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EIPA's Headquarters  
Maastricht (NL)



European Documentation  
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Alexis de Tocqueville  
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# About EIPASCOPE

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

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

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## EIPASCOPE dans les grandes lignes

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

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# European Public Procurement Reform: Main Innovations in the Public Sector Directive – A Preliminary Assessment



By **Rita Beuter**, Expert, Head of Unit “European Policies” – EIPA Maastricht

The first concrete result of the reform of the European public procurement system has been achieved with the entry into force of the “Legislative Package” in April 2004. This article briefly covers the *raison d’être* of the procurement reform, before looking at the overall new design and objectives of the public sector directive. It examines specific key innovative aspects and looks at their merits and possible drawbacks. It argues that most of the changes to the procurement rules are to be evaluated positively, but further action and guidance are required in specific areas. Moreover, materialisation of the potential benefits depends crucially on effective implementation by the Member States.

## Introduction

The first concrete result of the rather long process of reforming the European public procurement system has been achieved with the entry into force of the so-called “Legislative Package” in April 2004, consisting of two new directives: Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (public sector directive) and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (utilities directive).<sup>1</sup> This reform process has not been without difficulties. Starting in 1996 with the Green Paper and the initial Commission proposal in May 2000, the Council and the European Parliament reached an agreement in the Conciliation Committee in December 2003 and the package was finally endorsed by the Council and the Parliament at the beginning of 2004. Member States are required to implement the two new directives by 31 January 2006.<sup>2</sup>

Public procurement is a very significant area of public spending and it is estimated that the size of public procurement in the EU amounts to more than €1500 billion a year, representing 16% of the EU’s GDP. This figure includes all purchases of goods, services and public works by the public sector and public utilities. It includes

procurement not regulated by the EU directives, i.e. procurement contracts of lower value than the thresholds set in the directives and those defence contracts which are excluded from the scope of the directive on the basis of national security. But even if one excludes these areas falling outside the scope of the directives, it is obvious that the procurement market in the EU is economically significant. In addition, the European rules do not only apply to the EU but also to the European Economic Area.

EU rules ensure the proper functioning of the Internal Market. Discriminatory procurement practices are considered as a technical barrier to trade, undermining the fundamental provisions of the Internal Market: the free movement of goods, the freedom of establishment and freedom to provide services. For example, a technical specification which refers only to a national standard can be considered as a measure having equivalent effect to a quantitative restriction, prohibiting market access. Besides the Internal Market rules, Article 12 of the Treaty establishing the European Community (TEC), applies, which prohibits discrimination on grounds of nationality.

Prior to the creation of the Internal Market, contracting authorities were mainly favouring domestic suppliers, which was not only incompatible with the Treaty but also had negative economic effects for the European economies and European competitiveness. It was assumed that a

liberalisation of public procurement in Member States would result in increased competition for public contracts and a reduction in prices paid by the contracting authorities. The potential benefits of greater transparency and an increased openness of public contracts were presented in the Cecchini report, mainly as savings in public expenditure and competitive and restructuring effects for European industry. The savings for contracting authorities were to be achieved through enhanced market access for foreign products to domestic markets and the pressure on domestic industry to lower their prices, resulting in a convergence of prices.<sup>3</sup>

A recent study on the impact of the Internal Market on the performance of public procurement markets over the last 10 years demonstrates that the directives have increased transparency and competition. According to the Commission's study, which is using new indicators, the EU procurement directives have increased direct and – in particular – indirect cross-border procurement and reduced by about 34% the prices paid by public authorities for goods and services.<sup>4</sup> According to the Commission, a 5% cost reduction, resulting from more competitive and efficient public procurement markets would save over €70 billion.

As indicated above, the reform of European procurement policy started in 1996 with the Green Paper. Identifying the problems in the procurement area, it became obvious that some Member States failed to implement all directives, or failed to implement them correctly. The majority of the contracting authorities were not complying with the rules, mainly advertising and transparency requirements. The legal framework was considered to be too complex, with different rules applying for each type of procurement (supplies, services, works) and contracting authorities argued that the procedures were too rigid for complex procurement or involved high administrative costs.

Some of these problems have been addressed in the Legislative Package. The length and complexity of this reform process can be best explained by reference to different philosophies on procurement: the economic approach from the Commission concentrating on value for money in purchasing and the promotion of a competitive European supplier base, versus the approach by the European Parliament to use procurement rather as a tool for other policies, such as social policy.

This article limits itself to highlighting and discussing the main changes in the public sector directive. It does not address the new provisions in the utilities directive. It looks at the overall new design and objectives of the directive and identifies the key innovative areas in the procurement process, assessing their potential benefit and possible practical implications. By way of conclusion it will raise some implementation issues in relation to the *à la carte* provisions and express concern as to whether Member States will have the new provisions in place by the required deadline.

### Overall objectives of the changes

The new directive aims at simplification, increased flexibility and modernisation: simplification in terms of reducing the complexity of the legal framework, flexibility in terms of reducing the rigidity of the procedures, and modernisation in terms of adapting legislation to the changing economic environment and the use of electronic procedures and instruments.

Furthermore, public procurement does not operate in a vacuum and European procurement policy has been influenced by Treaty changes and political developments:

mainly Article 6 TEC which states that environmental protection requirements must be integrated into the definition and implementation of Community policies, and the endorsement of a sustainable development strategy by several European Councils, emphasising that economic, social and environmental policies are mutually reinforcing. This is clearly reflected in the directive:

"This directive therefore

clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts".<sup>5</sup>

As explained in the initial proposal from the Commission the objective is to simplify, clarify and restructure the provisions.

In terms of simplification, the new directive merges the previous three directives for the award of public supplies, works and services contracts into one directive and reduces the number of articles. The preamble provides relevant guidance for further interpretation of the articles and the "rules on public contracts" are restructured in such a way as to follow an award procedure and to make it more user-friendly. Annexes have been updated as to the coverage of the contracting authorities, yet these lists are neither exhaustive nor binding. Certain procedural inconsistencies between the former three directives have been removed and the thresholds above which the directive applies are expressed in euro.

In terms of clarification, the new directive integrates the considerable and increasing jurisprudence of the European Court of Justice (ECJ) as it has developed over recent years in the field of public procurement. This relates particularly to principles of the Treaty applying to public contracts and the use of secondary policy objectives such as environmental and social considerations in the award of public contracts.

The objective of increased flexibility is addressed in the directive via the introduction of new procedures and more flexible ways for contracting authorities to define the purpose of contracts. Modernisation of the procurement regime is being tackled via the introduction of electronic means, tools and procedures.

The main question is, however, how these principles need to be interpreted for those areas not regulated or only partially governed by the procurement directives.

## Specific provisions and changes, their merits and possible drawbacks<sup>6</sup>

### The principles of the Treaty

Reflecting ECJ case law, the directive states in a recital that contracts awarded by authorities in the Member States are governed by the principles of the Treaty (freedom of movements of goods, freedom of establishment, freedom to provide services) and the principles deriving therefrom: equal treatment, non-discrimination, mutual recognition, proportionality and transparency. The objective of the directive is to draw up coordinating provisions for the award of public contracts above certain thresholds which are based on these principles in order "... to ensure the effects of them and to guarantee the opening-up of public procurement to competition".

According to the directive the award of public contracts is subject to the principles of the Treaty. The main question is, however, how these principles need to be interpreted for those areas not regulated or only partially governed by the procurement directives, such as contracts below the threshold value, services concessions and residual services. No guidance on the actual application and interpretation of the Treaty principles is provided for these cases in the directive. In addition, the jurisprudence of the ECJ has not offered sufficient guidance on the concrete and practical implications so far. This is of particular relevance as to the exact interpretation of the transparency obligation, requiring a degree of advertising. There are several cases pending before the ECJ and clarification is required, as contracting authorities are facing considerable uncertainty as to when and where they would need to advertise for those contracts falling outside the scope of the directive.<sup>7</sup>

Under the directive, contracting authorities are required to treat economic operators equally and non-discriminately and they must act in a transparent way.<sup>8</sup>

### Flexibilities – New procedure and provisions

In order to provide flexibility and take account of the different circumstances and developments in the Member States, the directive provides for an *à la carte* implementation of some of the new key provisions. Member States may decide whether their contracting authorities may use framework agreements, central purchasing bodies, dynamic purchasing systems, electronic auctions or the competitive dialogue procedure.<sup>9</sup>

I will first cover the competitive dialogue, framework agreements and central purchasing bodies and other new provisions relating to technical specifications and the selection and award criteria, and then discuss the dynamic purchasing systems and electronic auctions under the electronic procurement heading.

**To what extent the new procedure, the competitive dialogue procedure, will provide for more flexibility and will be used for complex contracts remains to be seen.**

- Competitive dialogue procedure
- Under the three public sector directives, a dialogue between the contracting authority and the economic operator is not allowed in open or restricted procedures. In open procedures any interested economic operator can submit a bid. With restricted procedures, any economic operator may request to participate, but only those which have been short-listed by the contracting authority are invited to submit a bid. Use of negotiated procedures with prior publication is only permitted in specific cases. Practice has demonstrated, however, that these procedures are not sufficient for the award of complex contracts. To what extent the new procedure, the competitive dialogue procedure, will provide for more flexibility and will be used for complex contracts remains to be seen. Recourse to the competitive dialogue<sup>10</sup> is only possible if it is a "particularly complex contract" with the only permissible award criterion being the economically most advantageous tender. "Particularly complex" means that the contracting authority is not objectively

- able to define the technical terms for satisfying its needs or objectives, and/or the contracting authority is not objectively able to specify the legal and/or financial make-up of a project. Examples are integrated transport infrastructure projects, large IT projects or projects in the health or education sectors. This procedure has been much inspired by the Private Finance Initiative (PFI) in the UK which involves contracts with a complex mix of capital, development and long-term service delivery, and the need to finance large infrastructure projects such as Trans-European Networks (TENs).

- The competitive dialogue procedure is a mixture of the restricted and negotiated procedure with provisions on how the negotiations should be structured. The burden of proof that the contract in question is particularly complex rests with the contracting authority. The new procedure has been welcomed both by the contracting authorities and the economic operators, yet several question marks remain as to the definition of a "complex contract", the complexity of the procedure itself, the difference between it and the negotiated procedure with prior publication, its suitability for complex Public Private Partnerships (PPPs) and the issue of post-tender fine-tuning/negotiations.<sup>11</sup> The Commission will come forward with an explanatory document to clarify the provisions of this new procedure.

