7</sup>

These different settings require different approaches to achieve a high degree of integration via interoperability. Currently, there is insufficient knowledge to tell what is the best approach to achieve a high degree of interoperability. On the other hand, this is not a completely new field for action. A lot of relevant concepts have been discussed at various conferences, several projects are dealing with different aspects of interoperability, and important work is being done in projects and by standardisation committees. The big challenge is to provide both an overview of this complex landscape and guidance for the different stakeholders in achieving interoperability at the requested level. This is why the objectives and expected outcomes of Modinis 2 are of such interest.

### **Modinis "Study on interoperability at local and regional level"**

The Modinis "Study on interoperability at local and regional level" (Modinis 2) commenced on 21 December 2004 as a result of the European Commissions call for tenders (Modinis Tender Number 2004/S 120-100788). The project runs for 26 months, ending on 20 February 2007. The Modinis study on interoperability forms part of the larger Modinis call for tenders, which includes the Modinis "Study and supply of services for the reinforcement of exchange of good practices in eGovernment" (Modinis 1) and the 'Study on identity management in eGovernment; (Modinis 3).

### **Objectives and expected outcomes**

The objectives of Modinis 2 are:

- To intensify the exchange of information on practical eGovernment interoperability experiences at the local and the regional level and to support further actions to improve cross-border and pan-European interoperability.
- To identify and analyse cases to be fed into a good practice framework supplied by the Modinis 1 consortium.

The expected outcomes can be grouped under three main areas:

- Exchange of experiences and case studies
- Local and regional interoperability study
- Dissemination and promoting progress and take-up of interoperability, including workshops.

To understand the interconnectivity of the methodology utilised by Modinis 2, one must pay particular attention to the different aspects of the project. These are (1) the method of information gathering – that is, stakeholder input and feedback through workshops, surveys and other interactive methods – and (2) that each of the three main components

– that is, the good practice cases, the study and the workshops (including other dissemination and feedback functions) – are interlinked and provide direction and content for one another. Modinis 2 in turn feeds its findings into the Good Practice Framework.

### The consortium and other partners

The work of the Modinis 2 project is being carried out by a well-qualified partnership comprising two centres of technical excellence and another that acts as a focal point in Europe for the collection and dissemination of knowledge, and which supports and promotes the eEurope and the i2010 objectives. The Modinis 2 Consortium consists of the following partners:

- The Institute für Informationsmanagement Bremen (ifib), which is attached to the University of Bremen (DE). For many years, ifib has contributed to the eEurope agenda both through participating in projects and programmes and through writing technical papers.
- The Centre for Research and Technology Hellas and the Informatics and Telematics Institute (CERTH/ITI), which is attached to the University of Thessaloniki (GR). It also has a long history of being involved in projects and research in the eGovernment domain.
- The Maastricht (NL) based office of the European Institute of Public Administration (EIPA), which acts as coordinator and lead Consortium partner. In this, it applies its expertise, experienced staff and network of European public administrations.

In such a project as Modinis 2, Consortium partners and Modinis 1 and 3 are not the only parties with whom cooperation is actively sought. Synergies are also explored and exploited where such are mutually beneficial. Examples are the transfer of good practice cases from the eEurope Awards for eGovernment in 2003 and 2005, the BackOffice study, a cooperation agreement between Modinis 2 and the TerreGov Consortium for the mutual exchange of good practice cases, and the joint organisation of two sessions at the eGovInterop Conference '06 in Bordeaux (FR) on 22-24 March 2006. On a pan-European level, cooperation with the European Public Administrations Networks (EPAN) eGovernment Working Group is being cultivated for assistance in the identification of stakeholders, good practice cases and input for the study on the status of interoperability in EU Member States. To help make Modinis 2 a success, cooperation is continuously encouraged with the Austrian Presidency of the European Union, the Council of European Municipalities and Regions (CEMR), the organisers of the Eastern European eGovernment Days, the Italian Centro Nazionale per l'Informatica nella Pubblica Amministrazione (CNIPA), the Spanish region of Valencia, etc., plus the Consortium's network.

### Exchange of experiences and case studies

In order to successfully exchange experiences and case studies, the project has identified stakeholders and multipliers in interoperability from the public, the private and the academic sector. So far, circa 430 stakeholders have been

