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EIPA at 30



Henning Christophersen* *Chairman of EIPA's Board of Governors*

This is now the fourth time that I have the privilege, in my capacity as Chairman of EIPA's Board of Governors, of addressing the opening word of an EIPAscope edition published to celebrate a special anniversary of EIPA.

From 1982 onwards I have been following the development of EIPA – from the period when I was Minister of Finance and Deputy Prime Minister of Denmark (1982-1984), and the period of my time as Vice-President of the European Commission (1985 to 1995¹), when EIPA was involved in the modernisation of the management system in the European Commission services – including the 14 years that I have been chairing the EIPA Board of Governors. These 30 years of EIPA's existence – since its establishment in 1981 – have been a permanent process of change and development. EIPA has proven its ability to cope with change and keep pace with the continuous and important evolution taking place in Europe's economic and political environment, by constantly adjusting its variety of activities in accordance with the changing and specific needs of its diverse client groups. Although EIPA is one actor among others on the European training market, it has confirmed its unique role in the provision of training services suited to the specific nature of European public management.

As Chairman of EIPA's Board of Governors since 1997, I have the privilege of presiding over a wide and important network of high-level representatives from EIPA's Member States. The Member States offer EIPA an annual basic funding in addition to the EU grant which the institute receives from the European Commission. It is an important task but also a pleasure for the Board to provide guidance in steering EIPA's successive stages of development and to represent EIPA's strategic view on changes in public administrations across Europe.

In 2011, we can observe an EIPA ensemble of the Institute's Headquarters in Maastricht – with its three Units, its two Antennae – one in Luxembourg (European Law) and one in Barcelona (the regional dimension of European integration and of the Euro-Mediterranean Partnership) and a representative office in Brussels.

When reflecting on future prospects, it is EIPA's intention to further strengthen its open activities, whereby EIPA can act as a key player on the European scene in terms of training (130 open activities in 2010). EIPA will also continue to provide highly specialised and tailor made services for the EU Member States, the candidate countries as well as neighbourhood countries through its role as operator of important European contracts and projects with demanding management and visibility and its role as training provider for European officials.

Furthermore, Europe 2020 creates high expectations for more vigorous European cooperation and integration and it has already been acknowledged that training has a fundamental role to play in achieving the objectives of smart, sustainable and inclusive growth. EIPA will of course try to fulfil its responsibility in this process.

I can repeat what I wrote on an earlier occasion, namely that I am confident that EIPA will continue to play a central role in helping European administrations prepare to manage the profound changes involved in improving performance and enhancing democracy in the European Union. I can only add a message to it and that is that there is no better way to compliment EIPA than to give it (new) assignments.

Notes

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

¹ The responsibilities within the European Commission were as follows: 1985-1989: in charge of budgetary affairs, financial control, administration and staff (DG IX, DG XIX, XX). 1989-1995: in charge of economic, monetary and financial affairs, coordination of the Structural Funds, the borrowing and lending operations of the (then) Community plus the Statistical Office. He later participated in the European Convention and its Presidium as representative of the Danish Government.



EIPA at 30



Prof. Dr Marga Pröhl *Director-General, European Institute of Public Administration*

The European Institute of Public Administration (EIPA) is now entering its fourth decade. Like all my predecessors¹, I too have the privilege and pleasure of commemorating a special anniversary of EIPA. On such a momentous occasion, it is only logical to look back at what has been achieved in the past, as well as looking forward to what remains to be done in the next decade, whilst keeping up with developments in the European Union.

The concept of setting up EIPA was a timely initiative. Well known institutions of both European and national character already existed, but all addressed themselves mainly to students or to business managers or they focused on training public servants for their national work. EIPA was the first and only institution to assist public servants in their European tasks and responsibilities. It ensured that the most recent knowledge and expertise on European public policy-making and public management was concentrated and made available to those who were working on a daily basis in Europe's complex and ever-changing environment.

Formally established and launched in 1981 in the so-called 'Europe of Ten', on the occasion of the first European Council of the Heads of State and Government held in Maastricht (23-24 March 1981), the Institute immediately devoted its attention to the problems prevalent in the 1980s, such as the enlargement of the Community to include Spain and Portugal, the launching of the White Paper on the completion of the Internal Market by 1992, and the modernisation of management at the EC Commission. It then became increasingly involved in various activities aimed at capacity building in the perspective of enlargement as well as the full implementation of the various Treaties and, more recently, the Treaty of Lisbon.

The Institute primarily serves the institutions of the European Union and the central governments of the Member States, but regional governments and decentralised authorities are also among its clients. The Institute has furthermore developed some special programmes and projects for participants from outside the EU, but in principle always in the framework of the EU's external relations².

With the inclusion of EIPA in the structure of the official budget of the European Union (as of 1996), EIPA has been definitely placed as a foremost institute among the other establishments in the European public sector.

After 30 years, EIPA still is an autonomous European institution with a European vocation, currently counting 23 of the 27 EU Member States as its statutory members (Latvia, Romania, Slovakia and Slovenia are not yet members) and has become the centre of a wide network, thanks to which Management and faculty can respond effectively to existing or emerging policy or management problems in the EU.

Through its Board of Governors³ it maintains direct relations with governments. The member countries usually appoint in principle their Heads/Directors-General for Public Administration and the Public Service as their representative on EIPA's Board. Apart from appointing a representative of their administration to EIPA's Board, EIPA membership allows the signatory authorities to make use of and contribute to its network; to send officials from their administration to carry out a secondment at EIPA and to promote cooperation in the fields of particular interest and participate in joint research and training. EIPA's relationship with the EU governments is also underlined through its activities organised for the European Public Administration Network (EUPAN) – the network of Directors-General responsible for public administration in the 27 EU Member States (and the candidate countries).

There is no doubt that EIPA has become a recognised and appreciated meeting place, where people involved in European affairs can learn in a multicultural environment, benefiting from a unique combination of practical know-how and scientific expertise, exchange experience, network and build reliable partnerships across the boundaries. EIPA's corporate vision and strategy, as developed by Management and staff in 2008, is to be Europe's leading centre of excellence on European integration and the new challenges for public management, whereby the following overall objectives have been determined: to ensure a better support to administrations as well as a (recognised) added value and a financially sustainable organisation.

Although its basic mission has remained the same, the range of principal activities has changed over time: in the course of EIPA's 30 years of existence and its constant development, the EU itself has also undergone an important development through its subsequent enlargements. In addition, the successive Treaties, the institutional structures and mechanisms as well as the scope of European policies are making both the knowledge and command of these European structures, mechanisms, policies and monitoring of jurisprudence even more important and necessary for the millions of officials involved in the development and/or implementation of these policies; thus also making the mission of the Institute more important.

EIPA's annual work programmes include various types of activities, *i.e.* training (open and contract activities), applied research, consultancy, project management and publications.

The Institute, both at Management level and through its scientific staff at the level of specific expertise, maintains close relations with the European institutions. It also provides services to these institutions either directly through the participation of EU officials in its own programmes, by designing tailor-made programmes responding to specific needs or by answering calls for tenders issued by these institutions. EIPA also plays an important role as operator of major European programmes on the basis of contracts signed with the European Commission.

The Headquarters in Maastricht (with its three Units: European Decision-making; European Public Management and European Policies), the Antennae in Luxembourg and Barcelona and its representative office in Brussels operate along the same strategic and operational lines.

The Antenna in Luxembourg is specialised in European law and provides programmes and activities for lawyers and judges practising EU law and examine the impact of the European integration process on the specific roles, missions, organisation and functioning of sub-national administrations. The Antenna in Barcelona coordinates EIPA's activities for regional and local administrations in the EU. It examines the impact of the European integration process on the specific roles, missions, organisation and functioning of sub-national administrations and works in close relation to the European Committee of the Regions. The existence of these Antennae in Luxembourg and Barcelona as well as EIPA's presence in Brussels enable the Institute to have a broad outreach towards the EU Member States, to provide highly specialised services and, last but not least, to be close to the EU Member States.

Service organisations are made by the people who work in them and the basis of EIPA's success is its dedicated and motivated staff members and its unique and particular European atmosphere which inspires both, staff and participants. Corporate EIPA currently employs around 150 staff. As a multicultural and multinational Institute, its staff originate from 22 different European countries. Their commitment to the Institute's mission, the intense communication with participants, the follow up to the evaluation by the participants of the various activities, regular quality checks and a continuous update of the activities form the basis for EIPA's good reputation which is confirmed by the high percentage of participants that frequently participate in EIPA's activities and the number of loyal clients making regular use of EIPA services. Over the years, the Institute's faculty have acquired a reputation for providing services which are at the same time practice oriented and rooted in applied quality research. Part of the scientific

staff is permanent; others are seconded by their national administrations for a shorter or longer period. Seconded staff members are also representatives of their own country within EIPA with an added role of establishing a specific link between their country and the Institute. Moreover, the Institute adds real value to its general monitoring work through the scientific staff's close cooperation with the Institute's extensive network of external experts, where the information is transformed into practical tools in the form of training or consultancy.

It is clear that – as was the case in the past – there are many new challenges ahead and that these future changes will also involve developments and changes within EIPA itself, including the need to adapt its activities. I personally trust that EIPA, with its well established reputation, competence and expertise, will be able to continue proving itself in the competitive market on the European scene. EIPA will continue to strive for a leading edge position in its core areas and will also increase its efforts to tender for EU contracts. The Institute will further develop e-learning/blended learning as a complementary, reinforcing product and continues to work on an attractive series of publications. The Institute has also implemented the ISO 9001 quality management system (QMS) in the course of 2011.

To conclude: EIPA may be proud that it can look back at a dynamic past and it is surely ready to face the next steps towards an ambitious future.

Notes

¹ Dr Schepers, S., (March 1981-December 1988); Dr Pappas, S. A., (December 1988 - December 1995*); Corte-Real, I., (15 April 1996 - 15 April 2000); and Prof. Dr Druesne, G., (May 2000 - October 2007). (*) Voskamp, J., Secretary-General of EIPA's Board of Governors (1989-2002) ensured the management ad interim from December 1995 until 15 April 1996.

² In accordance with Article 3 of its Constitution, EIPA is achieving its mission by: providing training and capacity-building services on request and/or on its own initiative; conducting applied research as a centre of expertise on the development and implementation of policies and the management aspects of the European Union. Article 2 of the Constitution describes the Institute's objectives as follows: to support the European Union and its Member States and the countries associated with EIPA by providing relevant and high quality services to develop the capacities of public officials in dealing with EU affairs, plus to offer its services to officials at the EU institutions and in related bodies, and to civil servants within the national and regional administrations of the Member States, applicant countries and other countries in the framework of their relationship with the EU.

³ EIPA's Constitution sets provisions for full or associate membership. Full membership is open to Member States of the European Union; associate membership is open to European countries that have either applied for EU Membership or are involved in the integration process in other ways. EU Member States and Associate countries are represented in the highest management body of EIPA – the Board of Governors. The latter do not enjoy voting rights within the Board.

Introduction

Dr Simon Duke Professor, *European Institute of Public Administration*



An anniversary is traditionally an occasion to look back, as well as to look forwards. EIPA's 30th anniversary is no exception. It is important to look both backwards and forwards as T.S. Eliot so eloquently reminded us in *Burnt Norton*:

*Time present and time past
Are both perhaps present in time future,
And time future contained in time past.*

In this spirit, the first part will take the chance to look back at EIPA's thirty years of development and experience. EIPA's range of services and activities has expanded enormously over this period, as have the challenges of meeting the various demands from local, regional, national and European-level clients. With the Institute's expansion, there were obvious challenges in meeting EIPA's public-service mission posed by the growth of the EU itself. The challenges related to not only learning and development, arguably EIPA's core mission, but also to the types of research and consulting activities that should support it.

Looking to the future is in many ways more difficult since we enter the Rumsefeldian realm of not only 'known knows' but also 'unknown knowns'. Whilst avoiding speculation, EIPA's scientific staff will look towards the future taking a decade as the average perspective – any further and the risk of 'unknown unknowns' increases.

This anniversary edition of *Eipascope* could not come at a more propitious time in terms of both reflection and projection since the last few years have seen a number of dramatic changes with profound implications for the EU and its members. The adoption of the Lisbon Treaty, after an interminable delay (the 25th anniversary edition of *Eipascope* was written under the assumption that the Constitution for Europe would not enter into force) has dramatically changed not only EU decision-making, but also the institutions themselves. This poses fresh challenges in terms of not only understanding the ramifications of these changes but also how to communicate them clearly and originally to diverse audiences.

The implications of the Lisbon Treaty are often discussed in terms of institutions, structures and processes, but a far more

fundamental question is the impact on the citizen. Will the Lisbon Treaty succeed in encouraging more and different types of citizen involvement? How will government, at various levels, ensure the adequate information and consultation that must accompany any meaningful citizen's involvement? Connected to this there are questions of transparency, data protection and the citizen's rights to information. Should greater use be made of information, communication and technologies (ICT) to empower citizens and to foster democratic debate and participation?

The Lisbon Treaty aimed to introduce more coherence and continuity into EU policy-making and, by so doing, it also introduced new posts. In particular, the introduction of the President of the European Council and the High Representative for Foreign Affairs and Security Policy, who is also a Vice-President in the Commission, may have far-reaching implications for the General Secretariat of the Council as well as national administrations. Consequently, the challenges associated with 'multiple Presidencies' for European and national administrations are examined in detail. A second, and also highly significant reform, is the latest in a long line of adaptations to the control over the Commission when it delegates power (comitology), which raises a number of particularly interesting questions regarding efficiency, transparency, the European Parliament's extensive rights of scrutiny and lobbying. The institutional rules introduced, or adapted, by the Lisbon Treaty will also impact on the culture of negotiation within the EU institutions as well as in the capitals. This anniversary issue will reflect on the need to adapt the mind-sets, methods and resources of public administration in response to these challenges. Finally, the EU will continue to need 'the best and the brightest' in order to meet the challenges outlined above and below. With this in mind the possibility of reform of the European Personnel Selection Office is considered with a number of practical suggestions for efficiency gains.

The 30th anniversary edition also coincides with the (still largely unclear) effects of the global financial crisis. Public sectors throughout the EU face cut-backs, while many economies also wrestle with mounting unemployment and burgeoning deficits. The Europe 2020 strategy is central to the Union's

efforts to maintain its global competitiveness and to increase employment. The success of the strategy is not only crucial, but of overriding importance to the sustainability of the European 'social market' economic model. Public procurement has been identified as a key tool for promoting innovation, stimulating small-and-medium-sized-enterprises and opening up markets in third countries. Notwithstanding its obvious importance, it will be asked whether there may be excessive expectations regarding the application and effects of European public procurement rules, where the key problems lie and the implications for public administration. Closely connected to the preceding contribution, is the issue of how national authorities may pursue legitimate objectives of public policy such as consumer protection, without imposing unnecessary or disproportionate restrictions on market operations. The final article in this section will therefore examine the evolution of the internal market, its major achievements and challenges and to critically assess the proposals of the Commission.

Some of the most profound changes introduced by the Lisbon Treaty are to be found in the former third pillar area (police and judicial cooperation in criminal affairs) and external relations. On the former the Lisbon Treaty implies the creation of (limited) European criminal law and reinforced cooperation with national and European authorities. Whether such a limited approach is sufficient is open to question and the potential emergence of the European public prosecutor's office implies the need for a far more substantial and procedural approach to European criminal law.

The question of the integration of migrants into European societies is very much to the fore, especially following riots in France in recent years and open doubts about whether 'multiculturalism' has worked in Germany and the United Kingdom. The gradual, but already perceptible, greying of

European populations has reinforced the saliency of this issue since a culturally diverse work force is one of the necessities if Europe is to avoid economic hardship in the forthcoming years. It is therefore important to consider more clearly how immigrants can contribute fully to society whilst also enjoying full rights and dignity.

Any consideration of the road ahead would be incomplete without a global perspective. It is argued that both the changes within the EU itself, especially those prompted by the Lisbon Treaty, as well as external pressures, mostly notably those stemming from the Arab spring, demand fresh thinking and approaches of the EU. In particular this issue will look at why the development of the EU's public diplomacy is of crucial importance to the EU's global role. It is also argued that the EU needs a far keener sense of its strategic role on the world stage which will help establish clearer priorities but also assist in the internal coherence of the Union's responses to external change. In this regard, it is argued that the Arab spring should be used as an opportunity for fresh thought and approaches to EU external action for the forthcoming decades.

Finally, Eipascope's anniversary issue will turn to the EU's immediate borders and ask if the Union's 'power of attraction' is waning. What, if any, are the limits to enlargement? Are there prospects for a Union of 36, or more? What is understood by absorption capacity, or is this a political ploy to postpone decisions about how hard or soft the EU's borders should be? We shall then conclude with an examination of the macro picture and consider what type of role the EU might play on the rapidly changing global stage. Of immediate concern are two factors: whether the EU has a clear idea of the role it wishes to play and whether it is adequately equipped to conduct any envisaged role?



Citizen Involvement in EU Policies: *Impossible Dream or Work in Progress?*

Dr Edward Best, Professor; Head of Unit 'European Decision-Making', EIPA Maastricht 1988-present
Frank Lambermont, Research Assistant, EIPA Maastricht 2008-present

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Introduction

As the European Union has enlarged in terms of its membership, and expanded in terms of its competences, the idea of direct citizen participation in European policy-making has become both more important and more difficult. Given that many decisions are being taken at a level directly affecting over 500 million persons, and that EU institutional arrangements are so complex, is it really possible that citizens can become effectively engaged in EU decision-making?

The Lisbon Treaty has introduced the European Citizens' Initiative (ECI) as one means to help involve citizens directly in EU issues. This contribution looks at the precise nature of the ECI as finally agreed. It places the ECI in the context of broader political trends, and argues that the new mechanism may not produce the specific results expected by its proponent but, even so, could well have a positive impact on the democratic deepening of the EU in other ways.

The Lisbon Treaty and the Democratic Legitimacy of the EU

The Lisbon Treaty is, according to its preamble, the latest stage in 'enhancing the efficiency and democratic legitimacy of the Union and [...] improving the coherence of its action'. It does not say what the Union is, in political terms. It leaves the Union as an 'unidentified political object', floating between its legal nature as the creation of a treaty between 'High Contracting Parties' (perish the Constitutional Treaty's assertion that the Union is based on the will of citizens and states!) and its merit of a title on 'democratic principles' which starts with a reference to the Union's obligations to 'its citizens'.

This definitional uncertainty reflects not only the continuing differences across Member States as to the political nature of the EU, but also the continued co-existence within the Union of supranational rules in some areas, and inter- or trans-governmental cooperation in others. In such a context, it may be expected that the mechanisms for assuring democratic legitimacy will not be simple and may be contested. It is not the same thing to ask whether someone a) accepts the EU *per se* as a legitimate supranational level of authority; b) will not violate the specific binding rules on hazardous substances laid down in Regulation (EU) No 1234; or c) feels bound to support common European action in Libya.

The underlying democratic legitimacy of any political system as a whole depends on, at a minimum, the acceptance by people of the 'rightfulness' of authoritative decisions affecting their lives; their belief that they have had an opportunity to give their informed consent to the system; and their confidence in the availability of recourse if something goes fundamentally wrong. At this level, the question may arise as to whether individuals even want to be considered as 'citizens' of the system in question at all.

How people can shape individual decisions within a system is a quite different level of discussion. Assuming that the system enjoys an overwhelming degree of democratic legitimacy, different options for citizen involvement in decision-making may be compared on more or less the same level. Some such discussion has taken place in most countries in the last few decades against the background of political decentralisation, budgetary pressures, the drop in popular participation in traditional political structures, and the emerging discourse of good governance. Representative democracy can, it is widely insisted, be supplemented and indeed invigorated by forms of direct and participatory democracy.



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An analogous debate has taken place since the mid-1990s in the rather different context of the EU. It has inevitably taken a more problematic form, since the EU, unlike the Member States, cannot rely on common 'foundational myths' or other strong forms of common identity as 'given' sources of democratic legitimacy. Moreover, there are important differences across the Member States as to what the EU should be like in the future.

It is not merely a question of democratic detail but an issue of constitutional concern to ask whether one should aim at the simplest possible formal structures of representation and accountability at EU level, or whether one should (also) try to deepen forms of citizen and stakeholder participation in a broader perspective of 'European Governance'? What kind of EU polity do people in Member States want to emerge at the end of all this?

The new 'Provisions on Democratic Principles' proclaim that 'The functioning of the Union shall be founded on representative democracy': direct representation in the European Parliament, and indirectly through the European Council and Council. The right of every citizen 'to participate in the democratic life of the Union' is listed in third place. This does not seem to suggest direct democracy, however, so much as the active involvement of citizens in multi-level representative democracy – indeed the fourth paragraph continues by stressing that 'Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.'

The term 'participatory democracy', which had been recognised in the Constitutional Treaty as a second principle underlying the EU's democratic life, does not figure in the post-Lisbon Treaty on European Union. The same four elements are listed in the corresponding article (now Article 11): namely that 'citizens and representative associations' are to have the opportunity to make their views known; the institutions shall maintain an open, transparent and regular dialogue with 'representative associations and civil society'; the European Commission is to carry out broad consultations with 'parties concerned'; and the European Citizens' Initiative.

The European Citizens' Initiative: what has been agreed?

The substance of the Regulation putting into practice the new Treaty provisions was agreed informally in December 2010 and entered into force on 1 April 2011 (a date which can surely not have been chosen consciously, and could perhaps have been avoided for public relations purposes). It will only 'apply', however, as of 1 April 2012.

The arrangements finally agreed make it easier than initially proposed for an initiative to be conducted; demand more of the Commission in terms of providing support; strengthen the position of organisers in making their position known once one million verified statements of support are received; and will place greater pressure on the Commission regarding its decision on whether or not to act in accordance with an initiative¹.

The million citizens required will have to come from at least one-quarter (*i.e.* seven) of the Member States, with a varying minimum population threshold equivalent to 750 times the number of MEPs elected in each Member State.

Initiatives are to be proposed by a 'citizens' committee' composed of at least seven persons who are residents of at least seven Member States.

The Commission is to register the initiative within two months so long as

- the citizens' committee has been formed and contact persons have been designated;
- the initiative does not manifestly fall outside the scope of the Commission's power under the Treaties to submit a proposal for the requested legal act;
- the proposed initiative is not 'manifestly abusive, frivolous or vexatious';
- the proposed initiative is not manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union.

Once an initiative is duly presented, the Commission will have three months within which to examine the initiative and to 'set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking that action or not.' Moreover, the EP succeeded in including an article providing that the organisers will be entitled to hold a public hearing at the European Parliament, with the participation of the Commission 'at an appropriate level'.