- Framework agreements
- The directive introduces for the first time explicit provisions for the use and operation of framework agreements. In the past, framework agreements were only covered in the utilities directive. Framework agreements offer flexibility and are used when contracting authorities do not know the time and quantity of their purchases, or when market prices change. They are used for repetitive purchases or for example for the procurement of translation services, training and consultancy services and the purchase of IT equipment.
- With a framework agreement, contracting authorities are

not obliged to apply the normal procedures under the directive for each contract, which results in savings in terms of time and costs.

According to the directive, "a framework agreement is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged".<sup>12</sup> Framework agreements are limited to four years; only under "exceptional circumstances" can they be concluded for a longer period if this is required by the subject of the agreement. Contracting authorities are obliged not to use framework agreements in such a way as to prevent, restrict or distort competition. The framework agreement itself must be concluded in compliance with the rules of the directive. A distinction is made between contracts which are based on a framework agreement in which all terms are laid down, and those in which not all terms are set out in the framework agreement. In the first case, an agreement can be concluded with one or several economic operators (a minimum of three). In the latter case, where not all terms are set out, a mini round of competition between the parties to the agreement is required. The detailed procedure for organising this mini competition is explained. The inclusion of framework agreements in the directive is a positive development. Since, in practice, framework agreements are used frequently, their inclusion in the directive provides legal certainty to the contracting authorities and the economic operators.

- Central purchasing bodies

The directive provides legal certainty for the use of central purchasing bodies, which is already practice in several Member States, such as CONSIP in Italy, OGCbuying solutions in the UK and the Bundesbeschaffungsamt in Germany. A central purchasing body is defined as "...a contracting authority which acquires supplies and/or services intended for contracting authorities, or awards public contracts or concludes framework agreements for works, supplies or services intended for contracting authorities".<sup>13</sup> Contracting authorities are deemed to have complied with the directive insofar as the central purchasing body has complied with it. Central purchasing bodies may become increasingly important for local authorities who may not have professional procurement expertise.

- Technical specifications

The changes to technical specifications are innovative, inspired by procurement practice and case law. Technical specifications define the required characteristics of a product or service, quality, environmental performance, safety, testing, packaging, labelling, etc. in a contract document<sup>14</sup> and should not have the effect of creating obstacles to the opening up of procurement to competition. Technical specifications are to be defined either by reference to national standards transposing European standards,

technical approvals, international standards, etc. or – in the absence of those – to national standards, technical approvals, etc. Each reference must be accompanied by "or equivalent". A higher degree of flexibility is given in comparison to the current provisions, mainly with the introduction of performance or functional requirements and the possibility of including environmental characteristics if related to the subject matter of the contract. The directive also offers the possibility of combining the reference to standards approach and performance/functional requirements approach. It encourages contracting authorities to lay down technical specifications in such a way as to be of benefit to all users, in particular, disabled people. As the development of European standards is lagging behind technological development and as contracting authorities may in practice rely on too narrow specifications, not being aware of what the market is able to offer, these changes to specifications will stimulate more innovative solutions and technological development. Furthermore, they strengthen the possibility of including environmental and social considerations in procurement.

- Selection and award criteria

The directive requires that any candidate or tenderer who has been the subject of a conviction for participating in criminal activities (criminal organisation, corruption, fraud to the detriment of the financial interests of the European Communities, money laundering) must be excluded from participation in a public contract. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgement. Member States are required to specify and implement these provisions concerning the personal situation of the economic operator in accordance with their national law. An economic operator can also be excluded for non-observance of national law, for example in case of non-respect of environmental legislation, employment protection provisions or working conditions in force in a Member State.

The main change to the award criteria, the explicit listing of environmental considerations, has been inspired by the judgements of the ECJ. So-called non-economic criteria can be used as award criteria insofar as they are objective and linked to the subject matter of the contract, are

expressly mentioned in the tender documents and comply with the fundamental principles of the Treaty.

Contracting authorities are also required to indicate the criteria for the award of a contract and the relative weighting of each criterion in the contract notice or tender documents. In exceptional cases, if weighting is not possible for objective reasons, the contracting authorities must list the criteria in descending order of importance. These changes are positive for economic operators since they are able to concentrate on the most relevant requirements when preparing a tender. It is a safeguard against arbitrary decisions, although contracting authorities may feel restricted.

## The changes to technical specifications are innovative, inspired by procurement practice and case law.

## Modernisation – Electronic procurement

The directive provides the legal basis for carrying out electronic procurement at European level. It provides a definition of “electronic means” and their use, and covers electronic communications and the new tools available, such as dynamic purchasing systems and electronic auctions. The directive does not intend to regulate all aspects of electronic procurement as this is an area which undergoes constant development and technological change, and indicates that other electronic purchasing may be used as long as it complies with the rules of the directive and principles of equal treatment, non-discrimination and transparency.

The Commission expects that electronic procurement will lead to considerable economic benefits in terms of time and financial savings. When fully implemented, electronic procurement is expected to contribute to annual savings amounting to €19 billion by 2010.<sup>15</sup> It is also recognised that there are potential risks with the introduction of electronic procurement, which could lead to new legal, technical and organisational barriers, resulting in considerable market fragmentation. Therefore, in December 2004 the Commission issued an Action Plan on the implementation of the electronic procurement provisions and in July 2005 a working document was published in order to assist Member States in the coherent implementation of the new legal framework for electronic means.<sup>16</sup>

### • Electronic means and communication

The use of electronic means in the procurement process is put on an equal footing with traditional means of communication. The directive provides that the tools for communicating via electronic means and their technical characteristics must be non-discriminatory, generally available and interoperable with information and communication technology products in general use.<sup>17</sup>

The directive provides for a reduction of timescales when notices are compiled and transmitted electronically and when contract documents are made available electronically from the date of publication of the notice. If notices are submitted electronically to the Office for Official Publications of the European Communities in Luxembourg,

- notices are published on Tenders Electronic Daily (TED)
- within five days instead of 12 days.

**So-called non-economic criteria can be used as award criteria insofar as they are objective and linked to the subject matter of the contract, are expressly mentioned in the tender documents and comply with the fundamental principles of the Treaty.**

If contract documents are made available electronically from the start, an additional reduction of up to five days for the receipt of tenders and for the receipt of request to participate is possible. In the meantime, the regulation on the new standard forms<sup>18</sup> for procurement notices (prior information notices, contract notices and contract award notices) has entered into force. The forms integrate the new provisions of the directive and are available online at the SIMAP website (<http://simap.eu.int>).

The setting-up of buyer profiles is encouraged. Contracting authorities may like to publish prior in-

- formation notices, information on ongoing invitations to tender, contracts awarded, past procurement procedures, and general information in their buyer profile on the Internet.<sup>19</sup>

- Dynamic purchasing systems
- A dynamic purchasing system is defined as “... a completely electronic process for making commonly used purchases ... which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria...”<sup>20</sup>

- Dynamic purchasing systems are not defined as a new procedure but as a new process/system which needs to be carried out exclusively by electronic means. Contracting authorities must allow admission to the system throughout the entire period for any economic operator, but it may not last for more than four years, except in duly justified cases.
- There are specific procedural rules which are not covered

here. Suffice it to say, dynamic purchasing systems have not been utilised by procurement practitioners so far. They are similar to a qualification system, intended for repetitive purchasing and commonly used purchasing, and are free of charge. Practitioners, however, wonder about the usefulness of dynamic purchasing systems and

**The inclusion of electronic auctions in the European procurement rules is a valuable instrument for current and future procurement practice.**

- the transactional costs and administrative burden involved for the contracting authorities. If applied in practice, it may be more appropriate to use this system for niche markets and not for commonly used purchases.

- Electronic auctions

The use of electronic auctions has been practiced in some Member States. The directive provides legal certainty and specific rules and guidance for their application at European level. It is an instrument which may be used for the evaluation of tenders, but only for those aspects which can be evaluated automatically. These can be either the price or features which are quantifiable and can be expressed in numbers or percentages, for example delivery time. Evaluations of the tenders need to be carried out in accordance with the award criteria prior to the start of an electronic auction. The use of electronic auctions is only allowed for works, supplies or services contracts for which the specifications can be determined with precision and where it is possible to establish the respective ranking of tenderers at any stage of the auction. In addition, there are detailed rules on the running of such an auction and communications with tenderers.<sup>21</sup>

The purchase of "intellectual" works or services through electronic auctions is explicitly excluded.

The inclusion of electronic auctions in the European procurement rules is a valuable instrument for current and future procurement practice. Some lessons as to the requirements for the use of electronic auctions may be learnt from the private sector: the existence of competitive markets, training, clear specifications and clear bidding rules.

The experience of electronic auctions in the public sector is more recent. Experience in the UK demonstrates that the projected savings can be considerable. A specific case was an online auction for IT hardware (desktop PCs and laptops) for a group of National Health Service Trusts. According to the Office of Government Commerce the achieved projected savings were worth nearly 30% of purchasing costs.

On the one hand, electronic auctions are a useful tool for bringing prices down and delivering significant financial benefits, on the other hand, they may only be suitable for the procurement of certain types of products and services.<sup>22</sup>

### *Concluding Remarks*

Most of the changes to the procurement rules are to be evaluated positively. Legal certainty is given to contracting authorities for the use of framework agreements, central purchasing bodies and the use of electronic procurement. More flexibility and innovation will be achieved through changes to technical specifications and the possibilities for incorporating environmental and social considerations into procurement. The new competitive dialogue procedure will need to demonstrate its value in practice and will require further guidance and interpretation. Electronic procurement is introduced

## It is now up to the Member States to comply with the public sector and utilities directives by 31 January 2006.

and the potential savings to the contracting authorities are estimated to be considerable, if the procurement process itself is streamlined and not simply made electronic. Guidance and legal certainty are required as to the actual application and interpretation of the Treaty principles for those areas falling outside the scope of the directive.