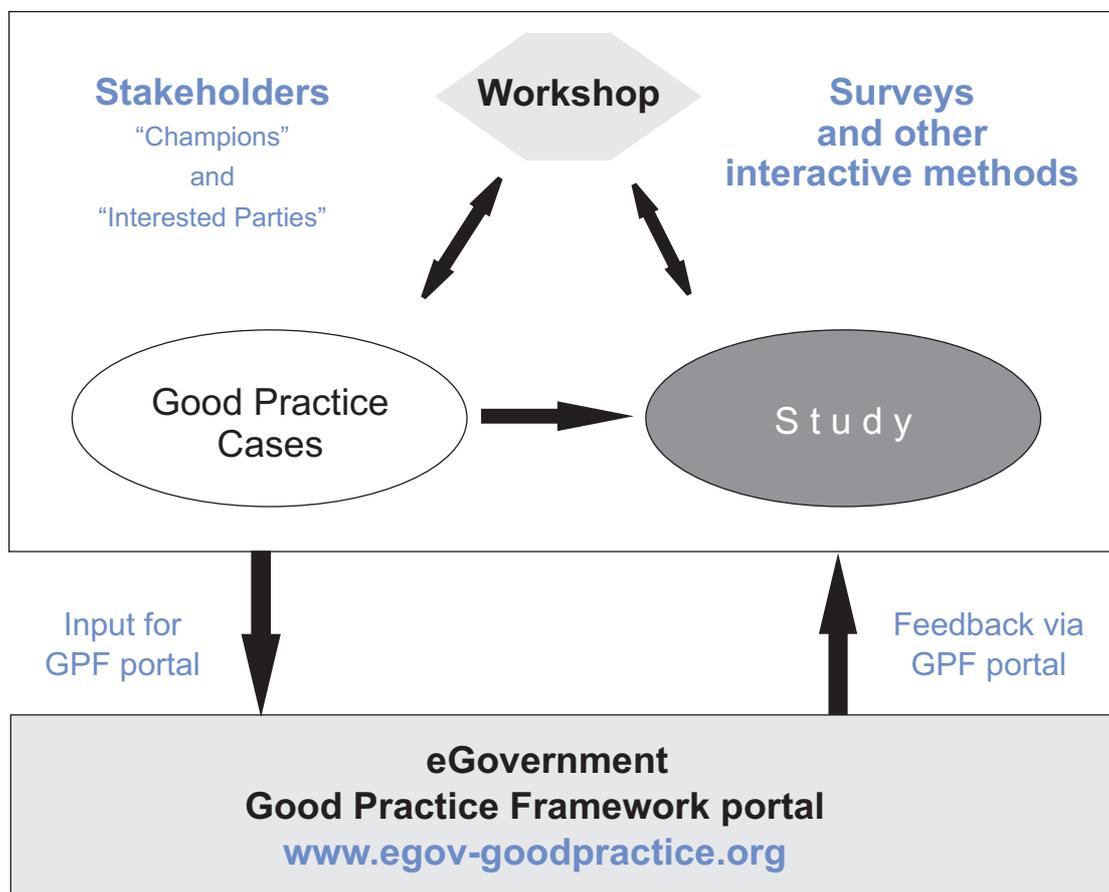


Figure 2:  
Interconnectivity of Components

identified. These have been divided into three groups:<sup>8</sup>

- Champions – those who have successfully implemented interoperability in eGovernment services or infrastructures.
- Interested parties – people who are involved in eGovernment projects that need some kind of interoperability.
- Potential/dormant stakeholders – parties that, because of their current or forthcoming projects or skills requirement, should be interested in interoperability but are not yet aware of the relevance of interoperability matters, topics or themes.

These three groups of stakeholders form the core contact group in which the stakeholder needs analysis and other future activities will be carried out. The stakeholders have also been asked to collect, describe and analyse cases of practical relevance that have the potential to generate measurable benefits and that could be transferred to other organisations and settings. In return, the interoperability study and good practice case analysis as well as the other results of Modinis 2 – such as the stakeholder needs analysis – are fed into the Good Practice Framework portal ([www.egov-goodpractice.org](http://www.egov-goodpractice.org)) provided by Modinis 1.

Several methods have been applied to assess the information needs of the target groups in order to match the case selection and presentation, as well as the study and the workshops, to these needs. The main method used for this assessment is a questionnaire that was sent to interested parties in government, IT business and academia, that is, to people who are or have been directly involved in an interoperability project. At the time of writing, over 70 questionnaires, indicating the preferences of the respondents for a number of subjects, have been returned and included in the interoperability study.

With regard to the three layers or functional aspects of interoperability (see previous section), almost all respondents prioritised semantic interoperability above organisational interoperability and technical interoperability. In relation to supporting measures, legal and security issues were ranked higher than cultural and social ones, thereby indicating the importance of these aspects. The survey on stakeholder information needs also showed that projects in which interoperability is to be established between different levels of government and/or several units on the same level of government are of greater interest than projects where interoperability has to be established on a single organisational level. With regard to the use of different organisational models for achieving and maintaining interoperability, the three models identified by Modinis 2 (i.e. standardised workflows, centralisation and clearing houses) received very similar rankings. Of the different modes of information and communication, respondents preferred a website, a study and a newsletter to workshops in their own country or Brussels (BE), and gave a lower priority to online forums and printed material.