Much will depend on the management of expectations by organisers of initiatives, as well as on the capacity of the Commission to respond.

The European Citizens' Initiative: what does it mean?

Great expectations have been raised by the ECI as to the prospects for increasing public interest in the EU, building citizens into the policy-making process, promoting Europe-wide debates and strengthening trans-European solidarity.

There are also risks. Much will depend on the management of expectations by organisers of initiatives, as well as on the capacity of the Commission to respond. The most obvious danger is disappointment and frustration, even a backlash. All concerned will have to explain clearly to people that successful submission of an initiative does not automatically mean that the Commission will present a proposal, and that even if the Commission does do so, the final result will be determined by the Council and the Parliament.

Direct democracy, which aims at citizen empowerment, is much more concerned with 'minority' concerns than with majority rule.

The ECI does not bring 'direct democracy' to EU decision-making, at least not if this is understood as the possibility for all citizens with political rights in a system to vote on an issue in a way which will then become binding upon them. Indeed, the very idea of direct democracy through binding EU-wide votes raises some fundamental questions. The legitimacy of authoritative decision-making by simple majority depends on the existence of

a simple 'demos' - a set of people who not only share a common identity, but also feel no need for any arrangement for minority representation in addition to their equality as citizens. The potential legitimating function of a 'demos' is usually stretched across different levels (local, regional, state, European) and different natures (territorial, ideological, cultural/religious). In the EU, this differentiated sense of identity is strong. It cannot be assumed that the ideal democratic form of decision-making would even in theory be a direct manifestation of the majority preference of the individual citizens of the EU. On the contrary, decision-making on the basis of an aggregation of preferences by simple majority rule in the EU would be illegitimate, and alarming in the eyes of most smaller Member States and minorities. The EU system has therefore tended to give priority to minority protection rather than majority rule.

The ECI is more precisely described as an 'agenda initiative', meaning that a set of citizens is to some degree empowered to put on the agenda of decision-makers an issue of minority concern. Indeed, the point is well made that direct democracy, which aims at citizen empowerment, is much more concerned with 'minority' concerns than with majority rule.

What kind of issues may be placed on the agenda? The list of 25 'pilot' initiatives presented between 2004 and 2009² is suggestive of the kind of issues which may be involved. Five were procedural, proposing the introduction of EU citizens' initiatives and referendums. Two proposed specific institutional-political measures (that Brussels should be the only seat of the Parliament, to ensure a partnership with Turkey rather than accession). Two proposed special international relief measures. Four concerned environmental/ecological interests. Three concerned the general needs of specific groups of people (the handicapped, cancer victims and the obese). One was limited to a specific practical question (an EU-wide emergency number). The rest reflected very general concerns (all EU residents to be EU citizens; a pan-European civil service; EU cooperation in justice; to authorise natural therapies in all Europe; to save Social Europe; human dignity and individual development to be fundamental values of the EU; quality public services to be available to all; to ban work on Sunday).

The ECI may have indirect consequences which deepen the democratic quality of European integration in other ways.

We do not know what precisely will happen from 2012 on. Some may feel more optimistic and others more sceptical as to the measures which will be proposed and their reception in Brussels. We argue not only that this does not matter – the most important thing is to open up the field for democratic exploration, within reasonably-defined minimum parameters. Beyond this, we argue that (barring disasters and backlash) the ECI may have indirect consequences which deepen the democratic quality of European integration in other ways.

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Conclusion

Citizens' initiative should not be seen as 'direct democracy' at the European level in any way which challenges existing principles. It may, rather, help to re-legitimate and re-invigorate the two processes which remain inevitably the core of EU policy-making, namely Commission consultations and multi-level political representation.

We started with a 'Community method' which rested upon the independent Commission's exclusive right of initiative, with its guarantee of equal consideration of all Member States' interests and balanced consultation of all parties concerned. The democratic legitimacy of legally-binding decisions rested on the representative principle underpinning Member State governments, and the less-articulated legitimacy derived from Commission consultations, as complementary forms of (non-power based) interest aggregation, and incipiently 'deliberative democracy'.

Following the introduction of codecision in 1993, assumptions about democratic legitimacy changed completely, to include the direct election of the Parliament which now had equal powers in legislation. Codecision was extended in 1999 and again with the Lisbon Treaty, while the EP has also new powers of control over the 'delegated acts' adopted by the Commission on the basis of legislative acts, as well as new powers over financial matters and of institutional supervision.

There has thus been, *de facto*, a semi-parliamentarisation of the system on top of the original Community method. This may be seen as a formal strengthening of the system, and the Commission and the Parliament can still usually be counted as institutional allies in the integration process. At the same time, however, this process has contributed to some problems of legitimacy in public perceptions for both sides. The Commission is seen as somehow not legitimate because it has powers but has not been directly elected (which many would argue was part of its original *raison d'être*). On the other hand, the Parliament has suffered because it was seen (wrongly) to have no formal powers, or because there was seen (rightly) to be a contrast between its ever-increasing formal powers and the degree of social legitimacy reflected in constantly-declining turnout in European elections.

Even if the ECI does not change much in legal reality regarding the influence of citizens on Commission initiatives, the fact that this process is now codified under the treaty and



will be subject to additional political considerations can only help legitimate consultation as part of EU democracy.

It is a good thing also that interaction between the ECI and political parties has not been blocked. The preamble states that 'Entities, notably organisations which under the Treaties contribute to forming European political awareness and to expressing the will of citizens of the Union [*i.e.* political parties at European level] should be able to promote a citizens' initiative, provided that they do so with full transparency.' It is hard to see what local issues could be transformed directly into European initiatives even on a transnational basis outside the framework of general EU legislation. As indicated above, the kinds of issue likely to be proposed are very varied. To the extent that they involve structured political choices for the EU, the most important consequence of local and national debates will normally be to force political parties to adopt clear positions. If this can contribute to the consolidation of multi-level political parties, then this will be an important step forward in EU democracy.

Notes

¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1 of 11 March 2011.

² GEF (Green European Foundation) (2010) *The European Citizens' Initiative Handbook*, Luxembourg: Initiative and Referendum Institute Europe (IRI) and GEF.



Transparency and Access to Documents in the EU: *Ten Years on from the Adoption of Regulation 1049/2001*

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Introduction

Transparency is a prerequisite of good governance: it empowers citizens. It allows them to scrutinise and evaluate the activities of the public authorities and to call them to account. It also renders more effective the use of other public and political rights, particularly the freedom of speech and the right to information. At EU level, transparency is indispensable for increasing citizens' understanding of EU decision-making and for enhancing their confidence in EU institutions. Public access to EU institutions' documents strengthens their democratic credentials and helps to close the gap between them and the citizens. The central instrument in the EU to that purpose is Regulation 1049/2001 of the European Parliament and of the Council, setting out the modalities for a right of access to EU documents and regulating transparency of disclosure procedures¹. This contribution discusses the thorny process of reforming this instrument and the current state of play.

The legal framework 1992-2008

The principle of openness was introduced by the Maastricht Treaty in 1992. Declaration No 17 on the Right of Access to Information² was attached to the Treaty with a view to 'strengthening the democratic nature of the EU institutions and the public's confidence in the administration³'. On the basis of this declaration, the Commission and the Council adopted a Code of Conduct on Access to Documents (1993), in which the two institutions committed themselves to providing 'the widest possible access to documents'. Afterwards, the Council, the Commission and later also the European Parliament adopted implementing decisions laying down detailed conditions for access to information⁴. In 1997 the Amsterdam Treaty embedded the right of access to information in the EC Treaty by providing in Article 255 the right of access to documents of the European Parliament, Council and Commission to all natural and legal persons residing or having their registered office in one of the Member States. Pursuant to this Article, the Council and the European Parliament adopted Regulation No 1049/2001 on public access to European Parliament, Council and Commission documents. The purpose of the Regulation is '(a) to define the principles, conditions and limits [...] governing the right of access to [...] documents provided for in Article 255 of the EC Treaty [...] as to ensure the widest possible access to documents; (b) to establish rules ensuring the easiest possible exercise of this right; (c) to promote good administrative practice on access to documents.'

The approach adopted in Regulation 1049/2001 corresponds to the Nordic concept of public access to documents. Every natural or legal person resident or established in the EU enjoys the right to request access to documents held by an EU institution without the need to specify any reason. That does not imply that all documents must be made public: Article 4 of Regulation 1049/2001 contains a list of exceptions which may justify restraining access to documents, and places the burden of proof on the institution to which the request is addressed.

Proposed reform of Regulation 1049/2009 by the European Commission

As part of its 'European Transparency Initiative' launched in November 2005, the Commission started a review of Regulation 1049/2001, eventually adopting a proposal for a new regulation in April 2008⁵, aimed at achieving more transparency in legislation and bringing EU provisions into alignment with the Århus Convention⁶. The proposal was based on views of the European Parliament expressed in its resolution of April 2006⁷, the outcome of a public consultation exercise launched by a Commission Green Paper⁸ and the case law of the General Court and the Court of Justice of the EU interpreting Regulation 1049/2001.

The Commission's proposal provoked a vivid debate amongst the institutions. The European Parliament was not happy with the choice of a recast procedure of the regulation as well as some of its content. And although it voted in March 2009 on a report containing a great number of amendments, it decided not to adopt a legislative resolution, as it considered that this dossier should be referred to the next parliamentary term. As a result, no formal position of the European Parliament was forged at first reading.

The Commission's proposal provoked a vivid debate amongst the institutions.

Some of the most controversial issues of the proposal concerned: the definition of 'document' [Article 3(a)] and the scope of application [Article 2(5),(6)]; the exception of legal advice provided by the legal services of the EU institutions [Article 4(2c)]; relation between the right of access to documents and the right to personal data protection [Article 4(5)]; and 4) Members States' documents and Member States' rights to restrict access [Article 5(2)].

Definition of 'document' and scope of application

The Commission's proposal [Article 3(a) and Article 2(5), (6)], stipulates that a document needs to be 'formally transmitted to one or more recipients [...] or otherwise recorded'. This definition has received much criticism by the European Ombudsman who believed that it would allow for access to fewer rather than more documents⁹. Such a definition seems to be too narrow because it excludes information meant for internal circulation by providing a blanket waiver regardless of the document's purpose or function. The previously non-existent requirement for a formal transmission brings a substantial number of 'non-papers', trilogue documents and other informal exchanges outside the scope of public scrutiny. In addition, the definition laid down in Regulation 1049/2001 could be easily argued to accommodate databases as documents. The 2008 proposal, however, deals with databases explicitly and restricts them from being classed as a document under the regulation to situations when 'data [...] can be extracted in the form of a print out or electronic format copy using the available tools for the exploitation of the system.' These more restrictive provisions therefore seem to be a retaliatory response by the Commission to the case law of the Court relating to Regulation 1049/2001.

Relation between access to documents and personal data protection

The right balance between the two fundamental rights of access to documents by the public and personal data protection of an individual is a delicate issue. It is noteworthy that the 2008 proposal explicitly refers to the relevant case T-194/04, *Bavarian Lager*, but at the same time, the proposed Article 4(5) stipulates that personal data shall be disclosed in accordance with the conditions laid down in EU legislation on the protection of individuals with regard to the processing of personal data.



This wording appears to be problematic as it might suggest that access to documents which contain personal data should be considered under Regulation 45/2001 on data protection instead of Regulation 1049/2001. This would be contrary to the General Court's ruling of 2007 on *Bavarian Lager*¹⁰, clearly stating that personal data of officials must be released if disclosure would not mean 'actually and specifically undermining the privacy and integrity of the persons concerned'. However, the Court of Justice recently overruled the General Court's judgment in this case and held that the Commission had sufficiently complied with its duty to openness by releasing a version of the document in question without divulging the names of participants who had not given their consent¹¹. It however failed to give specific indications on how to balance the relationship between transparency and data protection so that uncertainty still remains today about the legal correctness of the Commission's 2008 proposal in this regard. Very recently the European Data Protection Supervisor proposed a way out of this dilemma, by calling for a proactive approach by the institutions: the institutions would need to assess and subsequently make clear to data

subjects – before or at least at the moment they collect their data – the extent to which the processing of such data includes or might include its public disclosure¹².

Legal advice provided by the legal services of the European institutions

The proposal has been criticised for not reflecting the Court's jurisprudence (*Sweden and Turco v. Council and Others*¹³) that disclosure of legal advice in legislative procedures increases the transparency and openness of the legislative process and strengthens the democratic rights of European citizens. Therefore, the European Parliament proposes to refine the exception as meaning 'legal advice and court proceedings, except for legal advice in connection with procedures leading to a legislative act or a non-legislative act of general application'.

Member States' documents

It is important to remember that Regulation 1049/2001 applies only to EU institutions. It has an impact on national provisions only where it lays down conditions of access to Member States' documents. Regulation 1049/2001 goes much further than the national legislation usually does, as it includes the documents of the legislator. The 2008 proposal now allows Member States to enjoy more discretion in restricting access to documents [Article 5(2)] on two different grounds.

The first of relevance is the derogation relating *inter alia* to overriding reasons of public interest [Article 4(1)], or when a decision has not yet been taken by the institution and the disclosure would undermine the decision-making process [Article 4(3)]. In *'Sweden and Turco v. Council and Others'*¹⁴ the Court of Justice ascertained that all documents drawn up in the course of a legislative procedure shall be made 'directly accessible'. Moreover, in a very recent case of March 2011 'Access Info Europe'¹⁵, the General Court ruled that possible criticism by the public and media are not sufficient reasons to withhold disclosure during the legislative process under the current Article 4(3). The European Parliament as well as several civil society organisations have therefore considered that the proposed Article 4(3) is contrary to the Treaties altogether and should be repealed: Article 15(2) and 15(3) fifth paragraph clearly state the duty of openness and accessibility of legislation, and render the current derogation under Article 4(3) incompatible with the Treaties.

The second ground for discretion is an unfolding of Article 4(5) addressing the specific rights of the Member States to oppose disclosure of documents originating from them. The Court of Justice ruled that documents submitted by the Member States in the course of a legislative procedure did not have the character of a third party document but had an 'EU' character (Council Documents), and were therefore excluded from the exception under Article 4(5) of the Regulation 1049/2001.

In addition, Article 5 of the 2008 proposal allows Member States to veto the disclosure of documents sent by them to the European institutions providing reasons for withholding it. Those reasons could also be based on exceptions for access to information found in the national law, not only based on Article 4(1)-(3) of the Regulation 1049/2001. However, in the light of the case law of the Court of Justice, national provisions can only be invoked when the Member States' documents do not have an 'EU' character. Moreover, as in 'Commission v. Sweden' [C-64/05], Member States must prove the adequacy of their national provisions under the conditions laid down in Article 4(1)-(3) of the Regulation 1049/2001. Article 5 of the proposal cannot therefore be interpreted as an *a priori* veto right. It should be read together with Article 4 of the Regulation 1049/2001, whereby the national provisions protecting disclosure should be subject to an objective harm test.

Conclusion

The controversial issues discussed above have so far prevented any progress on the 2008 proposal to amend Regulation 1049/2001. The proposal itself seems to be a missed opportunity to substantially amend Regulation 1019/2001 and to adapt to modern standards of open administration, as well as to codify the case law of the European Courts. An important challenge lies in the clarification between the balancing of transparency and data protection. The proactive approach proposed by the European Data Protection Supervisor seems to be an interesting way out of this dilemma.

Rather curiously, faced with the new requirements of the Lisbon Treaty extending both the personal scope of Article 15 TFEU (applying to all EU institutions, bodies and agencies (with some exceptions for the Court of Justice, the European Central Bank and the European Investment Bank) and the material scope ('whatever the medium'), the European Commission adopted yet another proposal to amend Regulation 1049/2001 in March 2011¹⁶. Importantly though, this proposal is only to adapt the Regulation to the requirements of the new Article 15 TFEU and leaves the 2008 proposal intact. This means that the debate on the reform of Regulation 1049/2001 along the lines of the 2008 proposal will continue. It could very well be that with this binary approach with two parallel proposals to amend Regulation 1049, the Commission is searching for a way to withdraw its 2008 proposal and come up with a new one altogether.

Notes

¹ OJ, C191, 29 July 1992, p. 1.

² Official Journal, C-191 of 29 July 1992, p. 1.

³ In addition, Article 1(2) EU Treaty provided that decisions '[...] shall be taken as openly as possible and as closely as possible to the citizen.'

⁴ Council Decision 93/731/EC on public access to Council documents OJ L 340, 31 December 1993, p. 43, Commission Decision 94/90/ECSC, EC, Euratom on public access to Commission documents OJ L 46, 18 February 1994, p. 58 and European Parliament Decision 97/632/EC, ECSC, Euratom on public access to European Parliament documents, OJ L 263, 25 September 1997, p. 27.

⁵ COM(2008)229.

⁶ Convention on Access to Information, public Participation in Decision-making and Access to Justice in environmental Matters, signed in Århus, Denmark, on 25 June 1998. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Århus Convention to Community institutions and bodies (OJ L 264, 25 September 2006, p. 13).

⁷ P6_A(2006) 052.

⁸ COM(2007) 185, Green Paper, *Public Access to Documents held by institutions of the European Community - A review*.

⁹ See e.g. Nikiforos Diamandouros, P., Contribution of the European Ombudsman to the public hearing on the Revision of Regulation 1049/2001 on public access to documents, European Parliament - Committee on Civil Liberties, Justice and Home Affairs, Brussels, 2 June 2008.

¹⁰ See also Nikiforos Diamandouros, P.

¹¹ Case T-194/04, especially p. 81, 89 of the judgement.

¹² EDPS, Public access to documents *Bavarian Lager* ruling, 24 March 2011.

¹³ Joined cases C-39/05 P and C-52/05 P.

¹⁴ Joined cases C-39/05 P and C-52/05 P.

¹⁵ Case T-233/09.

¹⁶ COM(2011) 137.



Engaging Citizens:

How can Public Institutions Take Advantage of ICT for More Inclusion?

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Introduction

Information and communication technologies (ICT) have supported the emergence of online citizens' communities and non-institutional actors involved in politics, who have shaped public opinion on a number of issues. In parallel to a relative decline in formal civic engagement – both in terms of voters' turnout or political party membership – new kinds of participation fostered by digital media are influencing policy initiatives and government behaviour¹. The new possibilities offered by the internet enable ordinary citizens or civil society stakeholders to voice their opinions, to organise and mobilise themselves as well as to interact with public officials².

Public institutions- referred to as bodies from all levels of government, national, local, regional or European- have a substantial role to play in the fostering of citizens' involvement in public affairs through digital communication channels- regularly used by an increasing number of people around the globe. Information technology, by reason of its networking and linkage capacity is a crucial factor in strengthening civic engagement and ensuring a link between governmental organisations and grassroots. What is the relevance of digital media in the public participation challenge? How can public institutions use information technology to revive citizens' interest in public affairs? Our view is that governments may build on the connectivity effect of online tools to encourage constituents' participation in the policy process and get engaged in a two-way interaction with the public to better serve those who elect them.

Creating the conditions for citizens' empowerment

Citizens' engagement in the public debate lies to a great extent in the availability of channels for participation. Information and communication technologies play a great role in widening the possibilities for accessing knowledge and expressing one's opinions. Consequently public institutions have a responsibility to make sure that people have access and capacity to use digital tools in order to let them be active citizens.

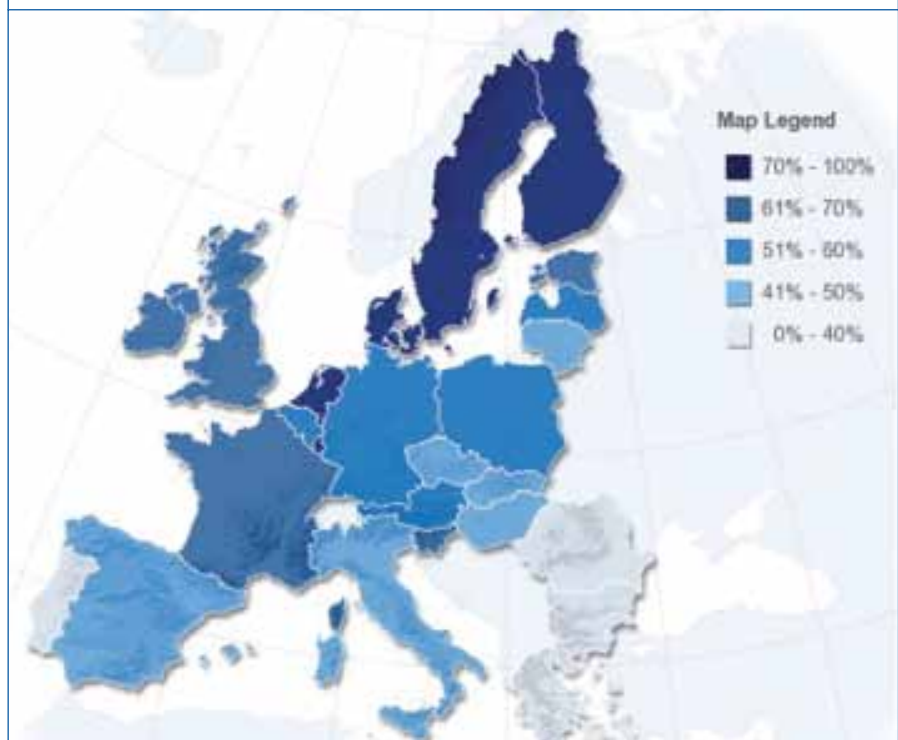
In the European Union³, citizens have increasing access to ICT, whether by phone, computer or internet access; however 43% of European households still do not have access to an internet connection at home. Moreover, there are also significant disparities

among EU countries in terms of broadband availability, with top ranking Member States, such as the Netherlands (92%), Denmark (87%) and Sweden (87%); meanwhile, Bulgaria and Romania are lagging behind the European average where respectively 37% and 42% of the population have the internet at home.

Overcoming the physical and cultural barriers that prevent people from taking advantage of online opportunities is a fundamental mission of governments in the internet age. Citizens need to be supported in the quest for digital empowerment through the creation of favourable conditions for skills enhancement. Developing interest and trust in technology may increase people's motivation to get online and grasp the benefits of digital engagement.

Similarly, people's involvement in society needs to be encouraged by public authorities. The availability of information about government activities is likely to enhance citizens' capacity to intervene in the public debate. In this view, public authorities could compensate the often-claimed lack of visibility and attractiveness of complex governmental issues, especially at European level, by providing clear and accessible information about the political system, parties' functioning and governmental policies. Digital channels can potentially make a great contribution to reducing the distance between institutions and the people.