It is now up to the Member States to comply with the public sector and utilities directives by 31 January 2006. As indicated above, there is some flexibility for transposition, as Member States are free to decide whether they allow the use of some of the new provisions. Some doubt may be expressed as to whether Member States will have the new regime in place by the required deadline. However, when implemented, the changes in the public sector directive will be a significant step forward in the overall reform of the European procurement system. ::

## NOTES

- <sup>1</sup> 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.
- <sup>2</sup> Green Paper "Public Procurement in the European Union: Exploring the Way Forward" adopted by the Commission on 27 November 1996, COM (96) 583; Commission communication "Public Procurement in the European Union" COM (98) 143 of 11 March 1998; Commission proposal concerning the Public Sector COM (2000) 275 of 10 May 2000.
- <sup>3</sup> Commission of the EC, Basic Findings, Vol. 5, Part A, The "Cost of Non-Europe" in Public Sector Procurement (1988).
- <sup>4</sup> European Commission, "Report on the functioning of public procurement markets in the EU", 3 February 2004.
- <sup>5</sup> Recital 5.
- <sup>6</sup> For a full account of the changes in the public sector and utilities directive see Sue Arrowsmith, "An Assessment of the New Legislative Package on Public Procurement", *Common Market Law Review*, Volume 41, (2004) pp. 1277-1325.
- <sup>7</sup> Regarding contracts below the threshold values, there is a case pending before the ECJ (Case C-195/04 *Commission v Finland, Senaattikiinteistö*). There are several judgements dealing with public service concessions which also fall outside the scope of the procurement directives (C-324/98 *Telaustria*; C-275/98 *Unifon Scandinavia*) and the most recent case dealing with this subject, *Coname* (C-231/03). Regarding Annex 1 B services there are several pending cases: C-507/03 and C-532/03 (Commission versus Ireland).
- <sup>8</sup> Article 2 Principles of awarding contracts.
- <sup>9</sup> Recital 16.
- <sup>10</sup> The main article dealing with the competitive dialogue is Article 29, however, one should also examine recital 31 and the definition in Article 1 (11) (c).
- <sup>11</sup> For a critical analysis of the competitive dialogue see Adrian Brown, "The Impact of the New Procurement Directive on Large Public Infrastructure Projects: Competitive Dialogue or Better the Devil you Know?", *Public Procurement Law Review*, Volume 13, Issue 4, (2004) pp. 160-177.
- <sup>12</sup> Article 1 (5), see in particular Article 32 and recital 11.
- <sup>13</sup> Article 1 (10), see in particular Article 11 and recital 15.
- <sup>14</sup> Annex VI provides a definition of certain technical specifications in case of public works contracts and public supply and service contracts and definitions on standards, European technical approvals, common technical specifications and technical references.
- <sup>15</sup> European Commission, "Cutting public procurement costs in the EU", *Single Market News*, No. 38 August 2005.
- <sup>16</sup> European Commission, "Action plan for the implementation of the legal framework for electronic procurement", 13 December 2004 and Commission Staff Working Document, "Requirements for conducting public procurement using electronic means under the new public procurement Directives 2004/18/EC and 2004/17/EC", SEC(2005) 959 of 8 July 2005.
- <sup>17</sup> Article 42 (4). There are also specific provisions relating to the devices for electronic transmission and receipt of tenders and receipt of requests to participate Article 42 (5) and Annex X.
- <sup>18</sup> Commission Regulation (EC) No. 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council. Official Journal of the European Union, L 257 of 1 October 2005.
- <sup>19</sup> See Annex VIII and Article 35 (1) and 36 (5).
- <sup>20</sup> Article 1(6), the main provisions are in Article 33, see also recital 13.
- <sup>21</sup> The definition of an electronic auction is provided in Article 1(7), the main provisions are in Article 54, see also recital 14.
- <sup>22</sup> For a comparative study on the use of electronic reverse auctions and their benefits and possible disadvantages see United Nations Commission on International Trade Law, "Comparative study of practical experience with the use of electronic (reverse) auctions in public procurement", 16 February 2005, A/CN.9/WG.I/WP.35.

## RELATED ACTIVITIES AT EIPA

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## *The situation and legal background of 'Green Procurement' in the EU*

By **Martin Unfried**, Senior Lecturer – EIPA Maastricht

For environmentally-minded people, it is always nice to be reminded of Article 6 of the EC Treaty: environmental aspects must be integrated into all different policy areas in the EU. However, at the moment, it seems that 'greening' of different policies is not very high on the political agenda. Given the various problems concerning employment, growth and national budgets, environmental standards are being questioned with respect to their impact on other policies, rather than the other way round. Interestingly, this refers to some extent more to the superficialities of political marketing than to real developments in the EU. It is also true that many initiatives on environmental policy integration that were started during the 90s are now reaching the point where they become relevant for many administrations. 'Green public procurement' is a case in point. Today, the idea of stimulating eco-innovation by sound purchasing practises is a well established concept. This article will describe the origins of green public procurement, the way it has been established and its present status at EU level and in the Member States.

### **Introduction**

It is very unusual that an environmental association promotes a car. In a recent press release, the Dutch NGO Stichting Natuur en Milieu asked the national government to follow the example of eight Ministers of the British Government who apparently changed their Jaguars for environmentally friendly hybrid cars.<sup>1</sup> What seems to be in the first place a rather smart NGO press campaign is in line with official governmental objectives in many Member States of the EU. It is a well accepted approach to stimulate eco-innovation by sound purchasing practises. This is also known by the label 'green public procurement'. So, green purchasing is about setting examples and influencing the market place. According to figures given by the European Commission, public authorities are major consumers in Europe, spending some 16% of the EU's Gross Domestic Product. The assumption is that their procurement practices matter. By using their purchasing power to opt for goods and services that respect the environment, they could make an important contribution towards sustainable development.<sup>2</sup> This included in 2001, for example, 2.8 million computers and monitors purchased by public authorities in the European Union.

In Scandinavian countries, local authorities started decades ago to use public procurement as an active tool to

stimulate the production of 'environmentally friendly' products. It started with an environmental standard for paper that is still one of the most prominent examples. Today 'green' procurement is no longer limited to a few products, but refers to all kinds of goods and services ranging from the procurement of tomatoes for canteens to the timber for new windows in office buildings. New products such as 'green electricity' and the stimulation of sustainable public transport are also included. According to the international organisation ICLEI (Local Governments for Sustainability) switching public demand away from the conventional EU mix of electricity to green electricity would save some 60 million tonnes of greenhouse gases (CO<sup>2</sup>-equivalents) alone, equating to 18% of the EU's Kyoto commitments.<sup>3</sup>

This article will firstly describe the history of green procurement at the international level, related to initiatives on sustainable development. Then the political and legal framework at EU level will be described. In section two, recent figures will be presented on the practise of public procurement at the Member State level. Obstacles and important positive aspects that hinder or stimulate green procurement practices at national level will be discussed. The third section will present the Commission's view on the possibilities for public purchasers described in the handbook on Green Procurement as a sort of interpretation of recent



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case law and the new Directives. In the fourth section, other recent EU policies will be described that have an impact on the development of green public procurement. Finally, the article will discuss whether the new legal and political situation in the EU and developments at national level might lead to a new momentum for green procurement initiatives.

### 1. History at the international and EU level

Agenda 21, a 600-page document adopted in the framework of the Rio Conference on Environment and Development in 1992, has led to many local initiatives on sustainable development. It also makes suggestions on the application of policies in various areas of resource management. Section I, Chapter 4 is concerned with production and consumption and sets the objective of promoting more sustainable patterns of consumption and production.<sup>4</sup> Thus, Rio also put 'green public procurement' as a new instrument on the international environmental policy agenda. Public procurement was especially mentioned in the follow-up Plan of Implementation of the World Summit on Sustainable Development, which stated that procurement policies should encourage development and diffusion of environmentally sound goods and services.<sup>5</sup> Until today, many initiatives have been developed at the UN and OECD level.

In the EC/EU, the 5<sup>th</sup> Environmental Action Programme described in detail the potential of consumer power to promote ecologically sound manufacturing and processing.<sup>6</sup> The 6<sup>th</sup> Environmental Action Programme made the management of natural resources a key area, which was politically

addressed in the follow up through different instruments. In particular, the 2003 Communication on Integrated Product Policy underlined the importance of green public procurement.<sup>7</sup> However, the former legal framework (Directives 93/36/EEC, 93/37/EEC, 92/50/EEC and 93/38/EEC) did not contain any reference to the possibility of integrating environmental considerations into a public procurement procedure. Barth and Fischer described the basic dilemma: the two principles of modern public procurement are that all bidders are granted equal opportunities and that public money is spent with regard to budgetary restraints. Therefore the integration of environmental or other aspects (e.g. social) would not necessarily reflect the guiding principles of procurement law.<sup>8</sup> In practice, administrations at all levels have to some extent been reluctant with respect to green procurement, in order not to violate the already 'complex' EU regulations. In Sweden for instance, the unclear EU framework was until recently seen as one of the biggest obstacles to green procurement.<sup>9</sup> This of course was not supporting the official policy objectives laid down in the 5<sup>th</sup> and 6<sup>th</sup> Action Programmes. Official EU environmental policy especially emphasised the need to operate beyond the traditional 'command and control' instruments with supplementary instruments in environmental policy, such as taxes, labeling, emission trading and eco audit. In this context, green procurement has been seen as an important environmental tool in order to stimulate environmentally friendly consumption and production patterns.<sup>10</sup>

However, until 2004 the Commission as a whole was rather reluctant to promote the idea of green procurement.<sup>11</sup> In its proposal for a new Directive on public procurement<sup>12</sup> the Commission did not elaborate and support green

procurement in the text.<sup>13</sup> Given the obvious uncertainties concerning the legal background, the Commission published in 2001 an interpretative communication<sup>14</sup> with the intention of clarifying the potential for purchasers to integrate environmental considerations. This did not, however, immediately change the complex legal situation and was a rather weak signal that the Commission supported the concept in general. A stronger push for green procurement was given by the Court of Justice in 2002 with the judgment in the 'Helsinki bus case'.<sup>15</sup> The Court of Justice stated that a purchasing decision could also include value for public health and the environment. It was the European Parliament that followed this line and fought for green procurement in the negotiation of the new Directive on public procurement. The Commission modified its proposal in response to amendments proposed by the Parliament that clarified how environmental and social concerns can be taken into consideration when assessing tenders at the contract award stage. The Council accepted the main changes in its Common Position.<sup>16</sup> In the final conciliation, it was stated that the Directive is based

on the principle of awarding contracts to the most economically advantageous tender. However, the contracting authorities may apply environmental and social criteria in a transparent manner in line with the case-law of the Court of Justice.<sup>17</sup> So, consideration of environmental criteria is mentioned in the Directives and the jurisprudence that was positive regarding the practices of some pioneer authorities has been consolidated in the text.<sup>18</sup> Also different from the Commission's initial proposal was the mention that eco-labels and environmental management schemes could play an important role for the purchasing authorities.