The high level of interest in semantic interoperability was also articulated in a panel at the 4th International Conference on Electronic Government 2005 – EGOV '05 within DEXA in Copenhagen (DK), and during the discussions at the Modinis 2 Workshop on Semantic Interoperability held at the European Commissions premises in Brussels (BE) on 8 September 2005.

The survey provided a clear indication of the priorities to

be given to the case selection, workshop subjects and the interoperability study. It also indicated which priorities should be considered in performing the different tasks. The assessment of the first cases has confirmed the assessment methodology and the concept used for and in the case analysis, thereby providing Modinis 2 with valuable feedback. Although the feedback rate compared to the activation and consultation processes has so far been relatively low, the approach taken by the project has been positively accepted, and with the information from the needs assessment, the project findings can continue to be fine-tuned and improved. This will be a continuous process for the duration of the project.

More than 70 interesting cases related to interoperability has so far been collected, described and profiled by Modinis 2. These cases serve as a pool for the selection of cases that will be analysed in depth. This pool of interoperability cases is continuously updated and more cases are added as they are identified. The list of identified cases is stored in a database and is searchable by keywords, making it a valuable resource that can be used for further analysis and as an information pool for interested parties. The database can be accessed online via a web link in the Good Practice Framework portal ([www.egov-goodpractice.org](http://www.egov-goodpractice.org)).

### Local and regional interoperability study

One of the key tasks of Modinis 2 is to produce the interoperability study. The aim of the study is to cover the broad range of issues relating to interoperability across Europe examined in the project.

Interoperability is seen by many to be one of the most challenging issues in the provision of seamless eServices and joined-up government, and during the first year of Modinis 2 it has become clearer why this is so.

The interoperability study is being developed in an incremental manner and will include the status of local and regional interoperability in a number of EU Member States, key success factors of local and regional interoperability, key barriers to local and regional interoperability, and recommendations to different stakeholders. The interoperability study is updated and made available via the Good Practice Framework portal approximately every four months.

The Modinis 2 interoperability study is based on a relevant bibliography. It will take into account the good practice cases identified and analysed, the results of the stakeholder needs analysis and the comments expressed through the stakeholders' input and comments. The methodology itself is based on an approach that is both top-down and bottom-up. This means that the literature is searched for critical success barriers within the eGovernment environment and projects (top-down). In addition, input has been sought in an extensive eGovernment (one-stop government, joined-up government, service delivery models, etc.) and interoperability bibliography. To this is added input from the good practice cases and the case analysis (bottom-up).<sup>9</sup>

To date, the study has identified the following critical success factors (CSF) and barriers to successfully achieve interoperability:

	Project level	Environment level
<b>CSF</b>	External pressure Internal political desire Overall vision and strategy Effective project management Effective change management Effective design Requisite competencies Adequate technological infrastructure	<i>Vision/political will</i> - Awareness and commitment - Integration - Information society competencies <i>Common frameworks/collaboration</i> - Harmonisation - Avoiding external barriers - Encouraging collaboration <i>Customer focus</i> - Customer demand and engagement - Responsibility - Standards - Strengthening privacy and security
<b>Barriers</b>	Lack of internal drivers Lack of vision and strategy Poor project management Poor change management  Dominance of politics and self-interest Poor/unrealistic design  Lack of requisite competencies Inadequate technological infrastructure Technological incompatibilities	Legislative and regulatory barriers, Financial barriers, Technological barriers and the digital divide Differences in administrative structures and procedures Skills barriers Language including differences in terminology, and the use of jargon

**Figure 3:**  
*Critical success factors (CSF) and barriers<sup>10</sup>*

### Dissemination and promotion of the progress and take-up of interoperability

Another important aspect of the Modinis 2 work is the dissemination and promotion of the progress and take-up of interoperability. This includes, as mentioned, the contribution of good practice cases in interoperability to the Good Practice Framework ([www.egov-goodpractice.org](http://www.egov-goodpractice.org)). These are used to set up and maintain the electronic discussion forums and other relevant information exchange facilities in collaboration with Modinis 1. In addition to the promotion of results and in order to encourage the take-up of interoperability, the aim of the dissemination activities is to provide feedback to the study on interoperability, the stakeholder needs analysis and good practice case analysis, including validating the methodology and preliminary results. The Good Practice Framework portal, together with the Consortium's extensive network, forms the core point for the dissemination, promotion and take-up activities of Modinis 2.

Since its launch in December 2004, Modinis 2 has achieved recognition throughout Europe as a coordination point for issues related to interoperability. It has done so through its active programme of dissemination and information sharing, which has been achieved, in part, through the workshops at which a number of cases and the results to date have been examined in depth.

Workshops have so far been held in Brussels (BE), in September 2005, together with the European Commission; in Vienna (AT), in February 2006, in close cooperation with the Austrian Presidency of the European Union; in Bordeaux (FR), in March 2006, at the eGovInterop Conference '06;

and in Prague (CZ), in April 2006, as part of the Eastern European eGovernment Days. Each of these workshops showcased good practice cases and presented the results of our findings, including those of the stakeholder needs analysis and the interoperability study.