Figure 1: Households in Europe having an internet connection- Source: Eurobarometer survey conducted by TNS Opinion & Social (October 2010)



© European Union, eCommunications household survey: The results of a special Euro-barometer survey, October 2010, p. 79.

To bridge the gap between governments and constituents, a framework for political dialogue needs to be established to ensure that citizens are updated on governmental topics and policy leaders take into account the electorate's views. Technology has the potential to nurture political participation by offering the means to exchange ideas and widespread information among constituents.

An Austrian model?

In Austria⁴, an electronic democracy model was established to organise the political debate in a digital environment. By connecting online and offline participation within a whole strategy for public participation, Austrian authorities developed standards for online participation including communication and transparency as objectives for a more open decision making (Standards for public participation, 2008).

In addition to this political framework, a successful project for online deliberation was set up in 2002 called the *Wahlkabine*⁵ ('polling booth') which aimed to help citizens understand political views and party positions before elections. This commitment to citizenry empowerment through a wider access to information and deliberation processes contributed to fostering democratic participation and people's interest in the public debate.

Figure 2: Image of the Wahlkabine.at portal



Knowledge, trust and participation as key principles

In Norris's⁶ view, the civic engagement concept entails three fundamental dimensions which are the political knowledge, trust and participation. Governments' pro-activeness in offering public participation tools have a marginal influence upon citizen engagement but it may, however, greatly influence people's resources and opportunities to be active political actors if they wish to do so. In this respect, the use of information technology to publicise political debates, policy developments and governmental data may foster interest and participation from civil society. Existing research on public sector information⁷ shows that transparency and the availability of public documents on the web promote citizens' confidence and interest in the policy-making process. Comprehensive and relevant government data strengthens people's availability to find information on policy issues in an efficient way. Nevertheless, the democratic interaction between public authorities and grassroots should not be limited to appropriate information delivery but rather developed into a continuous dialogue.

Engaging in a two-way interaction with citizens

Public entities willing to engage in a two-way interaction with constituents need to develop comprehensive communication models which incorporate the latest technological developments. Indeed recent evolutions brought about by information technology diffusion in society and the high impact of the internet on people's perception of politicians and governments imply that the public sector adjusts its practices to such changes.

The use of ICT- and especially the internet- for government-citizens interactions implies a change in the nature of communication itself, not just in its form. Traditional hierarchical communication systems, as developed by governmental bureaucracies, become less effective in a world where horizontal networks and loose informal coalitions rule⁸. Digital tools dramatically reduce communication costs while increasing speed and extend potential recipient reach. The contemporary repertoire for civic engagement offered by new media requires a new approach to political debate in which participants need to be considered on an equal basis. Those citizens who are interested in participating in online public discussions will expect their input to be acknowledged and integrated in the policy-making process. To facilitate constituents' participation in online political fora, content, language and resources need to be easily accessible.

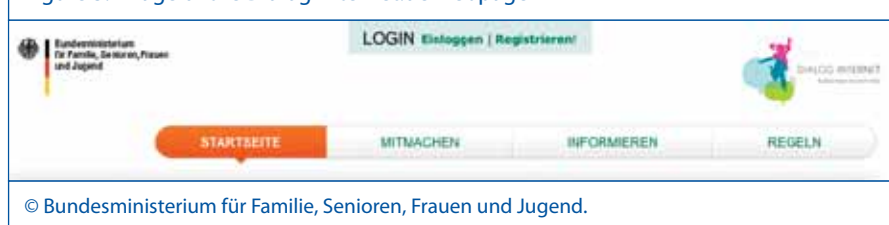
The German federal government developed online communication platforms to stimulate citizens' dialogue⁹. Even though those who participate in online political discussions could also be engaged in other traditional participation media anyway, the internet provides a chance to include virtual communities which may not be otherwise involved in political debates. In the German case, citizens are consulted in a structured way on a wide range of issues, such as sustainable development, future technologies or family policies, in order

to achieve common policy goals. Digital tools offer opportunities for stimulating the political debate in a different way and to reach less engaged constituents by reducing the difficulty of expressing an individual's views and providing easier access to political deliberation.

Real-time communication patterns emphasised by the current surge of social media tend to increase the need for

responsiveness and transparency in public deliberation while developing online relations with citizens¹⁰. Therefore the adoption of innovative ICT tools to support interactive communication processes between public administration and constituents needs to be managed in a strategic way. Such management involves the development of a long-term vision considering the risks and benefits of next generation communication channels to ensure consistency and sustainability. A careful planning of actions as well as the adequate allocation of resources may guide the public sector's leap into new media. A coordinated approach to balance the effects of such new communication modes could include standards and guidelines to guide public participation. Strategic planning, as well as a legal and political framework that facilitates access to public institutions, are among the key policy steps required for any constructive political dialogue with constituents.

Figure 3: Image of the Dialog-internet.de webpage



Conclusion

Information and communication technologies have a substantial role to play in enabling governments to do a better job as regards citizens' involvement in the policy process. To achieve the objective of a more open and responsive government, commensurate with good governance principles, public authorities need to develop expertise and experience in managing digital resources. ICT-based interaction between public institutions and constituents is a lengthy process which demands political commitment and leadership.

Developing openness and transparency through digital means requires a significant change in the way public administration traditionally works. The requirements for the public sector to adapt to such new communication modes involve different aspects. At an organisational level, information technology tends to make interactions less formal and more spontaneous, therefore flexibility and open mindsets in communications and any resultant administrative tasks. The innovation brought about by ever-evolving technologies implies that civil servants learn from new practices and are empowered through alternative ways of reaching out to citizens. Such a change is only effective when organisational and hierarchical barriers are lowered. Furthermore, from a technical and legal point of view, new forms of communication have deep implications on the status of public sector information and communication which need to be anticipated and managed. At the political and strategic level, a clear framing of goals and objectives is a prerequisite for enabling the public sector to take advantage of online resources to communicate with the public.

Notes

- ¹ Frissen, V., (2005), *The e-mancipation of the citizen and the future of e-government in Practice eGovernment: A Global Perspective*, Khosrow-Pour Ed. IGI Global.
- ² Norris (2001), *The Digital Divide*, Cambridge University Press.
- ³ European Commission (2010), eCommunications household survey: *The results of a special Eurobarometer*. TNS Opinion & Social. http://ec.europa.eu/information_society/policy/ecomm/library/ext_studies/index_en.htm#2010
- ⁴ Reinsalu, K. (2009), Handbook on eDemocracy, EPACE Project.
- ⁵ www.wahlkabine.at (2009) Project rated as a good practice example in the above mentioned: *Handbook on eDemocracy*, EPACE Project.
- ⁶ Norris (2001), *The Digital Divide*, Cambridge University Press.
- ⁷ *Ibid.*
- ⁸ *Ibid.*
- ⁹ www.buergerdialog-bmbf.de, <http://dialog-internet.de>
- ¹⁰ Archmann, S. and Guiffart, A. (forthcoming), *The Use of Social Media in Public Administration: Towards Citizens' Empowerment*, for the METTEG 11 Conference.



Coping with Multiple Presidencies in the EU: *Challenges for National Administrations*

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Introduction

One of the most visible and discussed changes introduced by the Lisbon Treaty concerns the introduction of the two new leadership figures in the EU: the permanent President of the European Council (POTEC) and the High Representative of the Union for Foreign Affairs and Security Policy (the new High Representative). The two new actors have each been entrusted with a part of a role previously held by the rotating Presidency of the Council of the European Union (EU). However, the rotating Presidency, contrary to the views often expressed in the media and also among the expert community, still has a job to do and shoulders responsibility for the advancement of the work in the Council during its six-monthly term in office. As a stark difference to the previous 'single EU Presidency' principle, the leadership of the Council and European Council is consequently split between the POTEC, the new High Representative and the rotating Presidency. Other changes introduced by the Lisbon Treaty, especially the extension of co-decision procedure to a number of new policy-fields¹, which increases the role of the European Parliament bringing it on a par with the Council as co-legislators, consequently even increased the role, and the importance, of the rotating Presidency of the Council.

These changes, the introduction of the two new posts and a greater role for the European Parliament in the decision-making process, have profound effects on the organisation and competences required by national administrations. This article analyses the effects of the split in the Presidency-system in the EU on the national administration of the Member State entrusted with holding a six-monthly rotating Presidency. It differentiates between the challenges the new leadership structures and governance modes have brought to organisational patterns in the administration, both in the capital and to their Permanent Representation in Brussels, and with regard to the competences that are required by individual officials as they enter previously unknown terrain with different actors and procedures. The article concludes with recommendations for overcoming the identified challenges, as well as some prospective views.

No longer a single EU Presidency

The thus far very resilient system of the rotating Presidency of the Council has been reformed to include the POTEC and the new High Representative in order to ensure better coherence, continuity² and with a view to finally giving the EU a single face (and voice) in

the international community. The two new posts were occupied upon the Treaty's entry into force by Herman van Rompuy and Catherine Ashton respectively.

The POTEK is appointed by the Heads of State or Government of the Member States, for two-and-a-half years, renewable once. He may not hold a national office and therefore serves the European Council full time. He is in charge of the preparation, chairing and follow up on the work of the European Council. He is supported by the General Secretariat of the Council (GSC) as well as by the new European External Action Service (EEAS) in exercising his role in the area of external relations. He has to work closely with the rotating Presidency to ensure coherence and continuity. Much of this was previously the role of the Head of State or Government of the Member State holding the rotating Presidency. This role has now been reduced to merely reporting (in consultation with POTEK) on the progress in the Council to the European Council.

The new High Representative, who is also vice-president of the Commission, takes over from the rotating Presidency, most visibly, the chairing of the Foreign Affairs Council, but also the programming, management and representation in the CFSP area³. She is supported by the EEAS. The new chairing arrangement in the Council working parties, however, has maintained the chairmanship of some of the working parties with the rotating Presidency⁴. Foreign ministers of the trio countries may be asked to deputise for the new High Representative when needed, while their diplomatic missions may still, in the absence of the EU delegation, represent the EU.



The rotating Presidency's task may thus be pictured as a head chopped off (European Council) and an arm half torn away (foreign affairs), but the rest of its tasks, management, forward driving and representing the Council in front of other institutions of the EU, have remained – some of them enjoying even a broader magnitude.

Challenges for the Presidency at European and national levels

A first set of challenges concerns the coordination between various branches of government for the management of the Presidency in the new EU leadership architecture. The fact that the preparation of the European Council, the political impulse, brokerage and agenda-setting as well as drafting of conclusions are entrusted within the POTEK, relieved the cabinet of the Head of State or Government of much of the work. However, the absence of the previous role of the chair of the European Council and a new reporting role for the Head of State or Government in the European Council (even if this role is more of a technical nature) have added new tasks for the administration of the rotating Presidency. The input for, as well as a follow-up to, the European Council meetings are generated by the Council, i.e. managed by the rotating Presidency. This means that a new coordinative role, in relation to the cabinet of the POTEK as well as a stronger link with the GSC is placed within the rotating Presidency, thus demanding the careful development of communication tools and an open information-sharing attitude. With the Prime Minister (Head of State or Government) ousted from the chairmanship of the European Council and consequently out of the lime light, s/he will have to define the parameters of success for the Presidency and ensure the dedication of the entire administration to the laborious but rather invisible tasks of the rotating Presidency.

The reform of the European Council has also sought to relieve it from a high number of issues it has dealt with in the past and to only concentrate itself on giving political guidelines. This means that the Presidency has to endeavour on lower levels, within the Council, to hammer out the compromises on legislative and also policy-making issues, as it can no longer resort to elevating them to the European Council level and aspiring to broker them among the Heads of States or Governments. As a consequence, a much more active role has been placed within the ministers' cabinets, also demanding the possibility of striking package deals at the ministers' level. This is another aspect that calls for more coordination and regular exchange of information at the ministers' level of a presiding country as well as leadership of the Head of State or Government in solving potential conflicts; all with the strong involvement and support of the Permanent Representation, possibly increasing its coordinating role and the breadth of its mandates.

The biggest change in running the post-Lisbon rotating Presidency has probably hit the ministries of foreign affairs. Unlike a clear cut hierarchical split in the Presidency's management of the Council and its role in the European Council, the arrangements and division of tasks in foreign affairs have resulted in a multi-layered network of actors, issue-areas and loyalties. This means that the rotating Presidency and the new High Representative (and the EEAS) need to coordinate their work at different levels and develop not only mechanisms and tools for communication, but also principles of cooperation, primarily on information sharing. Whereas a rotating Presidency is a (more or less) homogenous actor, the EEAS is a service still in the setting-up phase and with its own ways of working only emerging, composed of officials coming from different administrations and backgrounds. A readiness to work from the back-seat (working 'on behalf of lady Ashton', meaning placing the national personnel at her disposal, be it at home or in diplomatic missions abroad), a strong code of conduct and flexibility with a high level of diplomatic skills will be required to overcome impasses and to work together efficiently.

In relation specifically to the Council, two additional changes might affect the organisation of national capitals: the strengthened coordinative role of the General Affairs Council (GAC) and the lost role for the foreign ministers who no longer automatically attend European Council meetings. GAC, essentially split from the Foreign Affairs Council, is charged with responsibilities for the overall coordination of policies, institutional and administrative questions and horizontal dossiers which affect several of the EU's policies, including elements of the Economic and Monetary Union (EMU) and enlargement policy. This is likely to affect domestic coordination of European affairs, moving closer to prime ministers' cabinets than foreign ministries. When conceptualising the organisation of the coming presidency, this is another aspect to be kept in mind.

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Finally, the already mentioned upgraded involvement of the European Parliament in numerous new policy areas suggests the need for more strategic attention to it prior to and during the running of the Presidency, beyond a mere representational role. The need for rationalised and better-endowed resources to manage the relations with the European Parliament during Presidencies will become

increasingly evident, even beyond what the recent Presidencies (and Permanent Representations in particular) have already achieved. The latter suggests more attention should be paid to the European Parliament in the Permanent Representation, not only by those officials responsible for following policy developments in the Parliament, but especially by all those officials chairing working parties discussing dossiers under the Ordinary Legislative Procedure. Chairing, negotiating and searching for compromise in the Council are only part of the job in a dossier under co-legislation. The Presidency must also secure agreement from the European Parliament in a demanding bottom-up and political process; it begins with very informal contacts between the working party chair and rapporteur in the European Parliament, and might in the last instance end up in the highly institutionalised negotiation setting of a conciliation committee co-chaired by a minister from the Presidency and the Vice-President of the European Parliament. Throughout this process, the Presidency will meet representatives of the European Parliament holding a different institutional and attitudinal relation to a process of negotiation. They are used to highly political and direct deliberations and exchanges; different views on the necessary urgency and timing for actions; and interests are widely split along a variety of different lines, whether ideological, national or personal. This context (or rather, battlefield) recommends different sets of competences and skills for Presidency public officials or diplomats in order to match the Parliament's political state of mind and negotiating rationality.

Recommendations for overcoming the new challenges

The reform of the rotating Presidency system, which came into effect with the Lisbon Treaty, aimed at increasing the continuity, coherence and visibility of the EU on the world stage. In order to achieve these goals the now multi-faceted Presidencies in the EU need to cooperate effectively, utilising appropriate coordination tools and communication means. Consequently, a number of adaptations are required by the public administration of the Member State holding the rotating Presidency:

- a. The cabinets of the Head of States of Governments need to assume a stronger leadership role in coordinating the European affairs, and even at the expense of the foreign ministry, they need to ensure that the adaptation results in the Member State speaking with one voice and with resources adequately placed.
- b. Foreign ministries, having lost much of their prominence in the national European affairs as well as in the running of the Presidency, should concentrate their efforts on coherence in various aspects of the Union's external action, promoting principles – and actions – such as policy coherence for development (and policy coherence for security, for that matter)⁵.
- c. Public officials acting as chairs in the Council at all levels, increasingly more often coming from other places than the foreign ministries, need to receive (diplomatic) training, boosting their negotiation and language skills, to manage multi-tier negotiations in the Ordinary Legislative Procedure.

Conclusion

Today rotating Presidencies face challenges and situations they did not have to worry about before Lisbon when taking over the leadership of the EU in a long established routine job. Every Presidency was eager, willing or felt obliged to take some initiatives to set an ambitious agenda for the EU; to initiate landmark European programmes, projects and institutional evolutions; or to steer an international initiative. With the new multiple leadership, complex external representation, the need to upgrade domestic coordination, and widespread co-legislation required to adopt EU legislation, it is much less of a routine job to cash in national investments made during an EU Presidency. If setting up means and actions to the benefit of the EU is more difficult because of the new institutional challenges and the larger uncertainty about the rewards, the number of bold initiatives of Member States holding the Presidency will likely fade. We might then enter into another routine. A post-Lisbon routine consisting in mechanically and administratively providing the plain required service of managing the machinery of the EU; whilst no longer providing any major impetus to beef up the agenda, competences or visibility of the European Union. In this context, Member States holding the Presidency will also find it increasingly difficult to sell at home the need to invest in the EU Presidency; or as it were to accept to sacrifice national preferences or domestic projects on the altar of the Presidency. Looking at the Presidencies having taken office recently, these trends might have already started.

Notes

- ¹ There are 45 new legal bases falling under the Ordinary Legislative Procedure (as co-decision procedure is officially called in the Lisbon Treaty).
- ² A minor step towards continuity in the work of the Council was done by the introduction of the Trio Presidency, whereby three consecutive Presidencies operate on the basis of the joint programme. The first Trio Presidency was introduced for the period 2007–first half of 2008.
- ³ The representative function in the CFSP area is shared among the POTE and the new High Representative. The former is to represent the Union in matters of CFSP at his level and in that capacity. It is worth noting that Article 17.1. of the Lisbon Treaty entrusts representation of the Union in other matters except CFSP to the Commission. The interpretation of the mentioned article differs; however, among the Commission and the Council, therefore the Presidency might still be seen, along with the Commission, as representing the EU at certain international conferences.
- ⁴ The arrangements are laid down in Council Decision laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council. 16517/09. Brussels, 30 November 2009. Council Working Parties in the area of trade and development as well as some engaged in horizontal issues of CFSP, including the group of *Relex* counsellors remain chaired by the rotating Presidency.
- ⁵ While policy coherence for development is a principle covering, at first, 12 and later concentrated on 5 policy areas affecting developing countries, policy coherence for security does not exist as a principle (see contribution by Duke, S., p. 63).



Delegated and Implementing Acts: *the New Worlds of Comitology – Implications for European and National Public Administrations*

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Introduction

The Treaty of Lisbon (TFEU) significantly changes the theory and practice of the delegation of executive powers to the European Commission, powers which resulted in 14,522 legally binding implementing measures during the sixth legislature under the Barroso I Commission (2004-2009) (in comparison to only 454 legislative acts). The Treaty of Lisbon fundamentally alters the way this system works, and in turn the way everyone works with it, especially European and national public administrations. From obscure and informal beginnings in the field of purely technical agricultural markets in the 1960s, the Lisbon Treaty has in fact made the so-called 'comitology' system (and the name) partially redundant. Following the entry into force of the Treaty of Lisbon on 1 December 2009, there are now two new legal bases; Delegated Acts (Article 290) and Implementing Acts (Article 291). This means that the 'comitology' world has been split into two.

The new system makes a clear separation between tasks delegated to the Commission that only require pure implementation, Implementing Acts, and those that allow the Commission to amend, supplement or delete non-essential elements of the legislative act, Delegated Acts. The main changes in the Lisbon system are related to this new category of Delegated Acts, where committees cease to exist and the legislators have equal rights to object to individual Delegated Acts or even to revoke the delegation to the Commission altogether. Under this new situation the Parliament thus stands on an equal footing with the Council. The implications of these changes are considerable, in both practical and political terms, and therefore require serious attention from the EU institutions, Member States, and outside stakeholders.

This short article attempts to address the key changes and questions. Based on the institutions' Common Understanding on Delegated Acts and the new 'Comitology' Regulation 182/2011/EU, which entered into force on 1 March 2011, we present the two new avenues and highlight all the important changes. We conclude with our considerations of the practical implications of the new Lisbon system for European and national public administrations.

Two new avenues of delegation of powers to the European Commission

Delegated Acts (Article 290 TFEU)

The first category created, under Article 290 TFEU, is that of Delegated Acts. The Commission is delegated the power to supplement or amend the non-essential elements of the basic legislative act and in return the legislators are granted control over the individual Delegated Acts, and the Commission itself. Table 1 displays the new procedure for Delegated Acts.

This procedure is a sharp deviation from past practice – namely the regulatory procedure with scrutiny (RPS) (Hardacre and Damen, 2009). In fact it is simplified because the Commission now presents its Delegated Act directly to both legislators at the same time without first passing *via* a committee. The legislators will then both have a time determined by the basic act (usually two+two months) to oppose the act on any grounds. There is also the possibility that the legislators can give their early approbation to a Delegated Act so that the Commission can adopt it much faster.

Compared to the pre-Lisbon situation a number of innovations need to be highlighted (see also Hardacre and Kaeding, 2011):

1. **No horizontal framework:** The first major innovation is that there is no horizontal framework to cover Delegated Acts so the legislators will be free to set the objectives, scope, duration and the conditions to which the delegation is subject in each and every legislative act.
2. **Absence of committee:** The next noticeable innovation is the absence of comitology committees and the requirement of the Commission to get the approval of Member State representatives.
3. **Right of opposition on any grounds:** In addition, Council or Parliament now has the power to oppose an individual Delegated Act on any grounds.
4. **Right of revocation:** The legislators are also granted the ultimate control mechanism for Delegated Acts – the right to revoke the delegation altogether. Again if either legislator became so dissatisfied with how the Commission was using its power to adopt Delegated Acts it could vote to revoke the delegation.