The old legislative framework was to some extent a legal, but also probably a psychological and political, problem for many local and regional purchasers. The uncertainty *vis-à-vis* Brussels had also to do with the lack of visible political support. This was changed with the new Directives adopted on 31 March 2004. The European Commission signalled political support in 2004, with the presentation of a handbook on environmental public procurement (Buying Green!) that describes in detail the possibilities for purchasers against the new legislative background. Some of the main statements of the handbook will be presented below in section 3.<sup>19</sup>

## 2. Green public procurement in the Member States

In parallel to international developments, front-runner governments started to develop coherent policies in the field at the national and regional level. Denmark can be seen as an example of early action. In 1992, green procurement was integrated in the national environmental act; in 1994 the government developed an action plan;

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and in 1998 voluntary agreements were signed by counties and municipalities.<sup>20</sup> In the Netherlands, a national campaign starting in 1999 has led – according to government figures – to 23% of green public procurement at all levels of government. The government has set an objective of 50% green purchasing by the year 2010.<sup>21</sup> In many progressive countries, the first steps were not taken by national administrations but at the local and regional level. This is primarily because of the importance of local purchasing practices. According to estimates, local authorities account for 60%-70% of all procurement of goods and services in the EU.<sup>22</sup> Thus, local authorities are

major stakeholders in the process. In Sweden, for instance, a number of environmentally-concerned municipalities and counties have been at the forefront. In the context of local initiatives, the most progressive supporter of green procurement has probably been the previously mentioned organisation ICLEI.<sup>23</sup> Under its umbrella a network of professionals in the field has been established (Big Net, The buy it Green Network), in order to exchange know-how and broaden expertise. The

last big international conference of the network was hosted in November 2005 inter alia by the British Presidency of the Council of the EU (Department of Environment, Food and Rural Affairs) in Cambridge. ICLEI has also started the Procura+ Campaign that has set clear objectives and sophisticated criteria for participating administrations for a small number of products and services.<sup>24</sup>

So, there are many front-runners and a very busy international network of purchasers. But to what extent is green procurement today really practiced in all the Member States of the EU? DG Environment has commissioned the development of a measurement tool in order to measure the current level of green procurement. In October 2005, a first status report on the project was published. According to the study, there is a group of seven countries that already have a significant amount of green public procurement: Austria, Denmark, Finland, Germany, the Netherlands, Sweden and the UK. There, 40%-70 % of all tenders published on TED (Tender Electronic Daily<sup>25</sup>) during the past year included environmental criteria. In the other 18 countries this figure was below 30%.<sup>26</sup> What are the most important factors for the application of green procurement? According to the findings the following aspects play an important role.

- There are strong political drivers and/or national guidelines.
- Green procurement has been approached from a national programme and has been addressed for a number of years.
- All successful Member States have information resources and websites (often containing product related information) available for sector staff.
- Most of the successful Member States (60%) use

innovative tools such as life-cycle thinking, functional specifications or contract variants, compared with 45% from other countries.

- 33% of the successful countries have management systems in operation compared with 13% in other countries.<sup>27</sup>

These latest results show that green procurement is both a question of political commitment and administrative capacities. Strong political initiatives and national programmes have led to administrative structures and procurement routines that incorporate green public procurement aspects.

What have been on the other hand the problems and obstacles for the greening of public procurement? In all Member States the main problem is the fact that environmentally friendly products are perceived as more expensive. Another important obstacle is a lack of knowledge about the environment and how to develop environmental criteria for products and services. The lack of management support and administrative resources were also found to be a major problem, as well as the lack of practical tools and information and training for procurement officers.<sup>28</sup>

In the course of the study, the quality of environmental criteria used in the tenders was also analysed. It was found that many environmental criteria were not well defined, which was felt to be connected to insufficient training in this area. If well-defined criteria were found, they were related to certain product groups where clear environmental criteria are already available on the market. The average of all Member States shows that most of the solid green criteria are found within the product group of paper, printed matter and printing services (recycled content, not bleached). The second most important group is the construction sector (timber, energy use, harmful matter, water efficiency) and the third office machinery (energy use, recycling).<sup>29</sup> It is not surprising that the authors recommend following the example of the seven 'green' front-runners. Their examples show that aspirational targets are feasible. In particular, products where solid environmental standards are already developed would be appropriate to be integrated into national programmes on green public procurement. As a second point of departure, the study emphasises the role of information, communication and practical training. These basic needs are, for instance, already reflected in the European Commission's handbook on green procurement.

### 3. The Commission's view on what is possible

It has been said in the previous sections that progressive administrations were already operating in the field of green procurement under the old legal framework. The latest study on the situation in the Member States has also shown that green procurement is very much about awareness and training, with respect to the market for environmental goods and services and the definition of selection criteria. Today, local, regional or national authorities can no longer hide behind the 'difficult' EU legislative procurement framework. The meaning and scope given by the Directives is no longer unclear. The European Commission has described its point of view in detail in the handbook on Green Procurement.<sup>30</sup> The following is a brief summary of the most important recommendations given by the Commission:

- Authorities have greater freedom when defining the



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subject matter of the contract, allowing ample scope for including environmental considerations (p.10).

- The underlying technical specifications of eco-labels may be useful for the drafting of specifications. The relevance of the different label schemes is described in detail. Importantly, tenderers do not necessarily have to be registered under any eco-scheme to fulfil the specifications (p.19)
- It is also possible to specify specific materials or environmental production methods if relevant. According to the Commission, the two new Directives (2004/17/EC and 2004/18/EC) explicitly allow choosing between specifications based on technical standards and performance based requirements. An example: if office buildings should be kept at a certain temperature, this can be achieved by detailed specifications for the heating system. Alternatively, it could be stated that the temperature should be 20 degrees, leaving the question of the heating system to the supplier (p.18)
- The Commission also emphasises the possibility of working with 'green variants'. This means establishing a minimal set of technical specifications for a product which will apply to both a neutral offer and a green variant. This allows the authority to compare offers on

the basis of the same standard requirements (p.19).

- The new Directives also explicitly recognise that environmental management certificates can serve as a possible means of proof for companies to demonstrate their technical capacity to perform environmental management measures that are important for the performance of a contract. However, the authority should also accept all other evidence of this technical capacity (p.31).

#### 4. Other important factors for green procurement

One important result of the latest study has concerned the obstacle that many officials associate with green products – higher prices. To some extent this has proved to be a misconception. Research under the RELIEF project has shown that, in reality, while some green products indeed would cost more, many others would cost the same as non-green products, but generate savings in other areas, such as energy and water consumption, waste disposal costs and reduction of unnecessary purchasing.<sup>31</sup> It is also a question of whether or not the potential savings are taken into account and can play a relevant role in the procurement decisions. On the other hand, there is of course a dilemma of lower prices of non-environmentally friendly products that cannot be solved at the level of single authorities. The European Commission has only recently in its State Aid Action Plan again emphasised the aim of ensuring a full internalisation of environmental costs.<sup>32</sup> This also touches upon very sensitive national issues, such as state aid for different sources of energy, where very progressive steps are not likely in the near future. Related to the present lack of internalisation of environmental costs, the European Commission also recognises the need for environmentally friendly products and technologies to be financially supported. Consequently, the Commission is – according



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to the State Aid Action Plan – also ready to encourage eco-innovation and improvements in productivity through eco-efficiency where certain measures might also be exempted under the general block exemption from the obligation to notify the aid. That means that the new environmental aid guidelines that will be ready in the course of 2006 can be regarded as an important element in the framework of

green procurement.

A sustainable increase in green procurement will depend both on the reduction of subsidies for non-environmentally friendly production, and on active financial support for environmentally smart technologies.

Another important result of the latest study has been the relevance of solid green criteria. It was shown that the prominence and credibility of national eco-labels plays an important role in the pioneer countries. This indicates also that, at the EU level, future support for the promotion and development of eco-label schemes is a valid tool for green procurement. Today, there is a mix of public national, EU and private labels. There is still a lot to improve: for instance the number of categories under the EC eco-label (European flower) and under national labels have to be increased, since many new relevant green procurement products are not covered. Therefore, the complementary and supportive elements of both instruments, eco-label and green procurement, have to be streamlined.<sup>33</sup>

The work at EU level in the area of integrated product policy (where the Commission released a Communication in 2003) will also be very important.<sup>34</sup> Integrated Product Policy seeks to minimise the harmful effects of production, use or disposal by looking at all phases of a product's life-cycle and taking action where it is most effective. In pilot projects, this is at the moment being tested for several products. The idea is also to provide in this framework better website information on environmental criteria in order to provide corporate and public purchasers with background information on what criteria are relevant for a particular product.<sup>35</sup>

Finally, it is a political reality that any environmental instrument will be assessed today in order to know more about its impact on competitiveness. DG Environment of the European Commission and the Environment Council have frequently in the Lisbon framework supported the idea that public procurement procedures could indeed be a demand-driven stimulator for innovation, and there is also a strong link to research and development.<sup>36</sup> Green public procurement is therefore regarded as a key aspect of the EU's Environmental Technologies Action Plan. The Action Plan seeks not only to promote the development of environmentally sound technologies, but also to increase the EU's competitiveness.<sup>37</sup> The first review of the Plan in January 2005 identified the importance of action in the field, when it was stated that national action plans for green public procurement should be set up.<sup>38</sup>

#### 5. A strong push for green procurement?

Given the political support for 'green procurement' at the EU level and the changes made by the Directives, will there be a major push in the Member States in the near future? The expectations of stakeholders from SMEs are for instance that green procurement will have a new momentum in the EU.<sup>39</sup> Also environmental NGOs have been rather satisfied with the new Directives, recognising that they have strengthened the scope for considering not only environmental, but also social and ethical considerations.<sup>40</sup> The situation as shown in this article is definitely much better than in the past. However, today it is vital that these achievements are fully embraced by implementing authorities in the Member States. In fact, it will be very important how the Member States use the political and legal support coming from Brussels for their national and regional policies. By 31 January 2006, the Member States have to transpose the

## It was the European Parliament that followed this line and fought for green procurement in the negotiation of the new Directive on public procurement.