### Outlook and future activities

The benefits that local and regional authorities may derive from Modinis 2 include not only the opportunity to attend one of the eight workshops and to participate in the discussions at the event, but also the possibility to actively contribute to and learn from the findings of the project. Stakeholder feedback is essential to the quality and success of the Modinis 2 project. Whether input is received via the online discussion forums or other relevant information exchange facilities provided on the Good Practice Framework portal ([www.egov-goodpractice.org](http://www.egov-goodpractice.org)) or through the surveys, questionnaires or participation in the workshops, the relevance and quality of the project's findings will be strengthened by input and validation by the interoperability Champions and Interested Parties. This is especially true for the interoperability study, which is addressing not only the status of local and regional interoperability in EU Member States, but also the key success factors of local and regional interoperability and the main barriers to be taken into account by local and regional authorities when striving for interoperability. The study is also outlining recommendations for the various stakeholder groups identified.

Modinis 2 will continue to contribute to the Good Practice Framework. Its contributions will of course include additional good practice cases in interoperability, updated

versions of the incremental interoperability study and workshop reports. Workshops will be held with CNIPA in Italy on 10 July 2006, and in Valencia (ES) on 22-24 November 2006 as part of the I European Summit. A dissemination workshop with the European Commission in Brussels (BE) is planned for early 2007.

## NOTES

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<sup>1</sup> European Commission COM(2003)567.

<sup>2</sup> Modinis is an abbreviation for "Monitoring of eEurope, Action plan Dissemination of Good Practices, Improvement of Networks and Information Security".

<sup>3</sup> European Commission, *LOT 2 Study on Interoperability at Local and Regional Level – Terms of Reference Tender Number 2004/S 120-100788*, Brussels, 22 June 2004, p. 2

<sup>4</sup> Interoperability at Local and Regional Level, *Modinis Study on*

*Interoperability, D2.3: Interoperability Study version 2*, Thessaloniki, 17 November 2005.

<sup>5</sup> IDABC (2004). European Interoperability Framework for pan-European eGovernment Services. Luxembourg, European Communities.

<sup>6</sup> Interoperability at Local and Regional Level, *Modinis Study on Interoperability, D2.3: Interoperability Study version 2*, Thessaloniki, 17 November 2005, pp. 15-16.

<sup>7</sup> Modinis Study on Interoperability at Local and Regional Level, Proposal, 30 July 2004, Maastricht, pp. 5-6.

<sup>8</sup> Modinis Study on Interoperability at Local and Regional Level, *D1.1: List of experts on interoperability, stakeholders and multipliers*, Maastricht, 5 March 2005, pp. 4-6

<sup>9</sup> E. Tambouris, V. Peristeras, K. Tarabanis, *Experiences from Conducting a European eGovernment Interoperability Study at Local and Regional Level*, in proceedings of eGovInterop '06 Conference, Bordeaux, 22-24 March 2006, pp. 1-7.

<sup>10</sup> E. Tambouris, Modinis Study on Interoperability at Local and Regional Level, Presentation at the eGovInterop '06 Conference, 22 March 2006, Bordeaux.

**Organized by the Consortium partners:**

European Institute of Public Administration (EIPA)

Institut für Informationsmanagement Bremen (ifib)

Centre for Research and Technology Hellas/Informatics and Telematics Institute (CERTH/ITI)

**in conjunction with the I European Summit on Interoperability in the iGovernment organized from  
22-24 November 2006 by:**

Generalitat Valenciana

**Valencia, 24 November, 2006**

Palacio de Congresos Valencia

Avda. Cortes Valencianas, nº 60 – 46015 Valencia

Seminar

# EU Banking and Financial Law: Dynamic Consolidation?

*Maastricht (NL)  
29-30 June 2006*

In May 1999, the European Commission presented a Communication entitled "Implementing the Framework for Financial Markets: Action Plan". It became known as the Financial Services Action Plan (FSAP) and identified a wide range of issues that called for (urgent) legislative action from the EU if the full benefits of the euro and an optimally functioning financial market were to be ensured. The Action Plan was to be completed in five years – the deadline was set for the spring of 2004.

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, as the completion date for the FSAP has past, the future directions of European financial integration are being heavily debated. In the meantime, the European Commission has presented the outcome of its Spring 2005 consultation in a new White Paper (of December 2005).

The **objective** of the seminar is to present the outcome of the FSAP and to examine the need for post-FSAP legislative initiatives. An overview will be provided of most legislative proposals adopted so far, their state of progress and degree of implementation.

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

This seminar is designed for anyone involved in the implementation of financial services' or sectoral legislation, central bankers, as well as lawyers and practitioners working in this area.

The seminar will be held in English.