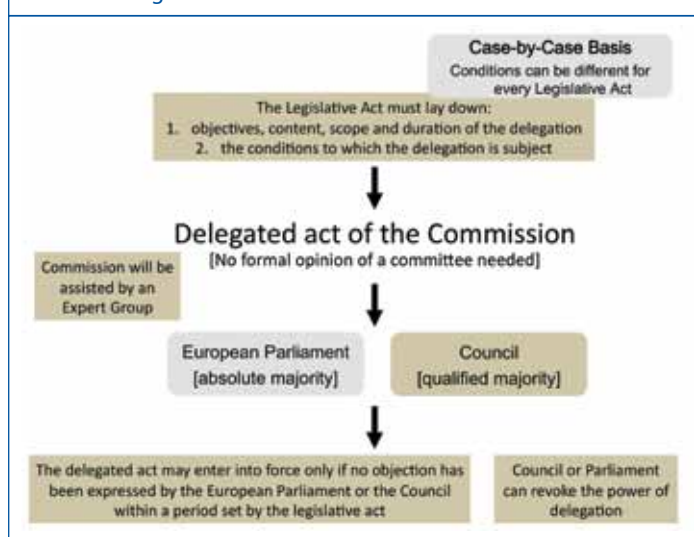
All in all, it is becoming clear that working with Delegated Acts will have to start in earnest at the legislative drafting phase because the objectives, scope, duration and the conditions to which the delegation is subject can change in every legislative act. This is already leading to longer negotiations of basic acts under the ordinary legislative procedure. Thereafter, the process will involve identifying the relevant expert group(s) assisting the Commission in drafting the Delegated Acts. Once the Delegated Acts have been forwarded to the legislators it is likely that there will be an increased amount of opposition as they can oppose anything they do not like in the Delegated Act (see also Hardacre and Damen, 2009; Kaeding and Hardacre, 2011).

Implementing Acts (Article 291 TFEU)

Article 291 designates Implementing Acts as the second category of tasks that can be delegated to the Commission. Here we find the 'traditional comitology system' and procedures that were in operation before Lisbon, although with some important changes in the newly adopted Implementing Acts Regulation 182/2011/EU. Whilst the 'comitology' committees remain in place, they now only operate under two main procedures.

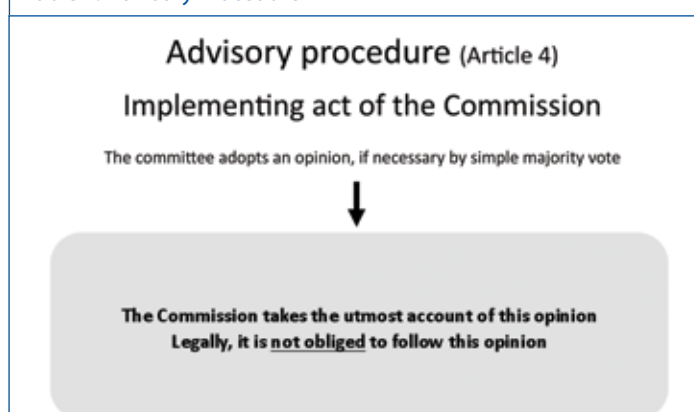
The first procedure according to Article 4 of Regulation 182/2011/EU (advisory procedure) is maintained and is used, as before, to deal with measures such as grant and funding approvals.

Table 1: Delegated Acts: The Procedure



Source: EIPA

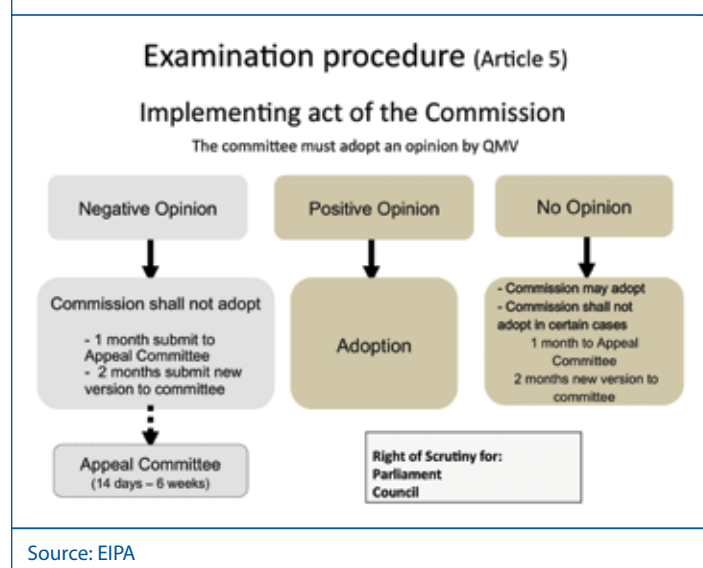
Table 2: Advisory Procedure



Source: EIPA

The second procedure, according to Article 5 of Regulation 182/2011.EU (examination procedure), is used for (amongst others) implementing acts of general scope, programmes with substantial budgetary implications, acts related to the Common Agricultural Policy (CAP) and fisheries, taxation and the Common Commercial Policy (CCP) (for more details on the new regime on Common Commercial Policy please consult Hardacre, 2011: Rule changes expose tension over trade policy, European Voice, 13 January 2011, p. 17).

Table 3: The Examination Procedure



The new examination procedure maintains the same voting system as the old regulatory procedure, such that the Commission needs to get a qualified majority in favour to be able to adopt an Implementing Act. If, on the other hand, the committee vote falls into the two other categories, things differ from past practice.

If the Committee is unable to find a qualified majority for or against, and hence issues 'no opinion' then the Commission will no longer ultimately be obliged to adopt the Implementing Act (something that was happening in the past with GMO authorisations and thus putting the Commission in a difficult position). Now the Commission may reconsider and resubmit the act to the committee. The Commission is also constrained in certain cases where there is no opinion. Firstly the Commission shall not adopt the Implementing Act if it is related to taxation, financial services, health and safety, or to safeguard measures; and secondly the Commission shall not adopt the Implementing Act if a simple majority opposes.

If the committee votes by qualified majority against the Implementing Act then the Commission will no longer forward it to the Council to take the final decision (as it did in the past) – although almost. The Commission will now forward the act to the Appeal Committee which is a new creation in the Implementing Acts Regulation. This committee will have one representative from each Member State (at the appropriate level – which will be that of Director-General of a Ministry or above *i.e.* political level) and will be chaired by the Commission. It will have the power to vote changes to the text, to adopt the text or to reject it. This committee can be equated to a political Comitology committee.

In addition to these two main procedures there are also two further possibilities:

1. **Exceptional Cases (Article 7):** In certain exceptional circumstances the Commission can adopt an act that has received a negative, or no, opinion from an examination committee but it must submit it immediately to the Appeal Committee. The Appeal Committee must find a qualified majority against to repeal the measure. This procedure can be used by the Commission to avoid significant disruption in agricultural and/or financial markets.
2. **Immediately Applicable Measures (Article 8):** The Commission can adopt an act that applies immediately (it cannot remain in force for longer than six months). The Commission must submit it to a Committee within 14 days and the Committee must find a qualified majority against to repeal the measure.

Implications for European and national public administrations

Working with 'comitology' now means working with two separate regimes: Delegated and Implementing Acts.

Delegated Acts are an entirely new world, notably with the abolition of comitology committees – although it is clear that the Commission simply uses other forms of groups for discussions, notably expert groups. The powers of the legislators are now considerable, with the discretionary right to object to an individual act or to revoke the delegation altogether. Whilst the opposition to an individual act remains an important decision to take, the fact that the legislators can now oppose on any grounds will likely open the door to an increased number of opposition – more likely from the Parliament. The Parliament will certainly be more lobbied on Delegated Acts – more than it was for RPS measures (Kaeding and Hardacre, 2011). Note that existing RPS procedures have not been automatically

aligned to Delegated Acts, so the RPS will continue to be used in committees until the basic act is revised – a process which should be finalised by mid-2014.

Implementing Acts remain subject to 'comitology' committees and the process of the Commission submitting draft acts for discussion and vote. The newly co-decided Implementing Acts Regulation 182/2011/EU entered into force on 1 March 2011 and provides the binding framework. For Implementing Acts the substantive changes are that there are now only two full procedures: advisory and examination. The Commission retains its right of initiative and the chairing of the committees, and the Parliament, now joined by Council, still only has the limited (but not to be neglected) right of scrutiny. Finally, the referral to Council has been replaced by referral to an Appeal Committee, which is the Member States in everything but name.

Conclusion

The key issues of Delegated Acts for European and national public administrations are:

1. There will be increased discussions of Delegated Acts in the legislative decision-making phase of the EU policy cycle, meaning that understanding Delegated Acts will be very important at this level. Delegated Acts are optional, so the Council does not have to delegate;
2. Member States will have to monitor how the Commission consults experts, with the possibility of making this compulsory by putting such a provision in the legislative act;
3. Impact Assessments: How many Delegated Acts will require proportionate impact assessments? Or perhaps they will have specific requirements in the legislative act like the Directive (2010/30/EU) on labelling and standard product information of the consumption of energy and other resources by energy-related products, which states in Article 10(3b) that, 'In preparation of a draft Delegated Act, the Commission shall assess the impact of the act on the environment, end-users and manufacturers, including small and medium-sized enterprises (SMEs), in terms of competitiveness including on markets outside the Union, innovation, market access and costs and benefits';
4. There will be more motivation to oppose Delegated Acts in both the Council and Parliament because the procedure is simpler and opposition does not require justification. This will increase lobbying of public administrations by external stakeholders.

In sum, national public administrations in the EU will have to develop a thorough understanding of what Delegated Acts are and where/when they can be used. Furthermore, they will find themselves required to interact more with stakeholders.

The key issues of Implementing Acts for European and national public administrations are the following:

1. The main challenge for national administrations here is to understand the new procedures and the role of the Appeal Committee;
2. There is also one outstanding issue of legal certainty: what happens in the case of no opinion under the examination procedure and then no opinion under the Appeal Committee; who has the final responsibility – the Commission or the Member States?

Overall, these two sets of challenges for national administrations are not without importance given the volume and significance of Delegated and Implementing Acts. In this sense there is one final set of challenges – the new areas that have to be aligned to these two new systems. The fields of agriculture, fisheries and the common commercial policy are all being aligned with Delegated and Implementing Acts in 2011; so national administrations do not have any time to waste in getting to grips with these challenges.



The Reform of the European Personnel Selection Office (EPSO) Selection Procedures: *the First Lessons Learned*

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Introduction

On 11 September 2008, EPSO published its 'Roadmap for Implementation' of the Development Programme (hereafter EDP)¹. It set out an ambitious plan of an overhaul of the selection process undertaken by EPSO in only two years. The EDP was indeed largely completed by early 2010. Later that year, the first rounds of open competitions under the new regime were launched.

This article aims to make an initial assessment of the main results of the EDP related to the new design of the personnel selection procedures, numbers and profiles of the candidates sought as well as the language regimes. It also intends to provide a critical assessment of the EDP by highlighting the strategic decisions made by EPSO in the context of a number of policy dilemmas related mostly to time-frames of open competitions, costs and overall efficiency of personnel selection and by enumerating a selection of inconsistencies of the EDP. Finally, the paper proposes a selection of measures for maximisation of benefits of the reform.

Reform of the EPSO selection procedures

Certainly, the reform of the selection procedures was indispensable due to the number of deficiencies. Perhaps the most authoritative criticism of the old regime of EPSO competitions was offered by the European Court of Auditors in its Special Report of September 2009². Its findings were rather harsh. The auditors concluded *e.g.* that the personnel selection took too much time; the emphasis on specific language requirements further discouraged candidates; the competitions produced only two-thirds (on average) of the targeted number of laureates; communication with the candidates was deficient and overall management of information flow and EPSO's database was unreliable and uncomprehensive.

The EPD tackled these shortcomings in a systematic manner. The three major challenges were to cut the length of the selection procedure by half (from approximately two years to maximum one year); to keep the costs at sustainable levels and; above all, to assure high quality laureates. This triangle of challenges at the same time illustrates the dilemma that EPSO's Task Force responsible for designing the EPD faced: how to select the best possible candidates in a relatively short period of time without inflating the budget?

Competency framework

A milestone of the EPD consists of introduction of a competency framework based on the analysis of typical jobs performed by the officials. It comprises the following skills and competencies: analysis and problem solving, communicating, delivering quality and results, learning and development, prioritising and organising, resilience and working with others. A further competency specific to the administrator positions is leadership. The competency framework constitutes a basis for reforming of the selection methods. In theory, each candidate should be assessed with reference to each and every competency and not by a direct comparison to performance of other candidates. The outcome was the move from a knowledge to a competency-based assessment of candidates. This shift resulted in cancellation of the infamous 'EU knowledge test' at the first, pre-selection stage. The second stage of the competition has also been affected by this change. Under the past regime, the admission stage was divided into two exams, one written and the other oral (with an interval of approximately two months between the two).



The EPD, inspired by common best practices observed not only in the private sector but also in some national public administrations decided to integrate the admission phase into a one-day long Assessment Centre (AC). This selection method offers the employer a possibility to observe and grade candidates in situations typical to the work environment. EPSO-style AC is composed of four components: group exercise, case study, oral presentation and structured interview. Each of the exercises assesses four selected competencies and each competency is tested in two exercises. At the same time, it is worth noting that the case study is the only part of the whole selection process where the application of knowledge in a given field is assessed. The choice of an integrated AC replacing a two-stage admission phase *prima facie* allows reaching certain time-efficiency gains. It must be borne in mind however, that a whole day long AC is also quite time-consuming. Given that the number of professionalised EPSO assessors is limited, the ambitious time-frame of open competitions determines *de facto* the number of candidates who may be invited to the AC.



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The first competition launched under the new regime

Before analysing the design of the reform it is worth taking notice of the very first open competition which has completed its cycle under the new rules. The notice of competition for AD5 general profiles³ was published in mid-March 2010 and the reserve list of successful candidates in February 2011. Therefore, it can serve as an interesting case-study to highlight the main features of the new style of selection process run by EPSO. The said competition offered in total 323 positions dispatched over five general profiles. In total, 51,639 candidates applied. The most 'generalist' profile, that of European Public Administration, attracted almost 30,000 candidates, while 'Audit' profile reached less than 3,000. It must be noted however that over 14,000 candidates dropped from the competition before its first stage as 37,329 finally sat the CBT⁴.

After reform, the CBT is composed of the verbal and numerical reasoning tests (used previously as well) and novel abstract reasoning and situational judgement tests. The three 'reasoning tests' were said to assess candidates' general aptitudes and competencies and were eliminatory. By contrast, the situational judgement test was graded, but its results were not eliminative. Nevertheless, its results were intended to be used during a later stage of the selection procedure during the structured interview. In order to pass the test a candidate must score 50% of available points. In practice, only the top-tier candidates who mark correctly approximately 90% of questions are invited to the AC. In fact, 992 candidates were invited to the AC⁵. Such figure is a result of a simple yet informal rule: the number of the invitees should equal the number of positions available multiplied by three. In EPSO's opinion this equation strikes a balance between a sufficient pool of candidates to choose from, the tight time-frame and budgetary constraints.

The final result of the whole process is a selection of 308 successful candidates who are now placed on the reserved list and ready to be recruited by the EU institutions. Once more, the EPSO has not achieved to draw the planned number of laureates, but the result of over 95% is much better than the past average success rate indicated by the Court of Auditors.

A number of lessons can be drawn from the first year of the application by EPSO of the modernised selection processes. The last year competition for the AD5 profiles attracted a huge number of candidates. A number of arguments can be put forward to explain this.

This competition was opened for citizens of all Member States of the EU, the first after a long period when a special attention was given to the nationals of the 'EU 12'. Moreover, the new style of competitions (shorter; no EU knowledge test) proves to be appealing especially given the EPSO's marketing and PR campaign (including the revamped website, new logo, social networks accounts). Of course EPSO seeks to attract the largest possible base in their quest for talent. At the same time, the use of legitimate dissuasive measures, such as a self-assessment exercise that is designed to discourage poor candidates, was of limited effectiveness. This suggests that similar but more effective measures should be considered for the future.

The first lessons learned

Another observation related to the number of candidates focuses on proportions between candidates assessed by the CBT and at the AC. According to the Court of Auditors report, competitions run before the reform, on average, of the candidates sitting the pre-selection tests, 28% progressed to the subsequent written test; 50% of those sitting the written tests proceeded to the oral test. Thus, over one-fourth of candidates used to be subject of initial substantive assessment before (during the written test) while only 2.66% were given a chance to show their skills and competencies last year at the AC.

At this stage certain concerns regarding the consistency of the approach undertaken by EPSO need to be addressed. In fact, the eliminatory parts of the CBT (the reasoning tests) of the 2010 competition were described as measuring 'general aptitudes and competencies'. Thus, the CBT was not designed to measure candidates competencies enumerated in the competency framework. It is only the AC stage which is designed to address the said foundation of the EDP. One may legitimately assume that the CBT, while selecting intelligent, reasoned individuals, may allow to proceed to the AC candidates with horrible communications skills and poor active knowledge of a foreign language (both in writing and orally), unable to work in teams or to solve more complex cases by delivering high quality output. While this risk should be considered real, it is hoped that it does not materialised too often. One more inconsistency in the design of the EDP is the related to case study testing (the ability to apply knowledge in a given field). While this skill should certainly be given its weight in the selection process, it does not feature in the EPSO's competency framework.

The continuation of the reform of EPSO's selection procedures brings one novelty in this respect. From 2011 onwards, the situational judgment test becomes eliminatory along with the reasoning tests⁶. This move could be praised as leading to a more widespread use of the competency framework provided that it is made clear what competencies listed in the framework are assessed by this test. Unfortunately, while a non-binding communication from EPSO 'New admission tests'⁷ published in early 2010 indicated

five specific competencies, the Notice of Open Competitions published on 16 March 2011 still refers to 'general aptitudes and competencies'. Thus, it seems, there remains uncertainty about which competences shall be tested by the situational judgment test.

A separate bundle of concerns relates to the linguistic framework of the open competitions. The 2010 AD5 competition followed an old pattern that candidate must have a thorough knowledge of any

official language of the EU and have, as its second language, satisfactory knowledge of one of the three working languages: English, French or German (but other than the first language). The selection process was run almost exclusively in this second language. While this solution assured that candidates would be able to work in the EU institutions it has been criticised on at least two main grounds. First, that the tests are discriminatory as they are not available in all official languages of the EU. Second, that in some instances, the language rules could favor the native speakers of the working languages of the EU or, in other cases that they may render them ineligible. For instance, a German national who considers they have a thorough knowledge of English may decide to choose it as their main language; German being the second one. In this case, the German national would have an advantage of taking the tests and the AC in their mother tongue. However, an English national who has a satisfactory knowledge of Spanish would not be eligible in the first place even if ultimately, they could work in their mother tongue while still bringing

The remedy [...] is to open competitions for general profiles on various levels (provided that they are indeed required) and more extensive use of specialised competitions.

the asset of multilingualism. It must be noted that from 2011, open competitions will run according to modernised language rules: the choice of languages will be similar; however, the reasoning tests will be available in all 23 official languages of the EU. Nevertheless, the situational judgment test and the AC will still run in the candidates second (EU working) language. This novelty has already sparked criticism from some candidates, as they are concerned about the quality of the translation, in particular, of the verbal reasoning tests.

Additional comment on the last year's competition for general profiles relates to the fact that only AD5 grade positions were offered. In fact, the statistics show that the average age of a candidate was 32.6 years. Moreover, 30,000 candidates were over 30 years old and thus, most likely having considerable professional experience. The remedy to tackle this deficiency is to open competitions for general profiles on various levels (provided that they are indeed required) and more extensive use of specialised competitions. It seems that the EPSO has already identified this issue as the open competition of March 2011 is opened not only to AD5 grades but also AD7 levels (for candidates with at least six years of relevant professional experience).

Final considerations relate to the design and results of the EDP in general. While the effort of EPSO to modernise its selection procedures and make them more efficient shall be applauded a number of concerns remain disregarded. First, even though the revamped EPSO website gives an impression of being more legible and transparent than before, it does not offer a full picture of 'EU careers'. While the EDP tackled the methods for selection of officials it did not address the issue of contract agents. The selection rules regarding the latter, therefore, do not benefit from the efforts of the EDP. In addition, some candidates may be confused about the status and selection methods of the temporary agents. What is more, the EPSO is responsible for personnel selection for major institutions, thus it does not run competitions for positions in numerous agencies, offices and bodies of the EU. Even positions opened by one of the very institutions of the EU – the European Central Bank – are not managed by EPSO. It seems that even if EPSO is not competent to conduct personnel selection for the above mentioned entities, it should become a gateway to the 'EU jobs' and serve as a point of single contact to provide information to all interested candidates about the impressive number of various career opportunities the EU institutions, agencies, offices and bodies offer.

Conclusion

It is argued that the overall direction of modernising the open competition is positive as it is based on duly construed competency framework and aims at reducing the length of the procedure. The first competition which was completed in February 2011 proves the new regime is workable. At the same time, a number of deficiencies have been highlighted. Computer based pre-selection eliminated over 97% of candidates even though it was not directly based on the competency framework, leaving only a small fraction of candidates subject to substantive assessment. The language rules are still in the process of modernisation. Other means to reap the full benefits of the reform, such as the opening up of more specialised competitions as well as general profiles competitions for varied grades, could lead to further improvements.

Notes

- ¹ EPSO, Task Force EPSO Development Programme, *Roadmap for Implementation*, EPSO/TF/2008/public, Brussels, 11 September 2008.
- ² European Court of Auditors, Special Report No 9, 2009, *The Efficiency and Effectiveness of the Personnel Selection Activities Carried out by the European Personnel Selection Office*.
- ³ AD5 is a grade for newly graduates or candidates with little professional experience. 'General profiles' refers to profiles such as: European Public Administration, Law, Economics, Audit etc.
- ⁴ Most figures related to the candidates taking part in the 2010 AD5 competition were disclosed in the press release IP/11/129, *Recruitment: Results published for first EPSO competitions*, Brussels 4 February 2011.
- ⁵ Source: author's own communication with EPSO in his capacity of a candidate.
- ⁶ EPSO, Notice of Open Competitions EPSO/AD/206/11 (AD 5) and EPSO/AD/207/11 (AD 7), OJEU 2011/C 82 A/01 of 16 March 2011, p. 4.
- ⁷ EPSO communication, *New admission test*, of 29 January 2010 available at http://europa.eu/epso/discover/news/news15_en.htm; accessed on 2 May 2011.



European Public Procurement: *Time for Reform?*

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Introduction*

In examining recent initiatives at European level, the EU2020 strategy and the relaunch of the single market, public procurement figures prominently as an important tool for modernising the European economies and reducing costs for the public sector. Due to the mere size and economic relevance of public procurement markets in Europe estimated at nearly 2300 billion Euros in 2009 and 19% of EU GDP, it is no wonder that public procurement has come to the fore in times of economic crisis and budgetary cuts as the panacea for many problems or as a promising policy tool whose benefits appeared to have been overlooked or not sufficiently taken into account in the past. Looking at the various strategy papers, public procurement is being identified as a tool for promoting innovation, stimulating SMEs, opening up markets in third countries for European businesses, promoting social inclusion, fair trade and environmental protection.