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two new Directives on public procurement into national legislation.<sup>41</sup> The present situation offers a good opportunity to fully incorporate the options described by the European Commission into the newly adopted national legislation.<sup>42</sup> This would also mean for instance that the objective of environmental policy integration was mentioned in national legal texts, making the link to the objectives of national sustainable development strategies or environmental plans. This must be at the political level supported by ambitious national objectives formulated in national action plans on green procurement. For all non-pioneer countries, the debate on the national transposition of the procurement rules could be used for national and regional campaigns to

spread the understanding of green procurement. The Green Procurement handbook of the Commission could be the stimulus for similar information tools in those Member States where these tools have not yet been developed. It has to be said, however, that in most of the Member States, due to economic and budgetary problems, environmental policy is not very high on the agenda. Nevertheless, procurement is an interesting test case of modern environmental policy: if we succeed in integrating the environmental dimension into purchasing decisions, we make a little move away from the 'end of the pipe' to the source of the environmental problems. ::

### NOTES

- <sup>1</sup> See press release Stichting Natuur en Milieu, 1.7. 2005: "Ministers lopen niet warm voor schone auto's".
- <sup>2</sup> See European Commission (2004): "Buying Green". A handbook on environmental public procurement, p5.
- <sup>3</sup> This figure is mentioned by ICLEI, Local Governments for Sustainability, at <http://www.iclei.org>.
- <sup>4</sup> United Nations Conference on Environment and Development, Brazil, 3-14 June 1992: Agenda 21 (<http://www.un.org>).
- <sup>5</sup> See European Commission, Green Public Procurement. Background. Short summary at <http://europa.eu.int/comm/environment/gpp/background.htm>.
- <sup>6</sup> See European Commission: "Towards Sustainability", *OJ*, 17.5.1993, p 138.
- <sup>7</sup> Other related initiatives are the Thematic Strategies on Natural Resources, on the Prevention and Recycling of Waste, and the Environmental Technology Action Plan. See Green Public Procurement. Background. At <http://europa.eu.int/comm/environment/gpp/background.htm#6eap>.
- <sup>8</sup> See Barth, Regine and Almut Fischer, "The European Regime on Green Public Procurement", in: Christoph Erdmenger, *Buying into the Environment*, 2003, p. 51.
- <sup>9</sup> See Ochoa et al, "Green purchases in practice: experiences and new approaches from the Pioneer Countries", in: Christoph Erdmenger, *Buying into the Environment*, 2003, p. 20-29.
- <sup>10</sup> Ibid.
- <sup>11</sup> See also Barth and Fischer, "The European Regime", p. 67.
- <sup>12</sup> See European Parliament Database Oeil. Fiche de Procédure. Commission Proposal COM(2000)275. Summary of the Common Position of the Council. (<http://www.europarl.eu.int/oeil/FindByProcnum.do?lang=2&procnum=COD/2000/0115>).
- <sup>13</sup> Barth and Fischer. "The European Regime", p. 67.
- <sup>14</sup> Commission, DG Internal Market, Commission Interpretative Communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement COM(2001)274.
- <sup>15</sup> In the Commission's initial proposal, COM(2001)275, environment characteristics are inter alia mentioned as award criteria in article 53.b but the meaning and value is not further clarified.
- <sup>16</sup> See European Parliament: "EP/Council: Conciliation committee, results", database Oeil. Fiche de procédure. Commission Proposal COM(2000)275.
- <sup>17</sup> Case C-513/99, ECJ 17 September 2002, *Concordia Bus Finland Oy Ab*. Under strict conditions the contracting authority is allowed to award a contract to the tenderer who submits the economically most advantageous tender taking into consideration ecological criteria such as the level of nitrogen oxide emissions or the noise level of the buses.
- <sup>18</sup> See European Parliament: "EP/Council: Conciliation committee, results", database Oeil. Fiche de procédure. Commission Proposal COM(2000)275.
- <sup>19</sup> Recitals refer to Article 6 ECT that stipulates the integration of environmental aspects into all policies.
- <sup>20</sup> European Commission, "Buying Green", A handbook on environmental public procurement (2004).
- <sup>21</sup> See Rikke Traberg: Greener Public Procurement in Denmark, Presentation of the Danish Environmental Protection Agency, at <http://www.un.org/esa/sustdev/sdissues/consumption/denmark021127.pdf>.
- <sup>22</sup> See Green Public Procurement in the Netherlands. Presentation given by Christel Ankersmit, Dutch Ministry of the Environ-

- ment, June 2005, available at <http://www.un.org/esa/sustdev/sdissues/consumption/procurement/christell.pdf>. Some critics say that the objective is not ambitious and the government should aim at 100%, see news from October 2005 on DG Environment Eco-label page ([http://europa.eu.int/comm/environment/ecolabel/news/index\\_en.htm](http://europa.eu.int/comm/environment/ecolabel/news/index_en.htm)).
- <sup>23</sup> See "Green purchasing gaining ground", *EnviroReport*, No. 2 January 2000.
- <sup>24</sup> According to its own presentation, [www.iclei.org](http://www.iclei.org) is an international association of local governments and national and regional local government organisations that have made a commitment to sustainable development. More than 475 cities, towns, counties, and their associations worldwide comprise ICLEI's growing membership. ICLEI works with these and hundreds of other local governments through international performance-based, results-oriented campaigns and programmes.
- <sup>25</sup> The Procura+ campaign concentrates on electricity from renewable resources, energy-efficient computers and IT devices for offices, organic food for canteens, hospitals and catering, buildings meeting highest heating and cooling efficiency standards, health-oriented cleaning services, quality-oriented public transport services with low-emission buses. See [www.iclei.org](http://www.iclei.org).
- <sup>26</sup> Tenders Electronic Daily publishes all tenders above certain thresholds defined by EU public procurement rules.
- <sup>27</sup> See also: European Commission: Buying green! New facts and figures on green public procurement in the EU. press communication 27 October 2005.
- <sup>28</sup> Bouwer, *et al*, *Green Public Procurement in Europe. Status Overview*, Interim Report October 2005, p.7.
- <sup>29</sup> *Ibid.* p. 8.
- <sup>30</sup> *Ibid.* p. 9.
- <sup>31</sup> European Commission, "Buying Green", A handbook on environmental public procurement.
- <sup>32</sup> See "Helping Public Authorities provide environmental relief". Information about the RELIEF project given by DG Research at <http://europa.eu.int/comm/research/environment>.
- <sup>33</sup> See European Commission, State Aid Action Plan. Consultation Document, July 2005, p 11. Available at [http://europa.eu.int/comm/competition/state\\_aid/others/action\\_plan/saap\\_en.pdf](http://europa.eu.int/comm/competition/state_aid/others/action_plan/saap_en.pdf).
- <sup>34</sup> See Allison, Charles and Anthea Carter, Study on different types of Environmental Labelling (ISO Type II and III labels), Study prepared for DG Environment, 2000.
- <sup>35</sup> See European Commission Communication: Integrated Product Policy Building on Environmental Life-Cycle Thinking, COM(2003)302.
- <sup>36</sup> See European Council, Integrated Product Policy, Council Conclusions, 12 November 2003.
- <sup>37</sup> See Catherine Day: "Buying Green: The Crucial role of Public Authorities", in: *Local Environment* Vol. 10, No. 2, pp. 201-209, April 2005, 208.
- <sup>38</sup> The Action Plan was adopted in 2004. European Commission: Stimulation Technologies for Sustainable Development: An Environmental Action Plan for the European Union, COM(2004)38.
- <sup>39</sup> See press release of DG Environment: "Environmental technologies: Reinforcing Action Plan to maximise contribution to Lisbon goals", 27 January 2005.
- <sup>40</sup> See "Introduction to environmental requirements in public procurement." Fact Sheet on Green Public Procurement provided by the Euro Info Centre for SMEs in Ireland. Available at [www.eic.ie](http://www.eic.ie).
- <sup>41</sup> See "Making the most of public money", published by a platform of environmental and social NGOs in Europe. Also available on [www.eeb.org](http://www.eeb.org).
- <sup>42</sup> Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts, (OJ L 134, 30.4.2004) 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 sectors (OJ L 134 30.4.2004).

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Fax: + 31 43 3296 296  
E-mail: [n.vermeulen@eipa-nl.com](mailto:n.vermeulen@eipa-nl.com)  
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Fax: + 31 43 3296 296  
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Fax: + 31 43 3296 296  
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# Open Activities February 2006

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## LOCATION

### MAASTRICHT

	PROJECT.No
1-2 February 2006 Seminar: Preparing for April 2006 – the Deadline for Implementing Directive 2004/38/EC, What Member States and in particular Immigration Services and Local Authorities need to have in place in order to avoid breaking the law	0631301
6 February 2006 Tutorial Droit Européen pour non-juristes: jour 1: Le système juridique de l'UE, et ses actes juridiques	0632001
7 February 2006 Tutorial Droit Européen pour non-juristes: jour 2: Principes Fondamentaux et Procédures du CJCE	0632002
8 February 2006 Tutorial Droit Européen pour non-juristes: jour 3: Libre Circulation des Biens	0632003
9 February 2006 Tutorial Droit Européen pour non-juristes: jour 4: Libre Prestation des Services & Protection des Consommateurs	0632004
10 February 2006 Tutorial Droit Européen pour non-juristes: jour 5: Droits de Séjour et Permis de Travail	0632005
13-17 February 2006 Workshop to Prepare for the Concours of the European Institutions: Main Developments in European Integration and Community Policies	0632901
20 February 2006 Tutorial EU Recht für Nichtjuristen: 1. Tag: EU Rechtssystem und seine Rechtsakte	0632401
20-21 February 2006 Seminar: EU Financial Perspective 2007 – 2013	0636901
20-23 February 2006 Introductory and Practitioners Seminar: European Public Procurement Rules, Policy and Practice (on 20-02-06 prior to the seminar EIPA will provide a basic introduction to European Public Procurement for newcomers to procurement or non-procurement persons)	0630801
21 February 2006 Tutorial EU Recht für Nichtjuristen: 2. Tag: Grundrechte und Gerichtsverfahren	0632402
22 February 2006 Tutorial EU Recht für Nichtjuristen: 3. Tag: Freier Warenverkehr	0632403
23 February 2006 Tutorial EU Recht für Nichtjuristen: 4. Tag: Freizügigkeit der Dienstleistungen und Verbraucherschutz	0632404
23-24 February 2006 Seminar: The Presidency Challenge – The Practicalities of Chairing Council Working Groups	0613301
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9-10 February 2006 Seminar: Modernising Our Employment Policies – New Employment Tools, Social Dialogue and Human Resources Management in an Ever Competitive Environment	0670401
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### BARCELONA

23-24 February 2006 Seminario sobre Cumpliendo con Europa: la nueva contratación pública	0665001
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# Beyond the New Public Procurement Directive – the Future for Public Private Partnerships (PPP)



By **Michael Burnett**, Lecturer – EIPA Maastricht

Public Private Partnerships (PPP) matter as a way of delivering public services, because there are so many pressures driving public authorities to use them across different sectors and Member States. They are often complex transactions, leading to long, high-value contracts, in high-profile sectors, so the opportunities and risks are correspondingly greater than in other public procurements. And, because they are relatively new, there is a need to ensure that the way they are carried out and their impact over time on public service delivery are watched very closely. It is also important to make sure that they are not adversely affected in future by legal uncertainty, even though this has not been a major barrier so far. After analysing the risks and challenges, this article goes on to propose how PPP can be used more effectively and how the potential legal uncertainty can be reduced, thus helping to ensure that PPP remains a viable option for public service delivery in the EU, Accession States and Candidate Countries.