**Project No.:** 0630001

For further information please contact:

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# State Aid Master Class and Case Analysis

*Maastricht (NL)  
6-7 July 2006 and 7-8 December 2006*

The European Institute of Public Administration (EIPA) would like to announce the launch of a Master Class on the design and assessment of state aid measures. In 2006, this two-day event will be organised in Maastricht (NL) twice, namely on 6-7 July and 7-8 December.

The Master Class is intended for public officials who already have a good understanding of state aid issues but want to improve their knowledge and skills on how to determine whether a public measure contains state aid and how to design state aid schemes that are compatible with EU rules. The Master Class is based on analysis of recent important Commission decisions and Court rulings.

An innovative feature of this event is that participants will be expected to introduce, for discussion, cases on which they are currently working. Participants will therefore be required first to send, in advance, a summary of the case they wish to present and, second, to treat all material and information obtained during the Master Class confidentially (cases submitted by participants will not be circulated outside EIPA).

The number of participants will be limited to a maximum of 25 so as to facilitate discussion and maximise learning effects.

The Master Class will be run by EIPA's experts on state aid, who have broad experience in working with public administrations. The working language will be English. Extensive documentation will be prepared by EIPA for use by participants.

Advantages:

- **Expert analysis:** cases will be critically and extensively examined.
- **Practical skills:** the aim of the Master Class is to impart knowledge that is directly useful in the every-day work of state aid officials.
- **Small size:** the number of participants will be limited, enabling extensive interaction.
- **Personal attention:** the small number of participants will guarantee that they will all have ample opportunity to discuss issues of concern to them.
- **Best practices:** participants will learn from each other about problems encountered as well as solutions adopted by public authorities dealing with state aid in various EU Member States.

Date	Project No.
6-7 July 2006, Maastricht	0631207
7-8 December 2006, Maastricht	0631208

For further information and registration, please consult:  
*EIPA website: <http://www.eipa.eu>*

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# Master of European Legal Studies

*Luxembourg (LU)  
2006-2008*

EIPA's Antenna Luxembourg, the European Centre for Judges and Lawyers, is offering, in cooperation with the University of Nancy 2 and Luxembourg University (pending), a postgraduate programme leading to a Master's Degree in European Legal Studies (MELS).

**Target Groups:**

- Civil servants;
- EU officials;
- Lawyers, judges, other legal experts;
- Professionals, graduates with an 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;
- eCommerce in EC law;
- External relations of the EC and the EU;
- Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP);
- Research techniques and thesis methodology.

**Working Languages:** English and French

**Timetable:** Lectures: mid-September 2006 to mid-July 2008 (Friday afternoons and Saturday mornings and one weekend per trimester). Exams in 2007 and 2008. Master's thesis due in June 2008.

**Deadline for Applications:** 25 August 2006

**Project No.:** 0652701

For further information and/or registration forms, please contact:

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Forthcoming seminars on

# European Information and Communication Management 2006

## OPEN VS SECRET EUROPE

*Barcelona, 14-15 September*

Striking the right balance between transparency and confidentiality

This new seminar is designed for anyone whose work relies on access to EU documentation or relates to the treatment of sensitive information. The participants will be acquainted with the various facets of "openness" in the EU. The sessions will especially link the concept of transparency with the broader issues of political accountability and democratic deficit, and will cover more specific relevant aspects such as:

- EU communication strategies;
- access to EU documentation;
- treatment of sensitive data;
- relevant case law;
- Member States' role.

At the end of the seminar, the participants will have acquired a sound understanding of "the politics of information" at European level, be more aware of the rights and obligations underpinning the access to and treatment of documents, and have a greater insight into the strategies to promote an open Europe.

## EUROPE ON THE INTERNET

*Maastricht, 5-6 October*

Learn how to quickly and efficiently find useful information through a wide range of free and commercial internet resources dealing with European issues and policies. During the course, you will have the opportunity to:

- gain practical experience in using key EU websites and databases (including EUR-Lex, OEIL and PreLex);
- learn what they cover and how to access them;
- compare the different existing sources of information.

A special session will be dedicated to EU public procurement, grants and funding opportunities and statistics information. A pleasant atmosphere, advice and guidance from expert trainers and plenty of hands-on time combined with practical exercises: these are the perfect ingredients for this successful training.

During the training course, laptops will be available for all participants.

## KEEP AHEAD WITH EUROPEAN INFORMATION AND COMMUNICATION IN THE ENLARGED EUROPE

*Maastricht, 30 November-1 December*

EIPA is organising the 9<sup>th</sup> edition of the annual conference on the latest developments in the field of European information and communication policy. The 2006 programme is an exciting mix of key note presentations on the EU information and communication policy, its modulation and the effect of its implementation on the evolving policy-making process, and interactive audience discussions on practical issues which will help you in your work.