This paper will first provide some factual information on European public procurement and then go through some recent initiatives and highlight their procurement context. The argument brought forward in this article is that the reform of procurement rules is premature and that the European public procurement rules are in general very flexible and innovative, which provide for the integration of other policy objectives. Professionalising procurement practice and doing away with prescriptive and bureaucratic rules at the national level would be recommended.

Procurement indicators: the economic importance

Economic studies and data on European public procurement are scarce. The public procurement indicators for 2009¹ show that the estimated value of tenders published in the Official Journal had increased steadily between 2005 and 2009 and reached about 420 billion Euros in 2009, equivalent to 3.6% of GDP. This was estimated to amount to 18.3% of the total expenditure on public works, goods and services of the EU27. Direct cross-border procurement was estimated to account for only 1.5% in 2009. No recent data is available on indirect cross-border procurement, which includes contracts awarded to locally established subsidiaries of other EU countries. In the past, various estimates pointed to a range of between 10-30%. The publication of contract notices and contract award notices increased considerably between 2005 and 2008². This indicates that transparency and post-award transparency have increased in the last couple of years. According to the

available data, savings range between 5-8% if contracting authorities and entities publish in the Official Journal³. According to Vogel, procurement related savings could translate into tangible macro economic benefits in terms of increases in employment and GDP, relax budgetary pressures and create fiscal space⁴.

New initiatives

Starting with the Monti report, it recognises the economic importance of public procurement and the achievements of European public procurement law in terms of notices published at EU level, its competitive impact and the savings made by public authorities; yet it also acknowledges the low level of direct cross-border procurement. Two questions are then addressed: '...whether public procurement policy should be reformed and whether such a review should lead to a greater integration of horizontal policy objectives into public procurement⁵'. The report advocates the need to simplify and modernise the public procurement rules in terms of considering applying the procurement rules to Part B services⁶ while providing some flexibility for social services and addressing complexity, administrative burden and SME unfriendliness. As regards simplification it is stated, 'Member States should also be asked to scrutinise their own national public procurement legislation which, in many instances, is responsible for the complexity and the administrative burden on contracting authorities and small businesses⁷'. Professor Monti also argues that the rules concerning in-house provisions should be further clarified, the use of negotiated procedure with prior publications should be included as a standard procedure in the classical directive, and that mandatory requirements relating to policy objectives should be set so as to, 'Make public procurement work for innovation, green growth and social inclusion...'⁸

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The Commission then announced in the Single Market Act (SMA) of October 2010, as proposal number 17, that '...it will make legislative proposals in 2012 at the latest with a view to simplifying and updating the European rules to make the award of contracts more flexible and to enable public contracts to be put to better use in support of other policies⁹'. This resulted in the publication of a green paper on the modernisation of EU public procurement policy in January 2011 which then entailed wide-ranging consultation based on roughly 115 questions and suggestions. The consultation was open until 18 April¹⁰. It is not, however, the purpose of this short article to go into the detailed proposals and questions of the green paper, or to cover the legislative initiative on service concessions which will be adopted by the Commission this year. In addition, the Single Market Act, in proposal number 24, states that '...the Commission will present a legislative proposal in favour of a Community instrument... in order to enhance its capacity to ensure improved symmetry in access to public procurement in the industrialised nations and the major emerging economies¹¹'. There are further references to public procurement relating to stimulating the development of energy efficiency markets, stimulating electronic procurement and socially innovative corporate projects.

Sequence and timing of the reform

The Commission is currently undertaking a comprehensive evaluation of the impact and cost-effectiveness of EU public procurement rules. The results of this study will be published in the summer. In terms of sequencing the reform process, the results of the economic evaluation and the impact of the European public procurement directives should have been available prior to starting the consultation on the overall reform.

More importantly, a reform of the procurement rules (Directives 2004/18/EC and 2004/17/EC)¹² is premature. The two directives had to be transposed by 31 January 2006 and quite a number of Member States were late with the transposition. The time-span for evaluating the impact of the directives is rather short and includes exceptional years due to the economic crisis. Furthermore, the new amending remedies directive (Directive 2007/66/EC)¹³ had to be transposed by December 2009. Examining the notifications of transposition to the European Commission, it is apparent that most Member States transposed it during the course of 2010, but at this point in time, one Member State has not yet provided notification. The reform introduced with the remedies and in particular the ineffectiveness of contracts will have implications for transparency and the opening up of the procurement markets.

Besides the recent remedies reform, the new European defence and security procurement directive (Directive 2009/81/EC)¹⁴ entered into force in 2009 and needs to be implemented by the Member States by August this year. Changing directive 2004/18/EC and directive 2004/17/EC will have implications for the defence and security directive, as most of the provisions, tools and wording are based mainly on the public sector directive, while taking account of the specificities of the sector. This new directive will hopefully lead to a real departure from the old practice and result in more transparency, the opening up of competition in a significant sector of the economy and value for money.

Simplification and integrating other policy issues into European public procurement

There is room for simplification, updating, clarification and streamlining of the procurement procedures. Yet, the complexity of the procurement rules is very much related to the national and regional levels. Various layers of legislation and bureaucratic processes do not facilitate efficient, innovative and sustainable procurement, but instead add costs to the

public and private sector. A scrutiny of national and sub-national procurement legislation is required as recommended by Professor Monti. A scrutiny of procurement practices at those levels would also be desirable. Some of the questions to be addressed could be for example: what are the costs of running a procurement procedure for the contracting authorities and for business? To what extent does procurement practice take account of stimulating innovation, SME inclusion, social and environmental considerations and value for money?

Preparatory work for the A2 project in Maastricht



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The current procurement rules provide the possibility of integrating other policy considerations such as innovation, environmental and social considerations. Further stimulation of SMEs to participate in procurement procedures can be achieved with the current rules. Contracting authorities have the freedom to use the available tools for integrating other policy considerations into the various stages of the procurement process, starting with the definition of the subject matter of a contract up to the award, including lifecycle costing. These are issues which need to be tackled through raising awareness and exchange of best practices. Further progress in green, ethical and socially responsible procurement could also be achieved *via* mandatory requirements in environmental, energy, social and transport legislation.

With regard to the asymmetry of access to third country procurement markets for European industry, additional initiatives are required. New trade legislation in this field may, however, require compensation for some trading partners in other sectors. European companies should also comply with socially responsible supply chain management in third countries.

Conclusion

At this juncture a legislative change to Directive 2004/18/EC and Directive 2004/17/EC is premature. The time-span for an evaluation is rather short and more time needs to be available for the application of the new remedies directive and the phasing in of the new defence and security directive. Contracting authorities and entities are just coming to grips with what are still called the 'new rules' and may not have been sufficiently aware of the new provisions and tools available or may be hampered by administrative barriers. Raising awareness, increasing cooperation and exchanging best practices on smart procurement could be a way forward. There is also room for further monitoring and enforcement of the rules at European level.

Looking at European public procurement in the longer-term, there is no justification for not fully applying the procurement rules to Part B services, perhaps with the exception of social services. An overall, perhaps even radical, review of the rules and procedures in a couple of years would have the advantage of streamlining the provisions concerning the public sector, utilities, concessions and defence and security procurement. At that point an evaluation could be undertaken to assess progress achieved with integrating mandatory requirements in other policy areas and whether this should lead to a legislative change in the public procurement area. Further streamlining of the rules and compatibility with the European procurement rules, including remedies could also be recommended for the European institutions, agencies and bodies.

Notes

* This article was written in March 2011.

¹ European Commission, Public procurement Indicators 2009, 11 November 2010.

² European Commission, Internal Market Scoreboard, No 19, July 2009.

³ *Ibid*, p.27.

⁴ Vogel, L., *Macroeconomic effects of cost savings in public procurement*, European Economy, Economic Papers 389, November 2009, p.2.

⁵ Monti, M., 2010, *A New Strategy for the Single Market at the Service of Europe's Economy and Society*, 9 May 2010 p. 76.

⁶ Part B services are those services listed in Annex II B of the Directive 2004/18/EC and are only subject to a few rules of the directive (technical specification and contract award notice), they are governed by the general principles of the Treaty.

⁷ *Ibid*, p. 77.

⁸ *Ibid*, p. 78.

⁹ European Commission, Commission communication, *Towards a Single Market Act For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another*, COM (2010) 608 final of 27 October 2010, p. 15.

¹⁰ European Commission, Green Paper, on the modernisation of EU public procurement policy – *Towards a more efficient European Procurement Market*, COM (2011) 15/4 of 27 January 2011.

¹¹ *Op cit*, p. 18.

¹² Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Official Journal of the European Union, L 134 of 30 April 2004 and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector. Official Journal of the European Union, L 134 of 30 April 2004.

¹³ Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, OJ L 335, 20 December 2007.

¹⁴ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, OJ L 216, 20 August 2009.



The Internal EU Market: *How Public Administrations can Do Better*

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Introduction

Market integration is one of the primary objectives of the European Union. The separate markets of the Member States are to be unified into a single area where there are no barriers to the movement of goods, services, labour and capital – the so-called 'four freedoms'.

This is the intention as expressed in the EU Treaties. But intentions and reality do not always coincide. In 2009, Jose Barroso, the President of the European Commission, asked Mario Monti, a former Member of the Commission, to prepare a report on how to achieve the completion of the internal EU market and eliminate remaining barriers. Professor Monti wrote in his report that 'a robust single market is key to the overall health of the European Union, because it represents the very foundation of the integration project'¹.

The Commission followed the Monti report with a bold initiative, aptly named the 'Single Market Act'. The basic premise of the Single Market Act is that the 'construction of one big market is at the heart of the European project envisaged by the founding fathers'².

The internal or single market is not just at the heart of the EU. It is the heart of the EU. But, like the human heart, the internal market performs a crucial but largely invisible role. Like the human heart, it is neglected until something goes wrong.

The Commission's strategy paper for 'Europe 2020' succinctly observes that 'the recent financial crisis has added temptations of 'economic nationalism' and that it had to act to prevent 'a drift towards disintegration'³.

While there is recognition that the single market is fragile, there is also determination to press on with its completion so that it can be the basis of a more innovative and competitive European economy. In the strategy for 'Europe 2020', the Commission commits itself to 'fully mobilize' 'EU-level instruments, notably the single market, financial levers and external policy tools' to 'tackle bottlenecks and deliver the Europe 2020 goals'⁴. To reach those goals, the Commission makes fifty proposals in the Single Market Act to eliminate remaining barriers and contribute towards sustainable growth.

However, the benefits from integration cannot be fully reaped if the rules that safeguard trade and investment are not implemented or are implemented incorrectly. In this connection, the role of public administrations is pivotal. They are the ones that mostly bear the heavy responsibility for correct application of the internal market rules.

In this article I examine a proposal of the Single Market Act that concerns directly the performance of national authorities. If the proposal is adopted it could have far reaching and surprising implications. Although it does not aim to create 'hard' law, it relies on a sort of peer review that can create benchmarks of quality for public policy and institutional performance. The internal market has always been perceived as the place where companies compete. It may now be transformed into an arena of contest for public administrations.

The Single Market Act and public administrations

The Single Market Act that was published in November 2010 covers a wide range of policy areas. Naturally, all of the proposals affect in some way or another public administrations. However, proposal 44 is of direct and immediate concern to them.

It states: 'The Commission and the Member States will cooperate in continuing to develop the internal market by stepping up the procedure for evaluating the *acquis*, in particular using the 'mutual evaluation' process set out in the Services Directive and currently being implemented by the Member States and the Commission. The experience gleaned from the mutual evaluation process of the Services Directive will also be applied to other key single market legislation'.

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To appreciate the significance of this proposal one has to understand what happens when a Member State fails to comply with a provision in the Treaties or secondary legislation. The Commission initiates the so-called 'infringement' procedure which starts with a 'letter of first notice' to the Member State concerned outlining the problem and requesting information. If the Member State disagrees or fails to cooperate, the letter is followed by a 'reasoned opinion' which explains in detail why the Commission believes that that Member State acts contrary to EU law. If there is still no satisfactory response, the procedure culminates in the referral of that Member State to the Court of Justice.

The infringement procedure is cumbersome. It is also time consuming. The pre-litigation stage may last for a year or two. Then it normally takes the Court another one to two years to deliver its judgement⁵. But even that is not the end of the story. The Court merely finds that the Member State fails to apply EU law correctly. Then it is the Member State that has to bring the infringement to an end. If it does not comply with the judgement of the Court, the Commission has to initiate the infringement procedure all over again. By the time the Court gets to decide whether that Member State has complied or not with its earlier judgement more than five to six years may have passed from the point the Commission first detected the infringement.

To avoid this complex and slow process, the Commission has done something whose true significance is only now becoming clear. When it drafted the Services Directive⁶ it included a provision for 'mutual assessment' of the compatibility of national measures with EU law. The aim of the Directive was to remove barriers to cross-border movement and establishment in the services sector. The European Parliament and Council retained the provision for mutual assessment when they adopted the Directive. Since the deadline for the transposition of the Directive was December 2009, the mutual assessment took place only in the Spring of 2010. Member States were divided in groups and each described their measures that regulated services, the measures they removed or adjusted and those they retained and why. The results were published in early 2011⁷.





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They confirm that the service sector is riddled with regulatory barriers and statutory restrictions. According to the Commission, more than 34,000 measures were reported by the Member States during the mutual assessment⁸. Bearing in mind that services account for more than 65% of the EU economy, the impact of those barriers on economic prosperity must be substantial.

In addition to listing the measures they eliminated or adjusted, Member States also identified the measures they maintained because they thought they were justified for achieving important public policy objectives. Article 52 of the Treaty on the Functioning of the EU allows Member States to impose restrictions on service providers if they can be justified by 'overriding reasons of public policy'⁹.

The most surprising aspect of the mutual assessment report is that it shows that even where Member States pursued exactly the same objective, sometimes they chose diametrically opposite instruments. One Member State would remove all restrictions to stimulate competition, while another would maintain restrictions to prevent competition. In the eyes of one Member State competition was good, while in the eyes of another it was harmful. For example, some Member States regarded minimum tariffs for certain professional services as protecting consumers from cheaper but inferior services, while other Member States considered them as detrimental to consumers for keeping prices artificially high.

Differences in national measures are by no means limited to price regulation. They cover every conceivable aspect of delivering a service, including such things as the legal form of the service provider. For example, in the name of protecting consumers and safeguarding the integrity of the profession, in Denmark, only natural persons are allowed to act as land surveyors, while in France, only legal persons may exercise that activity.

Now, it cannot be that all Member States are right. After this exercise national authorities should consider why they rely on very different instruments to achieve apparently similar objectives. Indeed, mutual assessment should lead to self-assessment.

However, it is unclear so far how national authorities will respond to the findings of the mutual assessment. The Commission may decide to propose new legal remedies. But will the responsible public authorities in Member States use the findings to re-evaluate their practices and improve their performance?

The EU has given Member States a unique opportunity to test their policies. The use of a mutual assessment instrument for compliance purposes is unprecedented in the history of the EU. Proposal 44 does not say whether the Commission intends to back up the voluntary nature of mutual assessment with the threat of infringement proceedings.

Conclusion

The integration of the internal market has brought prosperity to all Member States. But the internal market should not be taken for granted. Nor, can it support the strategy for 'Europe 2020' unless it functions properly. Perhaps the most serious threat to the internal market is not outright opposition but neglect. Public authorities which implement internal market rules are not always as vigilant and assiduous as they should be.

The intention of the Commission to expand the mutual assessment process beyond the area of services is a significant development. The challenge for public authorities will be ponderous.

Public authorities will have to justify their practices to their peers in a non-legal setting. The question they have to answer is not whether their measures are compliant with EU law but whether they are sufficiently effective or efficient. Their answer will partly depend on how well their peers perform. This marks a new beginning in the life of the internal market. It may bring the homogeneity in public policy that businesses have been asking ever since the European Community was established.

For years, the EU has tried to remove barriers through regulations and directives. Perhaps the approach of the next decade will become known as 'integration through mutual learning and institutional competition'.

Notes

- ¹ Monti, M., *A New Strategy for the Single Market*, 9 May 2010, p.12.
- ² European Commission, *Single Market Act*, COM(2010) 608 final/2, 11 November 2010, p. 2.
- ³ Commission Communication, *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, COM(2010) 2020, 3 March 2010, p. 18.
- ⁴ Europe 2020, p. 4.
- ⁵ One has to wonder why Member States persist to exhaust the legal process. Court statistics indicate that the Commission 'wins' about 95% of all infringement cases.
- ⁶ Directive 2006/123.
- ⁷ Commission Staff, Working Paper, *The Process of Mutual Evaluation of the Services Directive*, SEC (2011) 102, January 2011. See also Commission Communication on *Towards a Better Functioning Single Market for Services – Building on the Results of the Mutual Evaluation Process of the Services Directive*, COM (2011) 20 final, 27 January 2011.
- ⁸ Commission Staff Paper on *The Process of Mutual Evaluation of the Services Directive*, January 2011, p. 9.
- ⁹ Article 52 TFEU, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:15:0047:0199:EN:PDF>



The Implications of the Europe 2020 Strategy for Services of General Economic Interest (SGEI)

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Introduction

Services of General Interest (SGEI) are, in the wording of the Treaty of the Functioning of the European Union (TFEU), among the 'shared values of the Union' and play an important role in 'promoting social and territorial cohesion'. These services cover a wide range of activities and utilities ranging from water supply and ambulance services to the setting up of telecommunication infrastructures. Their role in the development of certain regions or in the inclusion of certain social categories has been acknowledged in numerous Commission documents and courts' rulings.

The financing of SGEI is in principle allowed, if this is necessary in order to ensure the proper functioning of the markets for the benefit of the consumers. For Member States the financing of SGEI is a means of achieving the social and cohesion objectives set up in their constitutions. However, for the European Union (EU), this financing may constitute a distortion of the competition between Member States and is subject to close scrutiny. This terrain is therefore a field in which the clear definition of the services and national interests concerned and the delimitation between national and EU competences is of crucial importance.

In several different contexts the Europe 2020 Commission strategy mentions social cohesion as an objective which needs to be reached by the EU in the next decade. However, in none of these contexts are the SGEI mentioned, although these services are instrumental in that respect. What does this silence mean? What are the implications of the 2020 strategy on the definition and financing of SGEI? Are there any consequences for the current and future regulatory framework of SGEI?

Europe 2020 Strategy and SGEI

The text of the strategy, as a programmatic document setting up the trajectory for the future EU cannot contain all the steps and details of the EU's action in a certain field. The silence of the document on the role of SGEI as such cannot mean that the strategy will have no influence whatsoever on the regulatory framework of SGEI. Competition in general is the key to ensuring that the Europe 2020 priorities of smart, sustainable and inclusive growth will be reached. Competition policy, although only setting up the general framework for the financing of SGEI, is an essential instrument for accomplishing

the objectives of such services. EU competition rules and Commission scrutiny will push Member States towards new solutions for the financing of SGEI, to ensure a high quality of services, while trying to maintain a level playing field.

Thus, the importance and possible consequences of the Europe 2020 Strategy for the regulation of SGEI under EU law must be analysed from the angle of the actions contained therein, which only incidentally touch upon SGEI and against the background of the existing regulatory framework and the shortcomings/needs for improvement arising from it.

SGEI actions in the Europe 2020 Strategy

Integrated guidelines to cover the scope of the EU priorities and targets will be adopted based on the strategy. The financing of SGEI is already dealt with in detail by a number of Commission documents (directives, decisions, frameworks, etc.) which set out the main characteristics of such services and their financing regime. The SGEI consultation initiated by the Commission in 2010 also required Member States to report on the way they applied the existing legal framework in their national law. However, the control of the SGEI or the exploration of alternative methods for reaching the same objective is not included in the mechanism.



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The Report of former Commissioner Mario Monti on 'A New Strategy for the Single Market' included suggestions on how to drive the Internal Market of the EU further¹. This was followed by a Commission communication containing 50 proposals on how to relaunch the Single Market². These documents are an important part of the 2020 Strategy, as the Single Market is the common foundation of the flagships introduced by the latter document (*i.e.* knowledge and innovation, low-carbon, resource efficient and competitive economy, high employment economy delivering social and territorial cohesion).

Regarding future developments and activities in the field of SGEI, the communication contains concrete proposals (*i.e.* proposal No 25) on how the challenges in this field will be dealt with by the Commission in the near future. The proposal states that the Commission will undertake to 'implement measures enabling better evaluation and comparison at European level of the quality of the services of general interest on offer, particularly on the basis of experience in the field'. Whether this will introduce incentives to make the services provided more efficient or to assess them in relation to the desired result remains to be seen in the near future.

The same proposal states that the Commission will examine the suitability and possibility of extending universal service obligations into new areas in the light of changes to the essential needs of European citizens, potentially on the basis of Article 14 of the TFEU. Except for the universal service obligations defined in liberalisation directives, the drive towards defining new areas as SGEI always came from the Member States. Furthermore, Article 14 of the TFEU (as well as Article 16 of the TEC) has until now been interpreted as a rather general declaration of principles and an acknowledgment of the importance of such services at EU level and not as a substantive change to the existing framework. Introducing new universal service obligations based on this legal basis would constitute a novelty and change the division of competences between the EU and Member States.

The Legal Framework

The existing legal framework governing SGEI raises a series of questions and challenges for the Member States, as well as local and central authorities, when defining such services and designing a system of financial support. Member States have the exclusive competence to define such services. The Commission will, however, have the competence to perform a manifest error test to avoid situations of Member States removing entire sectors from the application of the EU competition rules. In the absence of a regulatory definition of SGEI, the Commission is limited to checking whether the service concerned satisfies certain minimum criteria common to every SGEI mission within the meaning of the Treaty. The jurisprudence has explained that these minimum criteria are the following: the presence of an act of public authority entrusting the operators in question with an SGEI mission, the universal and compulsory nature of that mission, as well as an indication of reasons why the service in question deserves to be characterised as an SGEI.

Following Proposal 25 of the Commission's communication to relaunch the Single Market, the Commission has recently published a Communication on the Reform of the EU State Aid Rules on Services of General Economic Interest. This communication calls for '[...] clearer, simpler, more proportionate and more effective instruments to ensure an easier application of the rules and hence to promote a more efficient delivery of high quality SGEIs to the benefit of people living in the EU³'.

Although it is welcomed that the Commission envisages an easing of the administrative burden of public authorities as regards measures that are of a relatively limited scale and thus only have a minor impact on trade between Member States, there are still a number of implications. At this point, for example, there is no specific approach to SGEI based on the economic sectors to which the services belong nor as regards the exact limits Member States have under State aid rules when defining an economic activity as SGEI. This would have been a welcome approach since the definitions of the services differ significantly depending on the sector. By extending universal service obligation into new areas, as

proposal 25 suggests, the task of public authorities to define SGEI would become even more difficult and the risk of committing manifest errors would become greater if no such sectoral approach were to be introduced.