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## *Why do PPP matter?*

In November 2005 the European Commission published a Communication on the future treatment of Public Private Partnerships (PPP) and concessions in EU law.<sup>1</sup> But PPP should in any event already be on the agenda of policy makers and those responsible for public service delivery in the EU.

PPP are complex transactions. They are often high-value contracts for public services and necessitate a lengthy selection process. So the opportunities and risks for public entities are correspondingly greater in PPP than they are for other public contracts. It is important to know when they are the right solution, to make the right operational and commercial decisions when implementing them and to have the legal certainty necessary to attract competition for the role of private partner. PPP are becoming more widely used but few PPP have gone the full course of their life in the sense that they have completed all of their design, construction and operational phases. So, in a wider context there is a need now to try to understand the medium and long term political and economic effects of PPP as a means of public service delivery.

This article aims to explain what PPP are, why it is now important to understand when and how to use them, and some of the issues affecting how they can be used more effectively.

## *What are PPP?*

PPP has become a widely-used term to describe different types of contractual arrangements. It is a term characterised by a lot of acronyms and titles.<sup>2</sup> But, as the International Monetary Fund has recognised,<sup>3</sup> there is no clear agreement on what constitutes a PPP.

PPP are thus best described by the typical features of a such a transaction. These can be summarised as follows:

- the creation and/or re-development of an asset by a private sector supplier. This can, for example, be a road, a bridge, a school or a hospital, normally using land and/or buildings which were publicly owned before the PPP;
- the use by the same private sector supplier of the asset created or re-developed to provide a new or existing service to the public over a defined period of time. This period is often longer (up to 30 years or more) than is customary in other public contracts;
- the payment of a periodic charge by the public entity to the supplier for the provision of the service using the asset. The periodic charge may vary according to the volume of service supplied;
- the absence of a commitment by the public entity to pay the periodic charge until and unless the asset is used in the provision of the service;

- the sharing of the risks and rewards of the outcome of the project by both partners.

This list of features captures the essence of PPP, namely that they are about partnership between the public and private sectors to deliver a public service, which is how PPP have been characterised by the European Commission.<sup>4</sup>

But even this description of the features does not cover all the different options. There are several different models of financing and asset ownership. Concessions are also characterised by the European Commission<sup>5</sup> as a form of PPP, so that the term can also be used to describe the exploitation by a private sector supplier of a right to provide a service where payments are made directly by the public as customer, payments which may or may not be partly subsidised by the public entity.

### **Why is it important to understand PPP now?**

Transactions which might now be called PPP existed before the term came into common use in the 1990s. But there are three main reasons why, more than ever, it is now important that policy makers and those responsible for public service delivery understand PPP.

Firstly, PPP is a dynamic field of activity. The high level of PPP activity across Europe shows no sign of slowing down. The UK, Ireland, Italy, France, Spain and Portugal already have high levels of activity in different sectors and other Member States are following.

There are strong pressures both in old and new EU Member States driving public authorities to use PPP as a means of delivering public services. These include budgetary pressures (in or out of the Euro zone) leading to the need for cost reduction, the pursuit of better revenue collection and limitations on resources available for public financing of infrastructure investment, as well as pressures from citizens as consumers with ever higher service expectations. In some cases public entities seek also to use PPP as a way of introducing private sector management skills for different methods of service delivery and to use public assets more effectively. As a result, PPP is being used for an ever wider range of public services.

Secondly, because PPP is a dynamic field of activity, there is also a need now to try to understand medium- and long-term political and economic effects as a means of public service delivery, i.e. the implications for public service delivery of the wider use of the private sector as a service deliverer. In most sectors and Member States, most public services are still delivered directly by the public sector, so any conclusions must by definition be provisional. But two developments can be observed where there has already been significant use of the private sector for service delivery.

- Where the public sector has withdrawn completely as a service provider there can be difficulties for public entities to regulate the sector effectively. This has been observed in the provision of long-term residential and nursing care for the elderly, chronically ill and physically disabled in the UK, where municipalities are now heavily dependent on the private sector for the provision of this care.<sup>6</sup>
- Market liberalisation has led to consolidation amongst potential private sector providers, for example within the EU in the water, energy and solid waste management sectors. This could make it difficult for public entities to

ensure continuing effective competition for individual contracts, especially when a high level of activity allows the private sector to select which opportunities it responds to.

It is too soon to say whether or not there ought generally to be concerns about the value for money of PPP in the long term. This has been demonstrated by the uncertainty of the UK National Audit Office in some high profile cases such as the London Underground PPP.<sup>7</sup> Very few PPP have gone the full course of their life. But those who claim that PPP have already delivered value for money savings are by definition basing their claims on savings foreseen in PPP transactions negotiated and/or savings claimed to have been achieved during the project construction phase.<sup>8</sup> A more useful assessment of value for money for a public entity can in reality only be made over the whole life of the transaction.

Thirdly, there is a risk that insufficient legal certainty may impact in future on PPP transactions, This is particularly important to the supplier market in the type of long-term high-value contracts which PPP often involves.

It is possible to identify two main sources for this potential risk.

- PPP are a form of public procurement. So the new Public Procurement Directive,<sup>9</sup> due to be transposed into national law in EU Member States by 31 January 2006, generally applies to PPP. But the complexity of an increasing number of PPP mean that they do not fit very comfortably with the different definitions and different treatments in the new Directive on public contracts, works concessions and service concessions. The Commission has highlighted the fact that in some transactions it has not been easy at the start of an award process to be sure whether they are a public contract or a concession, and that the initial definition might change as a result of negotiations.<sup>10</sup> In the new Directive works concessions are less regulated than public works contracts, while service concessions remain entirely outside the scope of the Directive and are governed only by the need to apply EU Treaty principles.
- The new Directive introduced measures designed to make the use of PPP easier ie a new contract award procedure known as Competitive Dialogue.<sup>11</sup> It is meant to allow a public entity which knows what outcome it wants to achieve but not how best to achieve it to discuss, in confidence, possible solutions in the dialogue phase of the tender process with short-listed bidders before calling for final bids.

Competitive Dialogue is intended to be used more frequently and be easier to justify than the negotiated procedure in the existing Directive. It will be able to be used for "particularly complex contracts" where a *Contracting Authority considers*<sup>12</sup> that use of the open or restricted procedures (requiring pre-determined specifications) will not allow the award of the contract. Unlike the negotiated procedure (the award procedure generally used now in such situations), it is not necessarily to be used only exceptionally. The Directive envisages that the Competitive Dialogue procedure could, for example, be used to award contracts for integrated transport infrastructure projects or large IT projects or with complex financial and legal structures which cannot be determined in advance of the tender process.

The European Commission believes<sup>13</sup> that the Competitive Dialogue procedure, clearly giving public bodies

the freedom to negotiate the technical, legal and financial aspects of public contracts, is particularly well adapted to PPP and will provide the necessary legal certainty so important to confidence in long-term PPP-type contracts. This contrasts with the narrower view taken by the Commission about the permissible uses of the negotiated procedure, namely that it applies principally to technical aspects of the contract and not, strictly, to legal and financial aspects.<sup>14</sup>

But suppliers have some concerns<sup>15</sup> about how the procedure will work in practice:

- whether in reality the confidentiality of bids enshrined in the new Directive will actually be protected in the dialogue phase of the process;
- whether the dialogue phase of the process will be conducted in a manner consistent with the principles of equal treatment, non-discrimination and transparency, especially if there is more than one stage to the dialogue;
- how lenders, whose needs often lead to significant changes to projects at a late stage, will regard this process, in which negotiations are not permitted after the selection of the most economically advantageous tender. This could lead in practice to public entities seeking to stretch the limit of the meaning of clarification of tenders or confirmation of commitments included in the tender, both of which the new Directive does permit.

### **What needs to be done to make the use of PPP more effective?**

The above analysis highlights the significant operational and legal challenges facing public entities seeking to use PPP as a means of public service delivery, and the possible responses fall naturally into the same categories.

There are a number of *operational strategies* which can be deployed to make the use of PPP more effective.

Firstly, because of the high level of activity, Member States need a mechanism to allow themselves to step back from individual projects and look at the medium and long term effect of PPP on public service delivery. Since there are relatively few examples so far of PPP schemes which have completed all of their design, construction and operational phases, continuing interim assessment is needed. Are there, for example, any services in which PPP is working notably better or worse than elsewhere? Is risk transfer truly effective in all services? Are PPP consistently delivering better performance in all services? Is there a difference between the value for money at the design and construction phase and in the operational phase? As PPP markets mature, do suppliers and public entities expect profit margins be higher or lower in future? Will PPP be used for more services, less services or different services in future? Is there a level of private sector provision beyond which public entities lose control of the means to effectively regulate service provision? Will there be more competition

or less competition for individual contracts in future?

The answers, and the means used to reach them, will almost certainly be different in different Member States. But it is hard to argue that such a review process should not be undertaken by some entity in each Member State.

Secondly, at the level of the individual public entity, there needs to be a mechanism for confirming that PPP is the most appropriate solution in each particular project. PPP is not – or should not be seen as – the default option. To regard it as such can lead to the risk of weakening the bargaining position of public entities with suppliers, possible over-dependence of a public entity on the private sector for service delivery and/or stretching the capacity of the market to supply public sector needs.

Thirdly, there needs to be a mechanism to ensure that the lessons of PPP award processes and delivery are being learned to improve future PPP. For example, PPP models are continuing to evolve; using standard contract docu-

mentation as a baseline for customisation is one important way to learn lessons from experience and avoid reinventing the wheel. In the UK, contract clauses on benefit sharing for the public sector, where there is debt refinancing by the provider, is one area where this has helped.

Further, there are a range of difficult issues emerging in the award process and

implementation of PPP which need to be dealt with effectively. There is, for example, a continuing need to ensure:

- that encirclement of public entities by suppliers (relationship-building by suppliers before major award processes which influence the outcome of the procurement) is effectively controlled;
- that there is true risk transfer from public entities to suppliers in return for profits and no unplanned transfer back of risk;
- that public entities allocate appropriate resources for contract management and market regulation;
- that contract variations and break points in long term contracts are dealt with in a way which avoids unduly increasing the profitability of a PPP above what was envisaged at the time of contract award, except where this is justified by a change in risks accepted by the supplier;
- that public sector service “corporate memory” is maintained so that contracts can be terminated if supplier performance is unsatisfactory. This is crucial to avoiding contract lock-in and allowing public entities to take back a service in-house or to switch suppliers;
- that the basis for calculation of payments to and from the supplier on premature contract termination in different situations is clearly stated and does not form a barrier to contract termination by a public entity where this is necessary;
- that a change of supplier ownership, especially through secondary markets in PPP consortium stakes, is not harmful to service delivery.