Excellent speakers, ranging from Commission officials to information specialists and well-known academics, will present and discuss the following issues:

- the EU Commission's "Plan D" initiative which aims to bridge the information gap between the Commission and the EU citizens;
- the outcomes of the Commission's consultation process regarding the White Paper on a European Communication Policy;
- the current and the future developments of e-sources of information;
- the role of European agencies in delivering information to support the policy process.

For more information and/or registration forms, please contact:

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*or consult our website:  
<http://www.eipa.eu>*

Seminar

# Press Relations of Courts, Magistrates and Lawyers

*Luxembourg (LU)  
28-29 September 2006*

**Target Group:** Judges and advocates-general working at EU and national courts, public prosecutors, lawyers working in the legal service/department of public authorities and private companies, private lawyers, officials working for regulatory authorities (at national or regional level), lobbyists and others who are required to deliver or help prepare key messages for the media on complicated legal issues, for instance to explain the institution (or discontinuation) or conclusion of proceedings or in response to negative publicity arising from particular proceedings.

**Objectives:** This seminar, which is among the first of its kind to specifically target the judiciary and practitioners of law, will provide:

- practical guidance and techniques on how to deliver clear concise messages about complex legal issues and cases in today's information-laden society;
- an introduction to planning, implementing and monitoring modern communications campaigns and responding to crisis situations as they arise.

**Language:** This seminar will be delivered in English only.

**Project No.:** 0651901

For further information, please contact:

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Annual Conference

# Legal Aspects of Money

*Luxembourg (LU)  
12-13 October 2006*

**Target Group:** The conference is aimed at EU officials, national civil servants, lawyers and other professionals, in particular from private banking and financial institutions or public authorities and bodies in this field, as well as others whose work deals with the aspects of the EU *acquis* that will be addressed at this conference.

**Description and Objectives:** Over the past few years, the financial, monetary and banking fields have become some of the most fundamental and rapidly changing sectors within the corpus of EU law. Indeed, the introduction of the euro has facilitated greater efficiency in the functioning of financial markets, whereas the legislative programme established by the Commission's 1999 Financial Services Action Plan (FSAP) added to this creation a truly European reflex. In addition, new legislative priorities were announced in the 2004 FSAP report and last year, the Green Paper on Financial Services (May 2005) launched a debate on these priorities, marking the work still to be carried out to arrive at a real European, integrated capital market. Within this context, this conference will analyse recent developments in all these areas, which have "money" as a central and common element. Topics addressed will include current measures as well as new legislative proposals and how they are interpreted by recent ECJ case law, and experiences with their implementation in national practice.

**Method:** The conference will bring together high-level experts, practitioners and other interested professionals in a forum designed to facilitate the exchange of views and to offer the opportunity to raise and answer critical questions of participants as well as speakers.

**Languages:** French and English

**Project No.:** 0655201

For further information and/or registration forms, please contact:

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Seminar

# Free Movement of Labour

*Luxembourg (LU)  
26-27 October 2006*

**Target Group:** This seminar is intended for civil servants, legal professionals within the public and private sector, judicial professionals, law enforcement officers, persons working on issues of European law, academics, and others who are active, or interested, in EU legal issues.

**Description:** The seminar will tackle the general EU approach aimed at combating illegal immigration by providing a European framework allowing people to legally enter the EU to work. An initial analysis of the implementation of Directive 2004/38 will be presented, together with a comparison of Member States' best practices in the area of free movement of workers and free provision of services.

**Method:** This seminar will allow all those involved to exchange experiences and opinions. Experts will give lectures on different topics and engage in discussions with participants.

**Objectives:** The main objective of the seminar is to provide participants with helpful tools to understand the main challenges facing the EU in the area of free movement. It is essential that the differences in the implementation of the general principle of free movement should be pointed out to various target groups: EU citizens, citizens from the new Member States and third-country nationals.

**Languages:** English and French

**Project No.:** 0650601

*For further information, please contact:*

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*European Agencies**Seminar***FASHION OR NECESSITY?**  
**Comparing experiences gained with EU agencies***Maastricht (NL)*  
*6-8 November 2006*

This seminar is part of a series of activities about EU agencies organised by EIPA together with the Law Faculty of Maastricht University. The aim of this seminar is to provide a forum for national officials, EU officials and representatives of EU agencies to discuss the operations of EU agencies and agency-type structures. At this seminar, we will discuss the added value of EU agencies, explore trends in their design and discuss experiences gained with this still relatively new EU policy-making instrument.

EU agencies have existed long enough to start comparing experiences. This seems all the more important because it seems that there are doubts about the need for (more) EU agencies and the extension of their tasks. Moreover, it may be time to examine whether EU agencies are becoming a distinct type of agency structure – different from US-type agencies or agencies in the Member States.