To give an example, the social housing sector and hospital care are excluded from the obligation of notification to the Commission disregarding the level of compensation given by Member States. At first sight this means that the Member States have a wide margin of appreciation when it comes to the financing of these sectors. But, the definition of what services are covered remains a crucial issue and, at this point, there is no guidance on the specific requirements for each sector. The specific characteristics of the social housing sector (e.g. income of the target group, share of non-SGEI objectives that can be pursued by the provider) will be different than those in the hospital sector where aspects such as the content of the services provided, requirements of compulsory affiliation, universal obligation but also the distinction between medical services and other non-SGEI services, such as management activity, will have to be taken into account. Different aspects will

therefore have to be considered in the definition of the service and a more detailed view on the content of these SGEI, as well as on the related services, would provide greater legal certainty for the national authorities.

Conclusion

The priorities set out in the Europe 2020 Strategy need effective competition rules to materialise. The current legislative framework for financing SGEI, as part of EU competition policy, expires in November 2011 and the Commission is in the process of amending its rules. The overall objective of this reform is to boost the contribution that SGEI can make to the wider EU economic recovery and also guarantee certain services at affordable conditions to the general population. It goes without saying that this reform will go alongside the priorities set out in the strategy and help to create the conditions for establishing and safeguarding the benefits for companies and citizens and guarantee long-term prosperity. It is only hoped that it will also provide adequate guidance to the public authorities and facilitate their task of defining SGEI in an efficient and effective manner.

Notes

¹ Report to the President of the European Commission, Barroso J. M., by Monti, M., 9 May 2010.

² COM(2010) 608 final/2.

³ COM(2011) 146 final, 23 March 2011, p. 6.



Towards a European Criminal Law Code?

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The creation of a European criminal law code is a complex and, to a certain extent unpopular issue. It is complex because it suggests harmonisation of national substantial and procedural criminal law systems and unpopular amongst Member States because indeed harmonisation of criminal law is utterly sensitive, displaying one of the last corners of Member States' sovereignty.

The Lisbon Treaty has provided the European Union (EU) with new competences in the area of judicial cooperation in criminal matters and law enforcement cooperation as this area has now become an area of shared competences with the Member States. Two important questions arise from these new competences. First, does the Treaty on the Functioning of the European Union (TFEU) provide the means for further harmonisation? Second, will this harmonisation lead legislators to create a European Criminal Code and a European Criminal Procedural Code? This article will discuss the issue of harmonisation and then provide elements of answer to the second question through the angle of the possible setting up of a European Public Prosecutor's Office.

Harmonisation¹ of criminal law in the European Union

It is important to stress that the Lisbon Treaty is not the first fundamental legislation providing the possibility to harmonise substantial criminal law. Indeed, all multi-annual programmes (Tampere 1999, The Hague 2004, Stockholm 2009) and the former treaty on the European Union, as amended by the Treaty of Amsterdam, already provided for this possibility and/or objective.

Formally, only substantial harmonisation was possible and only in three particular crime areas: terrorism, organised crime and illicit drug trafficking². No detailed criteria were set out to explain or design a strategic direction to a future harmonisation policy in the area of criminal law. In practice, however, the limitation to substantive law and to these three specific criminal areas was not respected by the Member States. Between 2002 and 2010, at least nine harmonisation instruments were adopted over and above those mentioned above but were also reflected in procedural criminal law³. Therefore, it is fair to say that the text of the treaty was not followed strictly. Why was it so? The answer is probably because more crime areas than those officially mentioned deserved attention at a European Union level.

The effect of the various framework decisions adopted⁴ was mixed: with framework decisions being obligatory as far as their aims are concerned, all common definitions and penalty ranges adopted had to/should be transposed into national law of all Member States. Those provisions cover an important number of areas. On the other hand, many common standards were felt to be rather non-innovative⁵ or were not implemented in a satisfactory way.

Harmonisation of specific elements of procedural criminal law and of definitions and penalties for a limited number of particularly serious crimes is, since the entry into force of the Lisbon Treaty, detailed in Article 82.2 [procedural law] and in Article 83.1 [substantial law] of the TFEU⁶. Those harmonisation instruments will be adopted in the forms of directives. Unlike regulations, directives are not immediately applicable into the national legal orders, they should indeed be transposed by each Member State, which could leave some flexibility to the Member States in this particular area.

From a 'no criterion' situation before Lisbon we have clearly entered into a new era; namely, an attempt to explain the harmonisation purposes of substantial criminal law:

'The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of **particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis**. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime⁷'

However, this leaves the sets of criteria referred to above essentially undefined:

- a. what are the 'minimum rules concerning the definition of criminal offences and sanctions';
- b. the crimes concerned by harmonisation should have (a) a cross-border dimension, (b) a nature, (c) an impact which lead the relevant authorities to propose harmonisation measures or (d) there should be a special need to combat those crimes on a common basis;
- c. only 'particularly serious crimes' can be harmonised.

The phrasing used in Article 83.1 shows that the cross-border element should always exist. On the other hand, the 'nature', the 'impact' or the 'special need to combat them on a common basis' are alternative criteria. As a result, and because other serious crime areas⁸ could be recognised as encompassing a cross-border element, the procedure enlarging the list of 'particularly serious crime' stated in Article 83.1 should most probably, in our view, be used in the future. This procedure is not easy to implement though since it combines unanimity of Member States and consent of the European Parliament⁹.

It should also be noted that in addition to submitting only a limited number of 'particularly serious crime' areas to harmonisation, the TFEU gives the possibility to Member States to stop negotiations if 'fundamental aspects of (their) criminal justice system' are affected (Article 83.3 TFEU). As a result, a minimum of nine Member States could use enhanced cooperation to adopt those controversial harmonised rules (Article 83.3 TFEU). Nevertheless, the Lisbon Treaty has not gone as far as to propose the use of enhanced cooperation to create codes. As establishing European Codes in this sensitive area would, in our view, consist of more than a mere compilation of European laws, it does not seem likely that the treaty provisions on enhanced cooperation would be used and accommodated to adopt a European Criminal Code.

Nevertheless, will the creation of European codes in the area of criminal law be triggered by other elements and in particular by the establishment of a European Public Prosecutor's Office?

From a 'no criterion' situation before Lisbon we have clearly entered into a new era, namely an attempt to explain the harmonisation purposes of substantial criminal law.

A European Public Prosecutor's Office

In 2001 already, the Commission issued a green paper on the topic and explained how this new body would function¹⁰. Article 86 (TFEU) allows the Member States for the first time to establish a European Public Prosecutor's Office (the Office). If created,



its competence would cover crimes threatening the financial interests of the EU and then, if the European Council and European Parliament so wish¹¹, it could be expanded to other serious crime areas having a cross-border dimension. The Office would be operating 'from' Eurojust - terminology which continues to raise a number of questions as to the exact importance of Eurojust, as well as the Office ultimately, and also leaves the issue of the coordination of the two bodies unresolved.

In the Action Plan to the Stockholm Programme¹², the Commission foresees a Communication on this topic in 2013. It is thus somewhat surprising that a future Regulation, providing Eurojust with a new legal frame, will be issued by the Commission in 2012 and that the two questions will apparently be treated

separately. This probably also gives an indication as to the caution, and thus absence of ambition, to create a potentially major piece of codification. Indeed, unless there is sufficient and demonstrable political will backing the establishment of the Office, its mandate could remain very limited and Eurojust could then just be asked to support the Office in the field of offences against the Union's financial interests.

Many questions still need to be resolved with regards to this Office. André Klip, in a seminar organised by Eurojust and the Belgian Presidency in 2010 questioned 'on the basis of which definitions should the [Office] act: the definitions of the national criminal law systems or those of the [Office]'s regulations'?¹⁴ If it would act under definition of national laws, no central substantial criminal law code would be needed at European Union level. At most, a short version of a European Criminal Procedural Code would be adopted in order for this new body to operate within a specific legal frame, ensuring coordination with the national judiciaries. It is our view that a European criminal code and a European Procedural criminal Code would need to benefit from a wide support amongst Member States to be created. Yet, the Lisbon Treaty offers the possibility for at least nine Member States to establish enhanced cooperation. Having an Office representing the European Union's interest supported only by a minority of Member States would not, in our view, create the right conditions to launch European Codes (except, potentially, for a short European Procedural Criminal Code to regulate the Office's actions. The procedure of adoption of this code could mirror the procedure used to establish the Office, *i.e.* through enhanced cooperation). On the other hand, the extension of competence of the Office to 'serious crimes having a cross-border dimension' in the future could be instrumental to such a change. This extension does not, indeed, seem to be limited to particularly serious crime areas (as indicated above). When that stage is reached, the development of codes could, realistically, be on the agenda of the European Union.

Notes

- ¹ The author will use throughout this article the word 'harmonisation' rather than 'approximation'. Although approximation is the terminology mostly used in EU official documents, most specialists have recognised that both terms have the same meaning – see for instance Mitsilegas, V., *EU criminal law*, 2009. Additionally, the author believes that 'harmonisation' serves a clearer objective, 'approximation' being somehow a lukewarm terminology used in particular to soften the impression of Member States but not changing the outcome of the process.
- ² See former Article 31. 1(e) of the Treaty on the European Union.
- ³ Council Framework decision concerning the standing of victims in criminal proceedings adopted on 15 March 2001 (2001/220/JHA); Council Framework Decision of 13 June 2002 (2002/475/JHA) on combating terrorism; Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA); Council Framework Decision of 22 December 2003 (2004/68/JHA) on combating the sexual exploitation of children and child pornography; Council Framework Decision of 22 July 2003 (2003/568/JHA) on combating corruption in the private sector; Council Framework Decision of 25 October 2004 (2004/757/JHA) laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking; Council Framework decision 2005/222/JHA of 24 February 2005 on attacks against information systems; Council Framework Decision of 24 October 2008 (2008/841/JHA) on the fight against organised crime; Council Framework Decision of 28 November 2008 (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- ⁴ Although some other types of instruments – such as directives when the topical area 'belonged' to the first pillar- were also adopted, the normal and formal harmonisation tools under the former third pillar were indeed Framework Decisions.
- ⁵ For instance, on the minimum provisions laid down by Framework decision 2004/757/JHA in the field of illicit drug trafficking, see Report from the Commission of 10 December 2009 COM(2009)669 final stating that Member States specialists 'regard its importance as minor because it has not resulted in many changes to national legislation'.
- ⁶ The brackets have been added by the author.
- ⁷ Part of this paragraph of Article 83 of the TFEU was underlined by the author.
- ⁸ For a list of serious crime areas recognised as such, see Article 2.2 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) and the jurisdiction of Europol and Eurojust in Article 4.1 of the Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA) and its Annex.
- ⁹ Article 83.1 TFEU.
- ¹⁰ Commission 11 December 2001, Green Paper, *Criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor*, COM(2001) 715 final.
- ¹¹ A decision shall then amend Article 86.1. It will be adopted 'by unanimity by the European Council after obtaining the consent of the European Parliament and after consulting the Commission' (Article 86.4).
- ¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Delivering an area of freedom, security and justice for Europe's citizens. Action Plan implementing the Stockholm Programme, COM(2010)171 final, 20 April 2010.
- ¹³ The 'Proposal for a Regulation providing Eurojust with powers to initiate investigations and making Eurojust's internal structure more efficient and involving the European Parliament and national parliaments in the evaluation of Eurojust's activities' should, according to the Action Plan of the Stockholm Programme be issued by the Commission in 2012.
- ¹⁴ Presidency, Eurojust and the Lisbon Treaty: Towards a more effective action. Conclusions of the strategic seminar organised by Eurojust and the Belgian Presidency (Bruges, 20-22 September) Information by the Presidency, 17625/10 REV 1.



The Role of Public Services in Promoting Migrant Integration in Europe

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Introduction

Immigration presents both a challenge and an opportunity for the EU. It has an impact on the economy and society, and against the background of ageing European societies and of growing market needs, its demand in the EU is set to increase. Even if immigration is needed to offset the demographic decline in the short-term, it also brings with it new demands on policy such as integration. The article firstly presents the challenges that public administration faces in planning and implementing strategies for migrant integration and secondly provides some policy recommendations.

The EU framework on integration: setting the background

The integration of third-country nationals (TCNs) has been subject to complex policy processes since immigration was transferred to Community competence in 1999¹. The intergovernmental logic of Member States has led towards the development of the EU framework on integration by using a set of non-legislative modes of policy making and soft-law governance techniques, based on knowledge sharing, policy coordination and the exchange of information².

In the Tampere Programme (1999), four policy objectives were highlighted as having a central role in the treatment of migrant integration³:

1. The principle of fair treatment of TCNs who reside legally in the EU.
2. The provision of legal TCNs with rights and obligations comparable to EU citizens.
3. The granting of a set of uniform rights which are 'as near as possible' to those enjoyed by EU citizens.
4. The need for approximation of national legislations on the conditions for admission and residence.

Following these aims, the Commission presented in 2003 a Communication on Immigration, Integration and Employment, where integration was to 'be understood as a two-way process'⁴. This implies that on the one hand, the hosting society should 'ensure that the formal rights of immigrants are in place'⁵ while, on the other hand, immigrants should 'respect the fundamental norms, values of the receiving country and participate actively in the integration process, without having to relinquish their identity'⁶.

The EU framework on integration is composed of a considerable number of substantive and institutional mechanisms, including a set of eleven Common Basic Principles (CBPs) for migrant integration.

Better integration through access to public services: the implementation of CBP 6

According to No 6 of the CBPs 'access for immigrants to institutions, as well as to public and private goods and services... in a non-discriminatory way is a critical foundation for better integration'. Yet, the main weaknesses of public administrations are due to the 'institutional inability' of the States to effectively ensure the rights of migrants⁸. This inability is based on the stance of politicians and the cost entailed in complying with the idea of allowing immigrants to stay permanently⁹.

Regarding the dysfunctions of public administration, Non-Governmental Organisations (NGOs) consider as the most important ones the potential suspicion towards foreigners, the lack of education, interest, and availability of personnel as well as the lack of clarity of the institutional framework¹⁰. The absence of educated personnel and ignorance of the possibilities and guarantees that the laws provide to migrants can lead to migrants' rights violations¹¹. Also, the lack of information with regard to rights becomes aggravated by the vagueness and complexity in the adopted legal acts. Legal gaps are not filled in within a spirit of leniency or with the criterion in favour of the contracting party, but instead with clauses of exclusion¹².



Governance issues

Local and regional authorities are in the front line with regard to the implementation of immigration and integration policies and are the first ones to react to the economic and social impact of migratory flows in their areas. In addition, they can play a major role in preventing and detecting xenophobic and racist attitudes as well as in educating people in democratic principles. Nevertheless, they are confronted with a number of governance challenges deriving mainly from the number of stakeholders active in the field of supporting the local integration of immigrants, and the number of instruments used. These challenges can be summarised as follows:

1. Policy fragmentation

Communication is often hampered by the relevant fragmentation of this policy area, heavy workloads and limited resources. At the national level, responsibility for the integration of immigrants often falls across a number of different government departments, each of which is involved in different but relevant funding programmes¹³. In the Netherlands, for example, the Immigration and Naturalisation Service (IND) within the Ministry of Justice is responsible for legal admission, issuance of visas and residence permits for all kinds of migrants¹⁴, while the Ministry of Social Affairs and Employment is in charge of labour migration as it administers employment law, enforces employment rights and upholds the 'Act on Employment of Aliens' (WAV) among other legislation¹⁵. Local authorities also hardly assume control when subcontracted service providers, social partners and other stakeholders determine the direction of local economic policy.

2. The breach between labour market supply and demand

Regional authorities have to look at immigration as a way of contributing to wider economic development targets¹⁶. The local opportunity structure is often ignored when developing local initiatives and thus immigrants risk being prepared for non-existent jobs¹⁷. The Lombardia region constitutes an example of good practice, as it has promoted training programmes in countries of origin, aimed at providing specific skills for meeting regional needs¹⁸. Moreover, the CVs of the participants were catalogued on special online databases thus allowing employers in Lombardia to examine and to call the candidates needed¹⁹.

3. Equality and diversity in jobs and services

The CLIP Study of 2008 'Equality and diversity in jobs and services: City policies for migrants in Europe' points out that very few migrants are employed in public administration²⁰. While in some countries, collecting data on non-nationals or ethnic minorities is required, in others it is deemed discriminatory²¹. Yet, a lack of data makes it impossible for cities to gauge the barriers that migrants face in accessing municipal jobs and services²².

4. Better coordination and partnerships

Local areas need to go further towards mainstreaming, thus targeting all local residents in their strategies to promote integration²³. According to the European handbook for integration, cooperating with migrant organisations can prove beneficial as these 'can draw attention to problems such as health care, housing or education, and make suggestions for improvements to the relevant ministries'²⁴.

5. The inter-relationship between intensity, effectiveness of interventions and targeting

One method for influencing the intensity and effectiveness of interventions without necessarily increasing the length of the interventions is to ensure that actions are accurately targeted to migrants' needs²⁵. For instance, when targeting immigrants with the highest employability (that is, people with work permits and professional skills/qualifications) the emphasis should be on immediately finding a job or appropriate occupational training²⁶. On the contrary, for those with lower employability such as women, children and middle-aged people, some focus should be on social and personal development training, language and literacy classes²⁷.

6. Creating a supportive policy environment both at national and local level

Local actors lack the opportunity to have a significant impact on supporting integration when the overall intake of immigrants who come to a country does not have the appropriate profile and skills to meet labour market demand²⁸. Such a situation proves that even though immigration policy is decided more at the national level than at the municipal level, when integration fails, it is often the cities and municipalities that have to deal with the consequences²⁹.

Policy recommendations

Diversity is essential for the hosting societies as it affects their social cohesion.

The issue of diversity should become a national priority. Diversity is essential for the hosting societies as it affects their social cohesion. A basic requirement of an equitable society is to assure that everyone has equal access to services, both private and public. Tailoring services to the special needs of different groups is a collaborative effort requiring the development of intercultural competence in public and private service³⁰. Therefore, efforts to lower or eliminate any access barriers can have a positive effect on immigrant participation if they are accompanied by an overall change of organisational culture³¹. In this way, measures to adapt to diversity do not remain isolated efforts, but become a part of the goals and identity of the service as a whole³². To this end, the recruitment of employees with an immigrant background, even in high-ranking positions, where there is no actual contact with the public, is of great importance³³. At the same time, organisations and services active in policy-making or planning rather than direct service delivery also need to take diversity into account³⁴. Public and private services could, moreover, maintain databases of suitable qualified persons with diverse backgrounds who could serve on both decision-making and advisory bodies³⁵.

Recruitment and training are complementary strategies in equipping staff with intercultural competence³⁶. Thus, public and private services should utilise existing staff skills in a more effective way. For instance, they could recognise or even remunerate the linguistic skills, cultural knowledge and community contacts of their staff, while the study of languages and the training on intercultural issues at all levels should be encouraged³⁷. But even with targeted recruitment and training, it is impossible for mainstream service providers to cover the whole spectrum of linguistic, cultural and religious diversity through their own personnel. Consequently, it is also necessary to guarantee access to trained interpreters or specialised advisors on, for example, cultural and religious matters³⁸.

Access to employment and career development in local public administration should depend on the swift, appropriate and fair recognition of migrants' qualifications and professional experience. Only appropriate national procedures can lead to a significant use of skills and human capital³⁹. Consequently, national governments could usefully revise their current arrangements for recognising qualifications to ensure that these do not unnecessarily block the full integration of migrants in the labour market, especially in municipal employment⁴⁰.

Better cooperation and coordination with migrant organisations is necessary and carries many benefits. First of all, Migrant Self Organisations (MSOs) are familiar with migrants' problems due to their direct contact with them. The European handbook for integration confirms that MSOs 'can draw attention to problems such as health care, housing or education, and make suggestions for improvements to the relevant ministries'⁴¹. Moreover, they also know how one can address and reach migrants⁴² and have a great impact on migrants' opinion.

Conclusion

The integration of migrants is mainly a question of the management of change. This has a number of implications for an effective governance response. Immigrants need clear roadmaps to guide them between the various services which will support their transition into a new life⁴³. There is a need for well-coordinated and accessible local services which will meet their various needs by *mainstreaming migrant-friendly approaches*. Immigrants do not have the opportunity to become professionals of immigration⁴⁴. However, national, local administration and policy-makers do have the opportunity to build their professionalism by developing a 'reception competence'⁴⁵.

Notes

¹ Carrera Nuñez S., (2008), *In search of the Perfect Citizen? The intersection Between Integration, Immigration and Nationality in the EU*, Wolf legal Publishers, Nijmegen, p.39.

² *idem*.

³ *ibid*, p. 30.

⁴ European Commission, (2003), *Communication on Immigration, Integration and Employment*, (COM(2003)336), p. 44.

⁵ *ibid*, p. 17.

⁶ *ibid*, p. 18.

⁷ European Commission, (2005), *Communication on a Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union*, (COM(2005)0389 FINAL), p. 8.

⁸ Varouxi C., *Δημόσια Διοίκηση και Δικαιώματα των Μεταναστών*, από το Μεταναστευτική Πολιτική και Δημόσια Διοίκηση, Εθνικό Κέντρο Κοινωνικών Ερευνών, Ινστιτούτο Πολιτικής Κοινωνιολογίας, p. 29.

⁹ *idem*.

¹⁰ *ibid*, p. 27.

¹¹ *ibid*, p. 30.

¹² *idem*.

¹³ Froy, F., (2006), *From Immigration to Integration: Comparing Local Practices*, in OECD, *From Immigration to Integration: Local Solutions to a Global Challenge*, OECD Publishing, p. 66.

¹⁴ Platonova A. and Urso G. (ed.), (2010), *Migration, Employment and Labour Market Integration Policies in the European Union, Part 2: Labour Market Integration Policies in European Union (2000-2009)*, IOM, Brussels, p. 173.

¹⁵ *idem*.

¹⁶ *ibid*, p. 69.

¹⁷ *ibid*, p. 68.

¹⁸ *ibid*, p. 69.

¹⁹ *idem*.