## Member States need to step back from individual PPP projects and make sure that they look at the overall effect of PPP on public service delivery in the medium term.

In relation to the specific issues arising from the Competitive Dialogue procedures, public entities seeking to attract competitive bids for a PPP need to be aware of the level of care needed to manage the process. They will have to address supplier concerns seriously to show that they are competent and reliable and genuinely seeking to treat all bidders equally. There will now need to be a clear three-stage structure for the award of complex contracts, which has not always been the case in the past:

- a short-listing phase, in which suitable tenderers are selected who meet the minimum eligibility standards for financial, economic and technical criteria;
- a dialogue phase with tenderers where alternative solutions are discussed;
- a final tender phase during which fine tuning, further specification and clarification are permitted provided that they do not change the basic features of the tenders or the contract's key terms. Further clarification of the winning tender and/or confirmation of commitments in it can then be sought if required.

In the existing negotiated procedure there is no obligation after short-listing for the process to follow any particular structure for the negotiations. Though many public entities have in practice set out a clear structure and timetable in advance and fixed the key elements of the specification and contract conditions in a competitive environment, the need is now clearer because of the restrictions on negotiations after the final tender is submitted. The use of the Competitive Dialogue procedure could thus have the effect of underpinning existing good practice in PPP – that selection of the preferred bidder should not happen until all substantial terms and conditions affecting the price and delivery of the scheme are settled while there is still competition.

In addition there will also be a need, specifically, for:

- a commitment within the public entity, early in the dialogue phase, to invest time and resources in understanding the potential solutions likely to be proposed by the bidders (strengths and weaknesses, outcomes and performance standards for those solutions, potential deal breakers etc.);
- a clear and transparent timetable and structure for information flows between bidders and the public entity and assessment of solutions in the dialogue phase;
- a clear code of practice for conduct of the dialogue phase, for example, clearly identifying what is confidential and non-confidential data, setting out how confidentiality of data will be preserved (transmission, storage, access etc.) and how equality of treatment for each bidder in the dialogue will be achieved (frequency, scope, conduct, recording of meetings etc.);
- internal guidance notes within the public entity (prepared before the final tenders are submitted) about how the

evaluation criteria will be applied to different solutions at final tender stage.

As regards *legal issues*, the key question centres around whether or not different treatments for PPP which are public contracts and those which are classified in the Directive as concessions can continue to be justified. There is a clear risk that diversity of practice and lack of co-ordination of national legislation in the award of PPP in EU Member States could act as a barrier to competition, to the ability of public authorities to procure infrastructure development as quickly as they want to, and to the development of the public procurement component of the EU Internal Market. This is significant, given that the Commission has already highlighted public procurement as an area lagging behind in implementation of the Internal Market.<sup>16</sup> In addition, challenge on the grounds of using the wrong award procedure (and thus the uncertainty of legal outcome) is a greater risk given the increasing number of cases dealt with in the field of public procurement by the European Court of Justice.<sup>17</sup>

But, having developed the analysis, the Commission concluded in the Communication<sup>18</sup> that there was “significant stakeholder opposition to a regulatory regime covering all contractual PPPs” (public contracts and concessions) and therefore “the Commission does not envisage making them subject to identical award arrangements”.

Elsewhere in the Communication<sup>19</sup> there is a recognition of the need for a stable, consistent legal environment for the award of concessions, particularly to enhance competition, that general

EU Treaty principles do not provide enough legal certainty in the award of concessions and that it is “difficult to understand why service concessions which are often used for complex and high value projects are entirely excluded from EU secondary legislation”.

The author's view is that the most straightforward way of bringing about legal certainty in this field is the solution which the Commission appears to have ruled out, namely making public contracts and all concessions subject to identical award arrangements. Nevertheless, if a new legislative initiative includes, as the Commission suggests in the Communication that it might,<sup>20</sup> both works and services concessions this would at least reduce the scope for avoidance of the aim of the initiative, to promote competition.

Two key conclusions can be drawn as regards the legal issues relevant to PPP. Firstly, while there is no concrete evidence so far that legal uncertainty is having a significant impact on the pace of growth of PPP, the nature of the issues highlighted above means that it has the potential to do so in the future.

Secondly, Competitive Dialogue has the potential to enable public entities to enhance their procurement procedures, combining the disciplines it requires with existing best practice in the negotiated procedure. This

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## The clearest way of increasing legal certainty about the award of PPP and concessions is to make all public contracts and concessions subject to identical award arrangements.

should be helpful for complex PPP. But if it is not applied with great care there is potential scope for legal challenges. Hence the urgency for technical guidance on the application of the Competitive Dialogue procedure, called for by a substantial number of stakeholders<sup>21</sup> in response to the Commission's consultation, and promised by the Commission in the Communication.<sup>22</sup> ::

## NOTES

- <sup>1</sup> Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions, COM (2005) 569, European Commission, November 2005.
- <sup>2</sup> For example, the UK Private Finance Initiative (PFI) is a form of PPP, as is the Betreibermodell in Germany.
- <sup>3</sup> "Public-Private Partnerships", IMF Fiscal Affairs Department, March 2004, p. 6.
- <sup>4</sup> For example in "Guidelines for successful Public-Private Partnerships", European Commission, Directorate-General for Regional Policy, March 2003, p. 16.
- <sup>5</sup> See "Green Paper on public-private partnerships and Community law on public contracts and concessions" COM(2004) 327, European Commission, April 2004, p. 9.
- <sup>6</sup> See "NHS plc – The privatisation of our health care", Allyson Pollock, Verso, 2004, p. 157 et seq.
- <sup>7</sup> "The London Underground PPP: Were they good deals?" Report by the Comptroller and Auditor-General, HC 645 Session 2003-2004, June 2004, p2, pp. 25-26.
- <sup>8</sup> The willingness to claim that PPP deliver value for money based on comparisons between bid values negotiated and the claimed cost of public sector provision is well established. See, for example, the report commissioned by the Treasury PFI Task Force from Arthur Andersen and Enterprise LSE "Value for Money drivers in the Private Finance Initiative, January 2000, and quoted in "Public Private Partnerships – The Government's Approach", Her Majesty's Stationery Office, 2000, p. 17.
- <sup>9</sup> Directive 2004/18/EC on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Author's note: this article does not deal with issues arising specifically in the Utilities sector which are within the scope of Directive 2004/17/EC on the co-ordination of the procurement procedures of entities operating in the water, energy, transport and postal services sector.
- <sup>10</sup> "Green Paper on public-private partnerships and Community law on public contracts and concessions" COM(2004) 327, European Commission, April 2004, p. 12.
- <sup>11</sup> See Directive 2004/18/EC, Article 29.
- <sup>12</sup> Author's emphasis, taken from the Directive. Public entities are referred to in the Directive as "contracting authorities".
- <sup>13</sup> "Green Paper on public-private partnerships and Community law on public contracts and concessions" COM(2004) 327, European Commission, April 2004, p. 10.
- <sup>14</sup> "Green Paper on public-private partnerships and Community law on public contracts and concessions" COM(2004) 327, European Commission, April 2004, p. 9.
- <sup>15</sup> As, for example, expressed in various responses to the Commission's consultation on the Green Paper.
- <sup>16</sup> See, for example, "Internal Market Strategy – Priorities 2003-2006", European Commission, May 2003, pp. 17-19.
- <sup>17</sup> 95 public procurement cases decided by the European Court of Justice between 1995 and 2004 as compared to 31 between 1985 and 1994.
- <sup>18</sup> Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions, COM (2005) 569, European Commission, November 2005, p. 5.
- <sup>19</sup> COM (2005) 569, pp. 7-8.
- <sup>20</sup> COM (2005) 569, p. 8.
- <sup>21</sup> See "Report on the public consultation on the public-private partnerships and Community law on public contracts and concessions" SEC (2005) 629, European Commission, May 2005, p. 10.
- <sup>22</sup> COM (2005) 569, p. 5.

## RELATED ACTIVITIES AT EIPA

5-7 April 2006, Maastricht  
Public Private Partnerships (PPP) – Practitioners' Seminar:  
Public-Private Partnerships – Making Best Use of Public Funds  
0630601 € 950

9-11 October 2006, Maastricht  
Public Private Partnerships (PPP) – Practitioners' Seminar  
0630603 € 950

4-5 December 2006, Maastricht  
PPP – Policy Seminar  
0630604 € 750

For further information and registration forms, please contact:  
*Ms Diane Urlings,*  
Tel.: + 31 43 3296 280  
Fax: + 31 43 3296 296  
E-mail: [d.urlings@eipa-nl.com](mailto:d.urlings@eipa-nl.com)  
Website: <http://www.eipa.nl>

# Open Activities March 2006

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LOCATION	PROJECT NO.
<b>BARCELONA</b> 2-3 March 2006 Seminar: Immigration Policy in Europe and the Role of the Regions	<b>0661901</b>
<b>BRUSSELS</b> 21- 23 March 2006 Seminar: European Negotiations I, Surviving in European Negotiations	<b>0610901</b>
<b>MAASTRICHT</b> 6-8 March 2006 Seminar: Committees and Comitology in the Policy Process of the European Community	<b>0610001</b>
21-22 March 2006 Seminar: Planning & Implementing Effective Communications Campaigns	<b>0620101</b>
23-24 March 2006 Seminar: Europe on the Internet	<b>0611001</b>
23-24 March 2006 Seminar: State Aid Policy and Practice in the European Community – An Integrative and Interactive Approach	<b>0631201</b>
27-28 March 2006 Seminar: European Food Safety Policy	<b>0632701</b>
30-31 March 2006 Seminar: Anti-Money Laundering and Anti-Terrorist Financing Efforts in the EU: Recent Developments	<b>0633101</b>
<b>LUXEMBOURG</b> 9-10 March 2006 Seminar: Towards the Completion of the Internal Market for Services?	<b>0651201</b>

# The Power of the European Community to Impose Criminal Penalties



By **José F. Castillo García**, Lecturer – European Centre for Judges and Lawyers, EIPA-Antenna Luxembourg\*

This article analyses the judgement delivered by the European Court of Justice on 13 September 2005 establishing that the European Community has the power to require the Member States to impose criminal penalties for the purpose of protecting the environment, and discusses its benefits in the light of the need to ensure the effective and efficient implementation of other Community policies and the freedom of movement of persons, goods, services and capital. In particular, the consequences of the judgement for acts adopted and proposals pending will be considered. Attention is also paid to the costs for national sovereignty and to relevant changes introduced in the Constitutional Treaty.