The seminar will consist of two parts. On the first day, we will provide an overview of EU agencies, setting out their legal and institutional background, and raise political and organisational questions that affect their functioning. The remainder of the seminar will focus on the added value of individual EU agencies. The questions to be addressed will include: what were the reasons for their creation? What alternatives would have been available? And, in view of the policy challenges that had to be addressed, can it be demonstrated that EU agencies have an added value (also considering the strengths and weaknesses of the alternatives such as comitology systems)?

Day one is optional and will give the background for the more in-depth discussions on the added value of agencies in the case studies that will be discussed.

The seminar is aimed at officials and experts from Member States and from EU institutions working with or at EU agencies. Experts from NGOs and law firms are also welcome to participate.

For more information and/or registration forms, please contact:

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<http://www.eipa.eu>*

Seminar

# The Participation of the Spanish Autonomous Communities in Comitology Committees and Council Working Groups

*Barcelona (ES)  
9-10 November 2006*

Spanish civil servants working for regional administrations increasingly participate at Council and Commission level. This seminar will place particular emphasis on the involvement of the Spanish Autonomous Communities in these various committees; there have been important developments in the last few years and there is a need to understand and reinforce new participatory mechanisms. The seminar will therefore address the demands placed on civil servants of the Autonomous Communities who need to understand and actively follow EU decision-making procedures and the role of the Commission and of representatives of the Member States in the adoption of implementing measures.

**Target Group:** Spanish civil servants, officials from regional administrations interested in learning about the particularities of Spanish participation at EU level.

**Method:** Lectures and panel discussions.

**Objectives:** This seminar will provide participants with an overview of the various committees involved in the policy process of the European Union. This includes advisory committees and expert groups set up by the Commission, working groups and committees within the structure of the Council, and implementing committees. With respect to the latter, the seminar will take a detailed look at the various current procedures governing these comitology committees in order to provide participants with a better understanding of this process. It will analyse in detail the Spanish legal framework and practice regarding regional participation in these committees. At a general level, the seminar will examine the different phases of the policy process, i.e. consultation with expert groups, preparation of legislative proposals and implementation of policies.

**Language:** Spanish and English. During the seminar, simultaneous interpretation will be provided.

**Project No.:** 0663201

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Seminar

# The EU Regime on Consumer Safety

*Luxembourg (LU), 20-21 November 2006*

**Description:** In 2005, a number of fundamental steps were taken in the field of consumer protection that were marked by the launching of a proposal for a Parliament and Council Decision creating the Community Programme for Health and Consumer Protection 2007-2013. The basic objective of this proposal is to protect citizens from risks and threats stemming e.g. from unsafe products. Against the backdrop of this Decision, this seminar will provide an overview and critical analysis of the current EU regime on consumer safety and its different components: the General Product Safety Directive, chemicals in products, liability for defective products and safety of services.

**Target Group:** Lawyers, EU and national officials, in particular from consumer and ombudsman bodies, representatives of independent consumer organisations, academics and any professional with an interest in consumer issues.

**Method:** The seminar will consist of presentations, question & answer sessions and discussions.

**Languages:** French and English, with simultaneous interpretation between the two languages.

**Project No.:** 0651501

For further information and/or registration forms, please contact:  
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Annual Seminar

# Recent Trends in the Case Law of the European Courts What Directions for the Future

*Luxembourg (LU), 30 November-1 December 2006*

**Target Group:** The seminar is aimed at judges, lawyers, national and Community officials, academics, and more generally at all those who wish to know more about the main rulings delivered by the European Courts in 2006.

**Description:** The objective of this annual seminar is to provide an overview of the directions of the current case law of the European Courts. By looking at general trends as well as many specific cases of particular interest, we will be able to see where these support, further elaborate or modify prior case law.

**Method and Objectives:** Presentations will be given by representatives of the European Courts, and will give an idea of the dynamism characterising the functioning of the EU's legal system.

**Languages:** French and English

**Project No.:** 0650201

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# Institutional News

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## Creation of the European Centre for Public Financial Management, EIPA's Antenna in Warsaw



Photograph taken on the occasion of the signing, in Warsaw on 30 March 2006, of the agreement between the Government of the Republic of Poland, represented by **Mr Jan PASTWA**, Head of the Civil Service, the National School of Public Administration (KSAP), represented by its Director, **Mrs Maria GINTOWT-JANKOWICZ**, and EIPA, represented by its Director-General **Professor Gérard DRUESNE**.

### SAC meeting

EIPA's Scientific Advisory Committee met in Maastricht on 16 March 2006.

## Visitors at EIPA

On 20 February 2006, EIPA welcomed the French Ambassador in the Netherlands, **Mr Jean-Michel GAUSSOT**, and the Honorary Consul of France in Maastricht, **Mr Camille L.J.M. OOSTWEGEL**.