- ²⁰ Spencer S., (2008), *Equality and diversity in jobs and Services: City Policies for migrants in Europe*, Eurofound Report, Council of Europe, p.16. According to the study, only 1.9% of non-EU nationals in the EU15 work in the public administration and defence.
- ²¹ *ibid*, p. 126.
- ²² *idem*.
- ²³ Froy, (2006), p. 69.
- ²⁴ DG Justice, Freedom and Society (2007), *Handbook on Integration for policy-makers and practitioners*, p. 19.
- ²⁵ Froy, (2006), p. 79.
- ²⁶ *idem*.
- ²⁷ *idem*.
- ²⁸ *ibid*, p. 83.
- ²⁹ CLIP, (2008), *Equality and diversity in jobs and Services: City Policies for migrants in European Cities: Good Practice Guide. Resume*, Council of Europe, p. 1. Retrieved from www.eurofound.europa.eu/publications/htmlfiles/ef0871.htm.
- ³⁰ Niessen J. and Kate M.A., (2007), *From Principles to Practice: The Common Basic Principles on Integration and the Handbook Conclusions*, p. 15. Retrieved from http://epim.info/docs/documents/MPG%20Principles_to_Practice_CBP_Handbook3.pdf.
- ³¹ Niessen J. and Schibel Y., (2004), *Handbook on Integration for Policymakers and practitioners*, European Commission (Directorate General for Justice, Freedom and Security), p. 35. Retrieved from http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/handbook_en.pdf.
- ³² *idem*.
- ³³ *idem*.
- ³⁴ *idem*.
- ³⁵ *idem*.
- ³⁶ *ibid*, p. 36.
- ³⁷ *ibid*, pp. 35-36.
- ³⁸ *ibid*, p. 36.
- ³⁹ Spencer, (2008), p. 124.
- ⁴⁰ *ibid*, pp. 124-125.
- ⁴¹ DG Justice, Freedom & Security (2007), p. 19.
- ⁴² Curvello, L., C. (2006), *Integration durch Migrantenorganisationen*. In Documentation of E&C forum on Integration junger Menschen mit Migrationshintergrund – Sozialer Zusammenhalt durch interkulturelle Strategien und integrierte Ansätze in benachteiligten Stadtteilen, p. 35.
- ⁴³ Froy, (2006), p. 95.
- ⁴⁴ *idem*.
- ⁴⁵ *idem*.



The Continuous Challenge of Enlargement

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Introduction

The 'big bang' enlargement of 2004, followed by the accession of Romania and Bulgaria in 2007, has profoundly altered the way the European Union functions. But with hindsight, it turned out that none of the often apocalyptic scenarios predicted before 2004 has materialised: neither was the EU-15 widely swamped with a flood of migrants from its new member countries, nor was the EU budget blooded to death, nor have its structures become paralysed. However, public opinion – and thus politicians – in the old member states give little credit to enlargement, and there is limited appetite for promoting the accession of further member states.

This article tries to analyse the reasons behind the lack of appetite of most EU member states for further enlargement. It will challenge some of the conventional perceptions of enlargement and propose a double approach to get the process back on track: by tackling political challenges from a technical angle and by paying more attention to the perception of enlargement related problems.

The stumbling blocks: political blockages and public opinion

In 2011, the EU has five candidate countries (Iceland, Croatia, FYROM, Montenegro, Turkey) with whom accession negotiations have either started or are about to start, and four potential candidates (Serbia, Albania, Bosnia, Kosovo) which first have to qualify to become candidates by meeting a number of criteria in the field of political and economic reform. Whereas Croatia (population: 5m) and in particular Iceland (population: 0.3m) raise few concerns due to their size and their relatively little impact their accession will have on the EU, the accession of the other Western Balkan countries is more controversial, due to their poor reputation and to the number of internal problems (such as ethnic conflicts or the lack of rule of law). But the most controversial issue is arguably the country that made by far the biggest progress in its way on adopting European norms and standards: Turkey.

By just looking at the mere technicalities, Turkey's accession does not seem more complicated than the other (potential) candidates: With all its flaws (especially regarding the freedom of expression), it is nevertheless a rather well functioning democracy; it has reasonably well functioning institutions, and makes progress towards EU integration in most of the policy fields that are required by Brussels. However, in reality, the process

grinded to a halt, for two reasons: first, the blockage of the accession negotiations due to the unresolved Cyprus question, with EU member Cyprus vetoing the opening of further negotiation chapters (and the closing of currently open chapters). Second, public opinion in most of the Member countries is negative regarding Turkey's accession¹.

The freezing of Turkey's accession negotiations, the standstill in EU-NATO relations, and the danger of regional instability in the Western Balkans - due to a failure to address the Kosovo issue - are directly linked to the unresolved Cyprus question. With no solution to these fundamental questions of EU strategic interests in sight, both the enlargement process and the Common Security and Defence Policy risk becoming lame ducks, thus undermining the relevance of the EU as a global player and strategic actor.



A technical bypass to political problems?

How might these deeply entrenched political blockages be overcome? Here it might be helpful to remember that the process of rebuilding Europe after WWII started as a technical process (with the Coal and Steel Community) before becoming more obviously political. A good recent example of a technical solution to a political problem is the answer found to address the fear of paralysis in EU decision making after the 2004 enlargement: some technical modifications in the Council of Ministers' rules of procedure - hardly spectacular and rarely noticed by people outside the Brussels bubble - had a definite and positive impact and made decision making after 2004 easier than before². In the same way, the freeze of Turkey's accession negotiations and of EU-NATO relations - due to differences between NATO member Turkey and EU member Cyprus - could be overcome by taking a more pragmatic approach (i.e. increasing security for EU and NATO staff in Afghanistan as the result of exchange of intelligence between the two organisations), instead of leaving the issue to emotionally charged history-laden political debates in both capitals.

Problems and their perception: public opinion matters

The other much underrated challenge to the accession process is public opinion in the member states. This is in particular true with regard to Turkey³. Technically, it would be only a question of time before Turkey (and the other candidates) meet the criteria for membership: being fully fledged democracies with a competitive economy that have taken on board the 120,000 pages of EU rules and regulations. But of course, enlargement is also highly political, as any accession (even after the Lisbon Treaty) has to be ratified by all existing members. The governments of the member states know that the perspective of having Turkey as (soon to be) biggest, rather poor and Muslim member - with agenda setting powers - is hardly appealing to most of their voters. Hiding behind the *vox populi* is, in fact, a convenient way for governments to discard the responsibility for the rejection of Turkey on their voters. Turkey might have very strong arguments why the EU would benefit from having it as a member: its economic and demographic dynamism, its role for regional security and stability, as a political bridge to the Muslim world, as a buffer zone towards the Middle East and its moderating influence on Muslims within and outside the borders of the EU.

Turkey will eventually realise that this debate cannot be won with rational arguments alone.

Whereas these arguments are relevant and valuable, they are not likely to convince a broader public more susceptible to fears of immigration, of radical Islam and of an EU losing its European character. Therefore, Turkey will eventually realise that this debate cannot be won with rational arguments alone and that they also have to target existing underbelly fears through public diplomacy and perception management⁴. Turkey also will have to realise the extent to which negative public opinion in particular member states is the result of often suboptimal integration of the Turkish diasporas into their host societies and to be more proactive in looking for solutions.

The EU in 2020: a look into the enlargement crystal ball

At this point, it might be useful to move beyond analysing the existing problems and to engage into some out-of-the-box thinking in order to overcome the current stalemate. The author therefore takes the liberty of offering a hypothetic and optimistic – but maybe not entirely unrealistic – agenda of how the enlargement process could eventually unfold during the next decade:

2012: After repeated casualties among EU Police trainers in Afghanistan, Turkey decides to drop its veto on the sharing of NATO intelligence with the EU. Also, in order to put pressure on the incoming Cypriot EU Presidency, Turkey decides unilaterally to open its ports temporarily to Cypriot vessels. Accession negotiations are opened with FYROM after a compromise with Greece on the name issue (using the term 'Republic of Northern Macedonia' externally, but continuing using the name 'Macedonia' internally)

In the second half of 2012, the Cypriot Presidency gets under heavy diplomatic pressure to make a move towards Turkey and unblocks the opening of negotiations for five additional chapters. Cyprus also drops its veto on signing of a Stabilisation and Association Agreement with Kosovo, provided that Serbia is granted the status of EU candidate.

2013: The Stabilisation and Association Agreement between the EU and Kosovo is signed. Serbia and Albania get the status of candidate countries.

2014: Following a comprehensive agreement on land ownership on the island (involving important financial compensations paid by the EU), Turkey fully recognises the Greek Cypriot authorities and decides to permanently open its ports to Cypriot vessels. Serbia agrees on a territorial exchange with Kosovo allowing it to retain the Serbian populated North of Kosovo. The EU recognises the Republic of Kosovo under its constitutional name. Serbia and Albania are opening accession negotiations.

2015: Turkey launches PUDISTEA (Public Diplomacy Surge for Turkish EU Accession) in order to reverse EU public opinion on Turkish EU membership, with a budget of €100m over five years. During the first nine months of the campaign, the level of public support within the EU for the accession of Turkey goes up from 22% to 29%. In parallel, Turkey also sets up the 'TUDIF' (or Turkish Diaspora Integration Funds) shaped on the model of the European Social Funds in order to raise the level of professional qualification of Turkish citizens living the EU.

2016: In the second year of PUDISTEA implementation, public support to Turkish accession has climbed to 36%. After a fundamental local government reform and the restructuring of its police force, Bosnia is given the status of a candidate country.

2017: The Republic of North Macedonia becomes a member of the EU. One week later, following a landslide referendum, the country reverts to the name of 'Republic of Macedonia'. In the third year of PUDISTEA, public support to Turkish accession has climbed to 41%.

2018: After the transfer of former President Lukashenka to The Hague, Belarus expresses its desire to become a member of the EU. In the framework of a EU-Police mission, Kosovo has sent 30 police trainers to Afghanistan. In the fourth year of PUDISTEA, public support to Turkish accession has climbed to 47%.

2019: Serbia, Kosovo and Albania become members of the EU (extensive safeguard clauses regarding the rule of law and freedom of movement). Under the Romanian EU Presidency, Moldova, Ukraine and Belarus are given the status of 'potential candidate countries'. Turkey provides the bulk of peacekeepers in CSDP missions. In the fifth year of PUDISTEA, EU public support for Turkish accession peaks at 51%.

2020: After the closure of the last two chapters of the accession negotiations (freedom of movement and Institutions), Turkey becomes a member of the EU. The Accession treaty provides for a 20-year transition period before full freedom of movement and establishment for Turkish citizens in the EU will be realised. Turkey's number of votes in the Council of Ministers and EP seats will be frozen until 2040.

Conclusion

This scenario certainly includes some elements of wishful thinking. However, all sides with a stake in the enlargement process must realise that a strong and fresh impetus is needed for setting the process back on track, which implies a degree of fresh and unconventional thinking. Member states have to think about how to reassure their peers that are blocking further negotiations out of concerns for their national political agendas. The (potential) candidates have to increase their awareness that if they fail to address the (perceived) concerns of the wider EU public, most of their objective efforts towards accession may be invalidated.

The role of public administration in this process is crucial since many of the questions related to enlargement (such as the status of Kosovo or the FYROM name issue) are highly politically and emotionally charged. Approaching these issues on a technical, rather than from a political level, might open up new perspectives. The European Coal and Steel community managed to set the agenda for a United Europe on a technical level, which later created a spill-over effect and became manifestly political. In the same way, civil servants can work around the political blockages on the political level and thus set new parameters for political decision-making. Every administration should therefore foster unorthodox and 'out-of-the-box' thinking without political blinders within its ranks. Politicians are naturally wary of confronting hostile public opinions. Getting the right arguments from the administrative level can make their task easier and, hopefully, contribute to getting a blocked political process back on track.

Notes

- ¹ It is, in particular, the negative public opinion in France that has prompted Paris to block five negotiation chapters on its own.
- ² Before the 2004 reforms of the Council's rules of procedures, it was common that every member state made a statement on a given proposal during a Council meeting, regardless how repetitive this statement proved to be. A purely ceremonial *tour de table* could thus easily take 1,5 hours out of such a meeting, reducing the time left for substantial debate. This practice has been abolished under the new rules.
- ³ According to a 2010 Transatlantic Trends poll, only 22% of EU citizens agree that Turkey joining the EU would be a good thing, down from 30% in 2004 <http://trends.gmfus.org/leadership/TTL2011Topline.pdf>.
- ⁴ This fact was brilliantly understood by the Polish Tourist Board when they turned the diffuse fears within the EU of a flood of low skilled workers, personified by the 'Polish plumber' and the 'Polish nurse', into a reverse advertising campaign, which contributed to offsetting the poor image of Polish migrants. <http://news.bbc.co.uk/2/hi/4115164.stm>



Managing Change in External Relations: *The EU's Window of Opportunity*

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Dr Simon Duke, Professor, EIPA Maastricht 1998-present

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Introduction

There are a few moments in life when a crossroads is reached, necessitating a fundamental choice about the course to follow. Any decisions made at that juncture will have a decisive impact upon the future, for better or for worse. The EU is at such a point in its external action. The international order is being fundamentally reshaped by the emergence of influential actors (the BRIC countries are often automatically, and uncritically, mentioned in this regard) but also by influential non-state actors who act across borders and continents¹. The exact nature of the emerging international system is far from clear – for some it is a complex multipolar system with different influences in particular policy areas or regions, but with no obvious hegemon; for others this looks suspiciously like a 'non-polar' world promising disarray and potential competition (especially for resources)².

The EU's 'actomess'

The EU is in the throes of trying to establish its role in the developing international system, both at the macro level (trying to work out what Herman Van Rompuy's 'economic governance' really means) as well as at the levels of strategic partnerships (commencing with the EU's relations with China, Russia and the United States)³. Against this changing backdrop, the EU has the task of defining its role and identity – or as political scientists say, the nature of its 'actorness'. The mercury disputes last June, where the Council and the Commission split over the question of who should represent the Union in cases where there are shared competences, and the September deferment of a vote on a draft resolution that would have given the enhanced observer status in the UN General Assembly, are symptomatic of the difficulties of defining the EU's role and status as an actor on the international scene⁴.

Black swans

The shaping of the international system is also influenced by 'black swans' – events that no one predicted and thus prepared for and where there is the risk of overestimating knowledge about the event and its potential impact⁵. The emergence of the internet and its profound effect on international politics is an obvious example. The dramatic and still

unfinished foment in parts of North Africa and the Middle East is another, more salient, example. Officials and experts likewise did not predict these events, nor have the full implications been fully understood.

... and Lisbon

The third important development was heralded by the Lisbon Treaty and, in particular, the slow and still painful emergence of the European External Action Service (EEAS). The introduction of a High Representative for Foreign Affairs and Security Policy, who is also a Vice President in the Commission, holds the promise of more coherence (and less squabbling) between the EU institutions. The recognition of the EU's international legal personality and, most notably, the advent of Union delegations, open up the possibility for the EU to engage in far broader dialogues – now formally incorporating foreign and security elements alongside the former *communautaire* elements. The centralisation of geographical desks in the EEAS, the creation of multilateral and thematic desks, alongside the advent of the Union delegations, all demand a more strategic approach to the EU's external action. The EEAS may, in time, emerge as a quasi *corps diplomatique* for the EU, but it remains early days and it will take several years to iron the kinks out of the Service. In an obliging international system the stop button would be activated while the EU sorts itself out. But the world moves on.

'The vision question'

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Since the EU is itself in transition, it remains difficult for the Union to assume a pro-active role at a time when its fundamental aims and purpose on the international stage are open to debate. The EU lacks any compelling vision to guide its overall purpose, identity and direction in external action, although this is not for want of a plethora of disjointed strategies. An obvious starting point is the Lisbon Treaty itself which makes it clear that the EU's external actions are supposed to be based on values and interests. This is easily written although formidably difficult to accomplish, but this does not exculpate the Union and its members from trying.

Currently, the EU sends out mixed messages regarding the balance between values (human rights, democracy and the rule of law) and the pursuit of (common) interests. In some cases the EU's interests tip clearly in favour of more pragmatic considerations (like energy security) and, in those cases where the EU enjoys greater leverage, such as its relations with the Africa, Caribbean and Pacific countries, values appear more to the fore in the form of 'essential elements' clauses. It would be an exaggeration to claim that the EU does not attempt to introduce values-based, or normative, elements into its external action, but the manner in which it has done so leaves the EU vulnerable to charges of double standards; none more so than in its relations with the southern neighbourhood.

Lessons from the Arab spring

The foment in Bahrain, Egypt, Libya, Syria and Tunisia are stark reminders of why the question of values and principles should not assume the back seat to energy and trade agreements, or other more pragmatic considerations. The EU will soon face a generation of young Arabs, some of whom will assume positions of responsibility in the new administrations throughout the region. They, in turn, will reflect upon the nature of the EU's agreements with the previous autocratic regimes and where the Union was, alongside other actors, in their hour of need. Salient questions will be posed about the application of the EU's cherished principles (these are listed as liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law). Such questions may, with equal validity, be posed by young Georgians.

The confluence of these three elements – the changing international system, the changes introduced by the Lisbon Treaty, and the changes in the EU's neighbourhood – provide formidable challenges but may also represent a window of opportunity. It is time for the EU to be clearer about what type of actor it wishes to become and what paths it will pursue to reinforce what the EU itself claims is a distinctive European approach to foreign and security policy⁶.

The question of values and principles should not assume the back seat to energy and trade agreements, or other more pragmatic considerations.

Responding to change

In response to these three challenges, the EU should consider the following:

1. **A Strategic Concept:** The EU should adopt a strategic concept outlining the fundamental role envisaged for the Union in the years ahead (until, for example, 2030). As noted, the beginnings of such a broad dialogue have already begun, prompted by Van Rompuy's important speech at the College d'Europe in February 2010 and a number thereafter. The concept should though be generated from the EU itself, so that ownership is assured, and then approved by the members.

It should also tie together and prioritise existing geographical and thematic strategies. In practical terms this means moving beyond the somewhat lacklustre discussions on China, Russia and the United States (among others), to identify core priorities and to link these to the broad array of sectoral dialogues represented in each of these cases.

It is high time to frame the EU's interests with, if need be, more independence from the United States but only when matched by the political will and capacity to act.

In spite of the vogueish obsession with the BRICs, and especially ascendant China, no strategic partnership is more important to the EU than that with the United States, which still remains a fundamentally unbalanced relationship. On the one hand there is unparalleled cooperation (and competition) when it comes to economic and trade issues, as well as in critical areas of mutual interest like counter-terrorism; but on the other hand, foreign and security relations are clouded in mutual ambivalence, most notably where relations with NATO are concerned. It is high time to frame the EU's interests with, if need be, more independence from the United States but only when matched by the political will and capacity to act. Any new and more balanced transatlantic dialogue is only possible under this condition.

In its relations with other strategic partners (a term which itself lacks much substance or clarity), such as China, the EU needs a firmer idea of its key interests, the objectives of its partners, as well as the values and principles that the Union represents. Aside from the important role of the European Council, the EEAS should develop much of the detailed conceptual work along with the relevant parts of the Commission. Indeed, in the EEAS context the multilateral and geographical desks all require strategic parameters within which to operate. It is also difficult to understand the rationale behind the offices for Public Diplomacy, Strategic Planning and Strategic Communication in the absence of an guiding strategic concept. Any such agreed concept must, as a *sine qua non*, be supported by the Member States in their bilateral diplomacy;

2. **Public diplomacy:** Strategy and vision have to be harnessed to diplomacy (including that at the European level) as well as to public diplomacy, in order for the EU to exert its influence most effectively (see Aurélie Courtier's contribution). One of the more obvious weaknesses of the EU in this regard is the weakness of its public diplomacy in external relations. The EU should take public diplomacy far more seriously than it does and invest more personnel and resources towards this end (notwithstanding the confines of 'budget neutrality' of the EEAS). Much of what passes for public diplomacy in EU external relations is, in fact, disseminating information. Public diplomacy is, however, about establishing long-term dialogues with diverse groups – stretching beyond the official channels at governmental and official level. This also implies the ability to listen as well as to communicate. Effective public diplomacy is essential for acceptance of the EU's role and to the tailoring of the Union's activities to the specific locale in which it operates. This obviously has an equally important internal self-reaffirming aspect since the EU's role in the world also informs the internal identity of the Union. The influx of national diplomats into the EEAS, who bring with them often useful experience and knowledge in this domain, could be capitalised upon. More specifically, a number of programmes already exist to promote people-to-people contacts and these might usefully be harnessed and expanded within the framework of greatly enhanced EU public diplomacy;
3. **Rebuilding the Neighbourhood:** As a matter of course in the redefinition of all strategic partnerships, special attention should be paid to the balance between values and interests. The obvious priority for the EU will be in its immediate neighbourhood, where the EU is best placed to capitalise upon its 'power of attraction'. As proximate

neighbours, other states and organisations may also look to the EU for initiative and leadership. But, this must be on the basis of clear values and interests that speak to the younger generations in the southern and eastern neighbourhoods. The moral and political fortitude of the United States, the key European allies, as well as the EU itself, are likely to be questioned throughout the region.

The manner in which the EU addresses foment to its south will be critical in defining its wider global role. The Commission's *New response to a changing Neighbourhood* of 25 May 2011 is a step in the right direction, with the promise of greater support to neighbours engaged in building 'deep democracy', more 'inclusive economic development' and a strengthening of the regional dimension. The Commission's new approach is summarised under the rubric 'more-for-more' (i.e. the faster a neighbour progresses in its internal reforms, the more EU support will be available). By implication, 'less-for-less' also applies.

The Union's role has, however, been hampered by the complicated role of a number of Member States in the region and this is one reason why trade interests have tended to dominate in the EU context. Štefan Füle, Commissioner for Enlargement and ENP, noted that when negotiating and concluding association treaties with these countries and working on the action plan, compromises have been made 'when the Member States thought that in supporting the authorities we were also supporting stability in these countries.' The provision of new instruments, such as the Civil Society Facility, the European Endowment for Democracy and support to civil society organisations promoting media freedom are commendable, even if they challenge the notion of 'joint ownership' underpinning the EU's relations with individual neighbours. It will also make relations with the neighbours far more political and, in many cases, difficult (especially among those southern neighbours who have resisted any dialogue on what are perceived pejoratively as 'western values'). The demonstration by the EU of more overt conditionality in its relations with its neighbours may be of wider benefit to the Union in its relations beyond the neighbourhood since it will send a far clearer message about the type of actor the EU wishes to be on the international scene, as well as the desired balance between interests and values.

One of the most striking aspects of the Arab spring is the astonishing numbers of youths under the age of 30 throughout the region (and, indeed, even more so further south). This clearly suggests that the future of the region rests with young (often unemployed) people. The enticement of eventual deep free trade agreements with the EU ring hollow with many of the unemployed and dispossessed in the region. In order to win back some credibility among the youth in the region the EU will have to demonstrate that it is serious about values and principles, as argued above. This is not an easy sell and it will take time. One additional instrument that should be considered is the establishment of a College of the Mediterranean, bringing together young talented minds from the southern neighbourhood and the Member States, to engage in graduate level studies in the social sciences, law and public administration. The aim would be to draw together talent from the region and to establish enduring links across generations of students who, eventually, will become leaders and opinion shapers. This was, after all, the powerful rationale behind the College of Europe and, later on, the Central European University. The obvious locale for such a College would be Malta, historically a gateway to the Arab world. This could be supplemented by active executive development programmes for the region. It is clearly time for the EU to make an important and sustained investment for their futures – and ours.

Conclusion

The EU is at a juncture where fundamental choices about its future orientation must be faced. One fork in the road suggests growing irrelevance, low visibility and the inability to shape global change. The other road offers a chance to enhance the EU's visibility and to shape global change, commencing with the neighbourhood. It is an immense challenge, but it is also a rare window of opportunity. It was Jacques Poos who, in June 1991, with reference to EU's mediation efforts in Yugoslavia, proclaimed that this was the 'hour of Europe'. This claim met much subsequent ridicule, but he was nevertheless right that there will be decisive points where the manner and timing of the EU's response will shape its future. Now is such a time.

Notes

- ¹ See Cameron, F., *The EU and the BRICs*, Policy Paper No 3, Diplomatic System of the European Union, February 2011, at <http://dseu.lboro.ac.uk/publications/policypapers.html>.
- ² For an overview see Van Langenhove, L., *The EU as a Global Actor in a Multipolar World and Multilateral 2.0 Environment*, Egmont Paper 3, March 2010 (Brussels: Royal Institute for International Relations).
- ³ Address by Van Rompuy, H., *The Challenges for Europe in a Changing World*, College d'Europe, Bruges, 25 February 2010, PCE 34/10.
- ⁴ See Emerson, M. et al., *Upgrading the EU's Role as Global Actor: Institutions, Law and the Restructuring of European Diplomacy*, (Brussels: Centre for European Policy Studies, 2011).
- ⁵ The term and theory are derived from Nassim N. Taleb, *The Black Swan*, (London: Penguin, 2010) (2nd edition).
- ⁶ *Report on the Implementation of the European Security Strategy: Providing Security in a Changing World*, Brussels, 11 December 2008, S407/08.
- ⁷ It is easy with the current focus on the south to overlook the backsliding on democratic practices in the Ukraine or the condemnation and sanctions directed towards Belarus following the fraudulent December 2010 elections which, while warranted, did not evoke such strong action following numerous rigged elections among the autocratic southern neighbours.
- ⁸ Joint Communication to the European Parliament, The Council, The European Economic and Social Committee and the Committee of Regions, *A new response to a changing Neighbourhood*, European Commission, Brussels, 25 May 2011, COM(2011) 303
- ⁹ The Select Committee on the European Union Foreign Affairs, Defence and Development Policy Inquiry on Libya, Evidence Session No 2. Heard in Public. Questions 16-21, Tuesday 15 March 2011, Witnesses: Fule, S.



The Challenge of Public Diplomacy for the European External Action Service

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* The author would like to thank Mrs Jelisic, J., author of a Public diplomacy PhD research, EU Communication Coordinator in BiH and Leading developer of the EU Communication Strategy in BiH, Mrs Gallach, C., former Spokesperson of Javier Solana and Dr Duke, S., Professor at EIPA for sharing their views on this topic and for their cooperation.

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Introduction

One of the main questions emerging from the EU nascent diplomatic corps – the European External Action Service (EEAS) – is what type of diplomacy the EU will conduct and what will be the added value of this new level of diplomacy for the years to come? This article looks at the concept of public diplomacy both in general and in the specific context of EU external relations. It considers the potential of the Lisbon Treaty and the establishment of the EEAS to improve the public diplomacy capacity of the EU and argues that effective EU public diplomacy could be essential to the success of the new European level diplomacy¹.

The concept and definition of public diplomacy

The concept of diplomacy itself has considerably evolved over time to adapt to new foreign policy challenges and realities. The diplomatic practice has gradually extended beyond the notion of traditional diplomacy, understood as the attempt of a government to manage the international environment through engagement with other government elites², to integrate new forms of diplomacy such as public diplomacy, which by contrast suggests 'leaving the traditional zone of diplomatic work' by 'engaging in two-way communication not only with foreign governments' but primarily with wider foreign audiences 'directly and/or *via* non-state actors' through informational, analysis, educational and cultural activities to support the foreign policy goals³.

Public diplomacy is about creating a 'supportive foreign environment for a country's foreign policy by understanding, informing and influencing an external audience'⁴. The emphasis is put on 'building relationships' by engaging and managing dialogue with a foreign public beyond the official channels with a view to create mutual understanding and ultimately to be able to influence perceptions. The term foreign audience refers essentially to civil society *i.e.* the citizens, the media, NGOs, think-tanks, researchers, social and economic partners, private sector agents etc. whose support is deemed necessary to advance foreign policy objectives and who play a role in shaping the public opinion.

The recent historical developments in the EU's southern neighbourhood are a good illustration of how public opinion, global communications and social media have become a crucial factor in the course of international affairs. These evolutions show that now is

the time for the EU to take public diplomacy seriously and to engage in effective public diplomacy with the Mediterranean region if it wants to seize the opportunity for change and democracy. As Herman van Rompuy commented following the EU's disappointing experience at the Copenhagen Climate conference, 'Europe can no longer shine by the force of its example only. You need more than the conviction that your proposal is the best to win them over [...] The Union needs to assert itself politically'⁵.

The concept of public diplomacy in EU external relations

The concept of public diplomacy is not new for the EU but a quick review of the EU past public diplomacy practices reveals that the term itself has not been widely used in EU's external relations⁶ and that the EU past practices of public diplomacy have often resulted in simple communication and information dissemination activities⁷ (which are only one facet of public diplomacy) or disparate educational and cultural programs, conducted separately by multiple actors (Commission, Council General Secretariat, EC Delegations, EU Special representatives, rotating presidency of the Council etc.) with a variety of competences, means and mandates, and through a multilayered framework of policies and programs. This situation can be explained to some extent by the relatively young existence of the EU foreign policy as well as its dual nature, split between the Community and the Common Foreign and Security Policy (CFSP) actors and instruments, with their distinct approach to the EU external action, and by its strong intergovernmental character. Ultimately, the EU foreign policy has been driven by the member states with their own diplomatic network and national public diplomacy apparatus.

Now is the time for the EU to take public diplomacy seriously and to engage in effective public diplomacy with the Mediterranean region if it wants to seize the opportunity for change and democracy.

The Lisbon Treaty and the EEAS: an opportunity for EU public diplomacy?

A major objective of the Lisbon Treaty was precisely to address some of the concerns about the visibility, efficiency and coherence of the EU action in the world. In that respect, the creation of the European External Action Service (EEAS), officially launched on 1 December 2010, gives the EU a better chance to fulfill such goals and to shape a successful public diplomacy. Indeed, it provides the EU with a quasi diplomatic service composed in an innovative way of EU officials from the Commission, the General Secretariat of the Council as well as diplomats of the member states. In addition to associating different staff, it also brings together different EU external relations policies and instruments in one integrated structure placed under the authority of a single High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) who '*de facto*' replaces the former Commissioner for External Relations, the former High Representative for CFSP and the Foreign Minister of the rotating presidency⁸. This new foreign policy architecture by streamlining the EU external action creates a real opportunity to shape a successful European level diplomacy which would be more effective by defining common foreign policy objectives and by supporting them through a successful EU public diplomacy⁹. A few positive opportunities can be highlighted in this respect:

First, the July 2010 Council decision establishing the EEAS makes an explicit reference to 'communication and public diplomacy actions' and the EEAS organisation chart¹⁰ (see Annex 1) incorporates a strategic communication division and public diplomacy unit. This can be regarded as an official acknowledgement of the term, role and place of public diplomacy within the EEAS. Although public diplomacy kept appearing and disappearing in the successive versions of the EEAS organigram¹¹, it was retained in its latest sketch, thus recognising a specific public diplomacy function for the EEAS.

Second, the establishment of the HR/VP and the EEAS puts an end to the formal split of EU's external relations between two different pillars (the CFSP and the Community aspects). It therefore offers a unique opportunity to 'centralise' the different public diplomacy components of EU external relations in one integrated structure placed under the authority of a single figurehead who according to its mandate can link together the different EU foreign policy aspects and has both a certain degree of political authority (in her High Representative capacity) and the possibility of making use of available resources (in her Vice President of the Commission capacity)¹². In concrete terms, it means

that most of the public diplomacy activities and programs which were conducted on the one hand by the Council General Secretariat represented by Javier Solana supported by its spokesman, a number of Special Representatives and a Directorate-General for Communication, Information Policy and Protocol, and on the other hand by the Commission, primarily DG Relex and its network of 136 EC Delegations¹³ can be connected and brought together within the overarching structure of the EEAS. This should also be read in the light of the HR/VP overall mandate to ensure the 'unity, consistency and effectiveness of EU's external action'¹⁴. As can be observed on the EEAS organigram, the establishment of a specific 'strategic communication' division and 'public diplomacy' unit within the EEAS placed under the direct authority of Ashton and her cabinet should provide this opportunity. The connection between the two will be crucial though to link the political message and the various instruments of EU public diplomacy in order to promote coherence and efficiency.

Third, the EC Delegations which have become EU Delegations under Lisbon and which form part of the EEAS have the potential to play a greater role in the EU external information and public diplomacy efforts. The EU Delegations are now representing the whole of the EU abroad¹⁵ (not only the Commission) under the authority of the HR/VP which should contribute to increasing the understanding, visibility and legitimacy of their mission and actions. Their role has been enlarged and has become more political as they are taking over the duties of the rotating presidency in terms of representation and coordination of the EU position in third countries and in international fora¹⁶. This should place the EU Delegations in a better position to promote the EU foreign policy objectives, to influence and to engage with the different foreign policy stakeholders (official and non-official)¹⁷. Furthermore the EU Delegations will be required to strengthen their political analysis and reporting activities¹⁸ which to some extent should strengthen the level of information, political understanding and knowledge of foreign countries and audiences. The presence of national diplomats within the EEAS¹⁹ in general, and in the EU Delegations in particular, might also be a great asset to raise the diplomatic profile of the Delegations and further collaborate with national Embassies of the Member States who often already have strong public diplomacy experiences. This could help to better coordinate the different public diplomacy efforts. Furthermore, most EU Delegations already incorporate a 'Press, Information and Cultural Affairs' section of some sort which could be upgraded and oriented towards true public diplomacy departments²⁰.

From theory to practice: some recommendations for the future

Therefore, the creation of the EEAS offers real opportunities to improve the public diplomacy potential of EU external relations. Nevertheless, in order to make full use of these possibilities, several aspects should be considered with particular attention:

1. **Defining a Public Diplomacy Strategy for the EU:** the idea as such is not completely new²¹ but now that the EU has acknowledged the specific public diplomacy function of the EEAS, it would be of concrete added value. For that purpose the EU should clarify its understanding of public diplomacy and raise the EEAS awareness of public diplomacy. A review of EU public diplomacy activities and programs could be made to retain best practices and to differentiate between public diplomacy and information transfer, cultural events and outreach programmes – the latter being sub-components of the former. Although informational activities are an important element of public diplomacy, they are not in themselves sufficient. Public diplomacy should incorporate both a short and medium-long term components. Moreover, the EU and its member states should specify their common approach to the main foreign policy challenges of our times and the way to promote them abroad. Public diplomacy efforts of the EEAS should be truly connected to the EU's core foreign policy 'message'.
2. **Providing appropriate human and financial resources:** in order to avoid turning into an 'empty shell' the public diplomacy set-up within the EEAS should be accompanied by appropriate staffing and financial resources. It means that a new approach to public diplomacy and professional communications structure²² should be developed requiring communication specialists, journalists etc. to move away from the technocratic culture²³. Investment in relevant training programmes but also communication technologies and in the necessary linguistic support for instance to ensure key EU foreign policy documents or message can reach out to the public of key international security partners (Chinese, Russian, Arabic etc.)²⁴.

3. Coordinating all aspects of EU external action: although the Lisbon Treaty and the establishment of the EEAS are already providing a great opportunity to improve and further streamline the external EU public diplomacy actions, ensuring further coordination between all components of EU external relations will be crucial to its success. This requires not only the centralisation and coordination of the different public diplomacy components within the service (between CFSP/Common Security and Defense Policy (CSDP) and Community actions and between the political message and the financial resources and programs' implementation) but also with the parts of EU external relations which are not included in the service (such as Trade, an important number of Development and European Neighbourhood Policy aspects etc.). Ultimately, the Member States which remain at the core of the EU foreign policy making and which have traditionally developed strong national public diplomacy cultures will have to empower the service accordingly.

Conclusion

Thus, the establishment of the EEAS opens a window of opportunities for the EU external public diplomacy. In these times of financial austerity and of increasing competition for influence between major international players, public diplomacy is an underdeveloped facet of the redefinition of the EU's role on the global stage. It is a critical one, both in terms of influencing external partners but also internally, to bolster support within the EU for its external actions. Now that the EEAS is in place, the EU should not miss the EU public diplomacy opportunity.

Notes

* The author would like to thank Mrs Jelusic, J., author of a Public diplomacy PhD research, EU Communication Coordinator in BiH and Leading developer of the EU Communication Strategy in BiH, Mrs Gallach, C., former Spokesperson of Javier Solana and Dr Duke, S., Professor at EIPA for sharing their views on this topic and for their cooperation.

¹ Discussion with Jelusic, J., September 2010.

² Cull, N. J., *Public Diplomacy, Lessons from the past*, CDP Perspectives on Public Diplomacy, USC Centre on Public Diplomacy, Annenberg School, Figueroa Press 2009.

³ See Jelusic, J., *21st century diplomacy: a necessity, not a choice, on the road to the EU*, Policy brief No 55, Policy development fellowship programme 2009-2010, Open Society fund Bosnia and Herzegovina, p. 1 and Lynch, D., *Communicating Europe to the World: what public diplomacy for the EU?*, EPC Working Paper, No 21, November 2005, p. 15.

⁴ Lynch, D., *Communicating Europe to the World: what public diplomacy for the EU?*, EPC Working Paper, No 21, November 2005.

⁵ Address by Van Rompuy, H., *The Challenges for Europe in a Changing World*, College d'Europe, Bruges, 25 February 2010, PCE 34/10.

⁶ Lynch, D., *Communicating Europe to the World: what public diplomacy for the EU*, EPC Working paper No 21, November 2005, p. 26.

⁷ See de Gouveia, P.F., with Plumridge, H., *European Infopolitik: Developing EU Public Diplomacy Strategy*, (London: The Foreign Policy Centre, November 2005), pp. 8-9.

⁸ Upcoming publication: Vanhoonacker, S., Pomorska, K., and Heidi, M., *Belgium at the helm of the EU External Relations: a successful non-presidency*, p. 3.

⁹ Discussion with Jelusic, J., September 2010.

- ¹⁰ See EEAS organisation chart available from: http://eeas.europa.eu/background/index_en.htm
- ¹¹ See Duke, S., *The Implicit becomes Explicit? The EEAS and Public diplomacy*, prepared for the International Studies Association Annual Convention in Montreal, 16-19 March 2011, p. 1.
- ¹² See Council decision on the organisation and functioning of the EEAS, (2010/427/EU), 26 July 2010, Article 5(9) L 201/30 Official Journal of the European Union 3 August, Article 9, Paragraph 6.
- ¹³ *Ibid*, Duke, S., p. 8.
- ¹⁴ TEU Article 26(2).
- ¹⁵ Treaty on the Functioning of the European Union, (OJ C 83, 30.3.2010), Article 221.
- ¹⁶ Treaty on the European Union, (OJ C 83, 30.3.2010), Article 34.
- ¹⁷ *The European External Action Service: A step change in external policy for the Union: Delivering on the promise of the Lisbon Treaty*, (undated), Paragraph 7. Available from www.europolitics.info/pdf/gratuit_en/267601-en.pdf
- ¹⁸ *Ibid*, Paragraph 7.
- ¹⁹ When the EEAS has reached its full capacity, staff from the Member States should represent at least one third of all EEAS staff at AD level.
- ²⁰ See Duke, S., *The Implicit becomes Explicit? The EEAS and Public diplomacy*, prepared for the International Studies Association Annual Convention in Montreal, 16-19 March 2011, p. 22
- ²¹ See de Gouveia, P.F. with Plumridge, H., *European Infopolitik: Developing EU Public Diplomacy Strategy*, (London: The Foreign Policy Centre, November 2005), p. 23 and *Ibid*, Duke, S., p. 19.
- ²² *The European External Action Service: A step change in external policy for the Union: Delivering on the promise of the Lisbon Treaty*, (undated), Paragraph 7. Available from www.europolitics.info/pdf/gratuit_en/267601-en.pdf
- ²³ Discussion with Jelusic, J., September 2010.
- ²⁴ Interview, Brussels 4 March 2011.

Building EIPA

Official start of the European Institute of Public Administration, 23 March 1981.

Minister-President Van Agt is signing the agreement of the contribution of the Dutch Government. Next to him are Mr P. Houx, Director of the Dutch Section of the Council of European Municipalities and Mr B. Biesheuvel, Chairman of EIPA's Board of Governors.



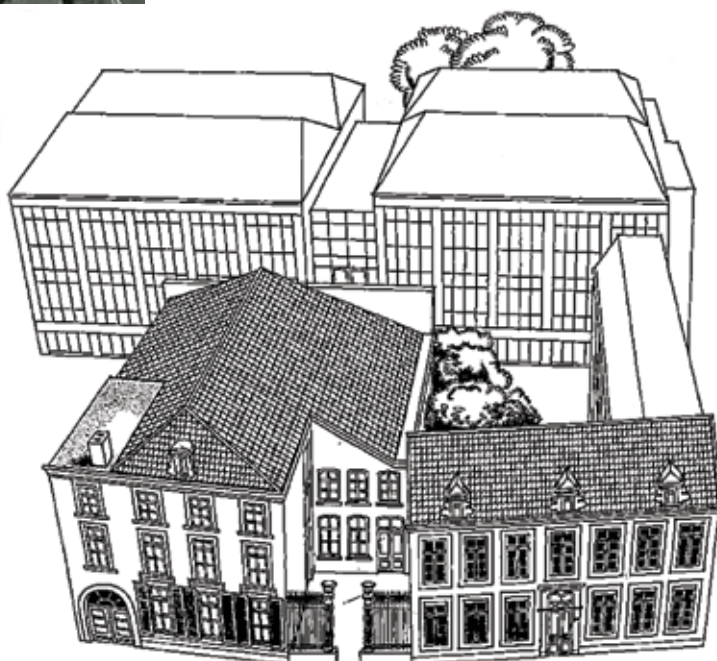
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The opening of the EIPA building by the Dutch Minister for Home Affairs, Mr E. van Thijn and start of activities with the organisation of a colloquium on 'The Development of Research and Training in European Public Administration' (Maastricht 21-22 January 1982), 19 January 1982, Maastricht.

Architect's drawing showing EIPA's original premises and the extension, completed in 1985.



The construction of EIPA's extension.



The colourful front quadrangle of EIPA.



Building EIPA

One of the first EIPA Board of Governors meetings, 1983.

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The 'founding stone': (on the left) Norbert Schmelzer (NL) 1984-1991, former Minister for Foreign Affairs of the Netherlands and (on the right) Mr Ph.J.I.M. Houben, former Mayor of Maastricht, 2 October 1985.



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The opening of the extension and EIPA's fifth anniversary coincided. Her Majesty Queen Beatrix of the Netherlands came to visit EIPA, 18 November 1986.

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Her Majesty Queen Beatrix of the Netherlands visits EIPA a second time to celebrate the 25th anniversary of EIPA , 2 November 2006.



Photographer Annemiek Mommers

The 'Blue room', one of EIPA's six conference rooms.



A conference room in our European Documentation Centre.



The 'Green room' during an EPSA meeting in 2009.



Photographer Marc Schols

EIPA's environs.



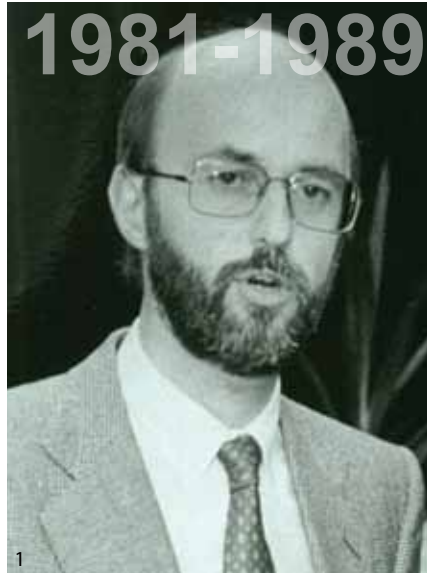
Chairmen EIPA Board of Governors

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- 1 **Barend Biesheuvel** (NL) 1981-1983, former Prime Minister of The Netherlands
- 2 **Norbert Schmelzer** (NL) 1984-1991, former Minister for Foreign Affairs of The Netherlands
- 3 **Peter Sutherland** (IE) 1991-1996, former EU Commissioner and Director-General of the General Agreement on Tariffs and Trade (GATT)
- 4 **Henning Christophersen** (DK) 1997-present, former Vice-President of the European Commission, Danish Prime Minister's personal representative to the European Convention (member of the Presidium), Deputy Prime Minister and Minister of Finance in the Danish Government and, prior to that, Minister for Foreign Affairs

Director-Generals of EIPA



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1 **Dr Stefan Schepers** (BE), March 1981 - December 1989

2 **Dr Spyros Pappas** (GR), December 1989 - December 1995 (*)

3 **Isabel Corte-Real** (PT), April 1996 - April 2000

4 **Prof. Dr Gérard Druesne** (FR), May 2000 - October 2007

5 **Prof. Dr Marga Pröhl** (DE), November 2007 - present

(*) **Jan Voskamp** (NL), Secretary-General of EIPA's Board of Governors has been the DG *ad interim* from December 1995 until 15 April 1996.

EIPA Board of Governors

Situation on 1 July 2011

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Président

Mr Henning CHRISTOPHERSEN
Former Vice-President of the European Commission

Vice Chairman
Vice-président

M. Pierre NEYENS
Premier Conseiller de Gouvernement
Ministère de la Fonction Publique et de la Réforme administrative

Secretary General
Secrétaire général

Mr Berend-Jan baron VAN VOORST TOT VOORST
Former Queen's Commissioner for the Province of Limburg

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	N.N.	N.N.

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Professor

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