Photograph taken on the occasion of the visit to EIPA on 15 March 2006 by a delegation from the Autonomous Community of the Balearic Islands, headed by **Mr José María RODRÍGUEZ BARBERÀ**, Regional Minister of the Interior, and composed of **Mrs Maria Lluïsa GINART NICOLAU**, Director-General for Public Administration, and **Mr Joan GARCIA LLITERAS**, Director of the Balearic School of Public Administration) in preparation for the drafting of the work programme for 2006 in the framework of the cooperation agreement signed the same day.

Photograph taken on the occasion of the annual meeting, held in Maastricht on 17 March 2006, between the Rector of the College of Europe in Bruges (BE), **Professor Paul DEMARET**, the President of the European University Institute in Florence (IT) (left), **Professor Yves MÉNY** (right), and EIPA's Director-General, **Professor Gérard DRUESNE**.



# Staff News

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## Maastricht



**Cristiana Turchetti** (IT) joined EIPA on 1 January 2006 as a national expert in the Unit on Public Management and Comparative Public Administration.

She has a Master's degree in technical cooperation and project cycle management and a degree in education from the Università di Roma La Sapienza. During her professional career, she worked for the Higher Education Authority and the Department of Education and Science of Trinity College in Dublin, assisting in educational programmes (Trinity Access Programmes) aimed at providing initiatives to increase the participation rate of people in developing countries who have not previously managed to obtain first, second or third-level education. She also worked for the Italian Cultural

Institute in Dublin taking initiatives to ensure the visibility of Italian culture, organising events in Ireland, and establishing working relations with the Institute's partners (government agencies, members of parliament, municipalities, educational institutions, and other public and private organisations). At the Benin Consulate in Rome she was involved in the development and implementation of research for basic education projects in educational areas for the diocesan primary school of Djougou, Benin (education policy, improving educational quality and access and educational assessment of disadvantaged students, including orphans, vulnerable children and children affected by HIV/AIDS).

Before joining EIPA, she worked at the ILO as a Junior Expert on the project "Sustainable Development through the Global Compact" where she was involved in different activities relating to corporate social responsibility and in delivering the project's training programme, which included the Global Compact, the OECD guidelines for multinational enterprises and the ILO tripartite declaration of principles concerning multinational enterprises and social policy.

Her fields of specialisation include public administration issues, cultural diversity, intercultural dialogue, technical cooperation, equal opportunities and labour standards.

# Recent Publications

more details at: <http://www.eipa.eu>

## Are Civil Servants Different Because They Are Civil Servants? Who Are the Civil Servants – and How?

*Christoph Demmke*

EIPA 2005/07, 160 pages, Only available in English  
ISBN 90-6779-200-4, € 37.00

## Administrations publiques et services d'intérêt général : quelle européanisation?

*Sous la direction de Michel Mangenot*

*Avant-propos de Gérard Druésne*, Directeur général de l'IEAP  
*Préface de Claude Wiseler*, Ministre luxembourgeois de la Fonction publique et de la Réforme administrative  
IEAP 2005/04, 200 pages, Disponible également en anglais et en allemand  
ISBN 90-6779-197-0, € 41.00

## Public Administrations and Services of General Interest: What Kind of Europeanisation?

*Under the direction of Michel Mangenot*

*Preliminary Remarks by Gérard Druésne*, Director-General of EIPA  
*Foreword by Claude Wiseler*, Luxembourg Minister for the Civil Service and Administrative Reform  
EIPA 2005/05, 186 pages, Also available in French and German  
ISBN 90-6779-198-9, € 41.00

## Öffentliche Verwaltungen und Dienstleistungen von allgemeinem Interesse: welche Europäisierung?

*Herausgegeben von Michel Mangenot*

*Vorwort von Gérard Druésne*, Generaldirektor des EIPA  
*Geleitwort von Claude Wiseler*, Luxemburgischer Minister für den öffentlichen Dienst und die Verwaltungsreform  
EIPA 2005/06, 210 Seiten, Auch in Englisch und Französisch erhältlich  
ISBN 90-6779-199-7, € 41.00

## State Aid Policy in the European Community: A Guide for Practitioners

*Phedon Nicolaides, Mihalis Kekelekis and Philip Buyskes*

EIPA/Kluwer Law International  
June 2005  
ISBN 90-411-2394-6, € 65.00\*

## Die europäischen öffentlichen Dienste zwischen Tradition und Reform

*Christoph Demmke*

EIPA 2005/02, 234 Seiten,  
ISBN 90-6779-186-5, € 40.00  
(Auch in Englisch erhältlich)

## Main Challenges in the Field of Ethics and Integrity in the EU Member States

*Danielle Bossaert and Christoph Demmke*

EIPA 2005/01, 270 pages,  
ISBN 90-6779-196-2, € 42.00  
(Only available in English)

## European Social Dialogue and Civil Services. Europeanisation by the back door?

*Michel Mangenot and Robert Polet*

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(Also available in French)

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ISBN 90-6779-187-3, € 21.00  
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EIPA 2004/E/01, 52 pages, ISBN 90-6779-188-1  
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