## Introduction

The European Court of Justice (ECJ) gave a crucial judgement on 13 September 2005<sup>1</sup> finally putting an end to a dispute between the European Commission and the Council of the European Union (EU) on the legality of the Framework Decision (FD) on the protection of the environment through criminal law<sup>2</sup> adopted in the framework of the third pillar (title VI of the EU Treaty).<sup>3</sup>

The Commission argued that the European Community (EC) can, under Article 175 EC, require the Member States to prescribe criminal sanctions for infringements of Community environmental protection legislation, considering that it is a necessary means of ensuring the effectiveness of this Community policy.<sup>4</sup> The Council, however, maintained that “the Community does not have power to require the Member States to impose criminal penalties in respect of the conduct covered by the FD, as there is no express conferral of power in that regard”.<sup>5</sup> The ECJ, considering that it could have been properly adopted on the basis of Article 175 EC, decided to annul the FD.

As Advocate General Ruiz-Jarabo Colomer explains in his opinion,<sup>6</sup> what lies behind this dispute is a far-reaching issue, as the choice of one position or the other entails completely different legal and institutional consequences. The fact that the EC could have the power to approximate national criminal laws, not only in the field of environmental crime – as the ECJ has ruled – but also in the framework of other policy areas of the Community, would *ipso facto* imply the application of the Community method to the detriment of the intergovernmental rules foreseen in Title VI EU.<sup>7</sup> This is precisely what most of the Member States that have fiercely guarded their sovereignty over criminal law fear.<sup>8</sup>

The issue at stake is not new. Discussions on the competence of the Community to force Member States to impose criminal sanctions have been taking place for a long time, as criminal law has been associated with the implementation of the internal market and related Community policies.<sup>9</sup> However, even if some Community instruments have included provisions on criminal sanctions, the freedom of the Member States to choose between administrative or criminal law was never called into question.<sup>10</sup>

With the entry into force of the Treaty of Maastricht and, more recently, the Treaty of Amsterdam that expressly provides for the approximation of rules on criminal matters<sup>11</sup> and introduces the FD as a legal instrument to achieve this aim,<sup>12</sup> “the question of whether or not the Community was entitled to harmonise national criminal laws did not become less relevant”.<sup>13</sup> Indeed, the activity of both the EU and the EC on approximation of criminal law has increased in the last few years<sup>14</sup> and conflicts of competence between the first and third pillars could not be avoided. The case of environmental crime has given to the ECJ for the first time the opportunity to determine the boundaries between both pillars with respect to the harmonisation of criminal law.

## *The legal and institutional constraints of the EU Treaty*

In order to understand what lies behind the dispute, it is important to highlight the reasons why the Commission submitted a proposal for a Community Directive<sup>15</sup> intended to oblige the Member States to provide for criminal sanctions in the environmental field, rather than a proposal for a FD – as Denmark actually did.<sup>16</sup> The difficulties that arise from the current legal and institutional framework of the EU

Treaty – described in the assessment of the Tampere programme<sup>17</sup> – are at the core of the problem. Wasmeier and Thwaites identify three different categories of problem.<sup>18</sup>

First, as regards the legislative procedure, Framework Decisions are to be proposed either by a Member State or by the Commission and adopted unanimously by the Council after having consulted the European Parliament.<sup>19</sup> Directives, however, can only be proposed by the Commission and, in most cases, are adopted by qualified majority following the co-decision procedure. The shared right of initiative between the Commission and the Member States in the framework of the third pillar, the unanimity requirement and the current restrictions on the Parliament's role are widely seen as negatively affecting the Union's ability to act in this sphere.<sup>20</sup>

Second, "the legal effect of third pillar instruments differs from that of Community law instruments". According to Article 34(2)(b) EU, Framework Decisions "shall be binding upon the Member States as to the result to be achieved, but they shall not entail direct effect".<sup>21</sup> This means that citizens can in no circumstances take legal action if a Member State fails to transpose the act. In the context of the first pillar, on the other hand, there is no doubt that Community Directives can have direct effect, as the ECJ has held through its constant jurisprudence.<sup>22</sup>

Third, once the instruments are adopted, "the institutional limits regarding the real possibilities for verifying the implementation of policies by national authorities, given the limited role of the Court of Justice and the restricted powers of the Commission are a real obstacle to ensuring that the instruments and decisions adopted are actually effective".<sup>23</sup> As stated in Article 35(2) and (3) EU, the jurisdiction of the ECJ to give preliminary rulings depends on a declaration of each Member State.<sup>24</sup> According to Art. 35(6), the Court can now review the legality of Framework Decisions and Decisions.<sup>25</sup> However, as Wasmeier points out, "the impact of these actions is limited, as the Commission cannot ask for a ruling on the Member States' implementation of Framework Decisions and Decisions, or for sanctions in cases of non-compliance". In other words, "a major weakness for enforcement of EU law is that there is no infringement procedure as in the first pillar".<sup>26</sup>

This last difficulty was also stressed by the Commission in the action brought on 15 April 2003 against the Council,<sup>27</sup> based on Article 35(6) EU, in which it stated that "the choice of the legal basis is important in this case because of the special institutional features of Title VI EU which, inter alia, does not have any equivalent to the infringement procedure".

### **Background**

The FD on the protection of the environment through criminal law was formally adopted by the Council on 27 January 2003 on the basis of an initiative presented by Denmark.<sup>28</sup> As the ECJ clearly states in paragraph 3 of its judgement, the FD, based on Articles 29, 31(e) and 34(2)(b) EU, "constitutes the instrument by which the EU intends to respond with concerted action to the disturbing increase in offences posing a threat to the environment". In Articles 2 and 3, it lays down a number of environmental offences, in respect of which the Member States are required to prescribe criminal penalties.<sup>29</sup> Article 5 provides that the penalties must be "effective, proportionate and dissuasive", including, "at least in serious cases, penalties involving deprivation of liberty which can give rise to



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extradition".

The Commission was supported in its action by the European Parliament, which on 9 April 2002 expressed its view on both the proposed Directive and on the draft Framework Decision.<sup>30</sup> As established in paragraph 13 of the judgement, Parliament called on the Council "(i) to use the FD as a measure complementing the Directive that would take effect in relation to the protection of the environment through criminal law solely in respect of judicial cooperation and (ii) to refrain from adopting the FD before adoption of the proposed directive".

The Council, considering that the proposal for a Directive did not reach the majority required for its adoption and that it went beyond the powers attributed to the Community by the EC Treaty, decided to adopt the FD on the basis of Title VI EU.<sup>31</sup>

The Commission appended the statement cited below to the minutes of the Council meeting at which the FD was adopted.<sup>32</sup>

### **Legal arguments of the parties**

As already cited above, the Commission, although it does not claim that the European Community has a general competence in criminal matters, submits that "the Community legislature is competent, under Article 175 EC, to require the Member States to prescribe criminal penalties for infringements of Community environmental-protection legislation if it takes the view that that is a necessary means of ensuring that the legislation is effective. The harmonisation of national criminal laws, in particular of the constituent elements of environmental offences to which criminal

penalties attach, is designed to be an aid to the Community policy in question".<sup>33</sup> It is clear that criminal law is not to be considered as a Community policy, but just as a means to ensure the effectiveness of the environmental policy.

The Commission relies, in support of its argument, on the case law of the Court concerning the duty of loyal cooperation and the principles of effectiveness and equivalence, as well as on two Community Directives which require the Member States to introduce penalties which are necessarily criminal in nature, although that qualification has not been expressly employed.<sup>34</sup> That is the case of Article 14 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering and also of Articles 1 to 3 of Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.

Finally, the Commission also puts forward a ground of challenge alleging abuse of process (paragraph 24 of the judgement). "Recitals 5 and 7 in the preamble to the FD show that the choice of an instrument under Title VI EU was based on considerations of expediency, since the proposed directive had failed to obtain the majority required for its adoption because a majority of Member States had refused to recognise that the Community had the necessary powers to require the Member States to prescribe criminal penalties for environmental offences".

The Council, supported by 11 Member States, argues that the Community does not have the power mentioned. Paragraph 27 states that "not only is there no express conferral of power in that regard, but, given the considerable significance of criminal law for the sovereignty of the Member States, there are no grounds for accepting that this power can have been implicitly transferred to the Community at the time when specific substantive competences, such as those exercised under Article 175 EC, were conferred on it".

The Council therefore concludes that, given the absence of an explicit provision on criminal law, the parties to the EC Treaty did not envisage harmonisation measures regarding criminal matters.

It is also argued that the Court has never obliged the Member States to adopt criminal penalties, that legislative practice also follows that interpretation<sup>35</sup> and that whenever the Commission has proposed to the Council that a Community measure having implications for criminal matters be adopted, the Council has detached the criminal part of that measure so that it may be dealt with in a FD<sup>36</sup> (see paragraphs 31 to 33).

The position of most of the Member States, with the exception of The Netherlands, mainly follows the arguments of the Council.<sup>37</sup> For example, Denmark considers that Articles 135 EC and 280 EC, which expressly reserve to the Member States the application of national criminal law and the administration of justice, confirm the interpretation of the Council. Germany adds that the establishment of the third pillar, with competence for judicial cooperation in criminal matters (see Articles 29 EU, 31 EU and 34 EU), was

a consequence of the absence of a Community competence in this field.<sup>38</sup> According to the French Government, the EC can only act within the limits of the powers conferred upon it by the EC Treaty (Art. 5 EC) and, as no EC provision expressly confers competence to the Community in the field of criminal law, it has to be concluded that the EC cannot oblige the Member States to provide for criminal sanctions. The UK considers that Articles 174 EC and 175 EC do not confer any power to the EC to legislate in the field of criminal law.

The position of The Netherlands is quite interesting as it acknowledges that the Community may require the Member States to provide for criminal sanctions, provided that the penalty is inseparably linked to the relevant substantive Community provisions and that it can actually be shown that imposing penalties under criminal law in that way is necessary for the achievement of the objectives of the Treaty in the area concerned.<sup>39</sup> In this case the Dutch Government considers that the penalties foreseen are not inseparably linked to the environmental provisions of the EC and therefore it concludes that the harmonisation of criminal law in this field can only be operated from the third pillar.

### *The EC Treaty priority*

The Commission, considering that the EC is competent to impose on the Member States the obligation to provide for criminal penalties in the environmental field, also bases its action on the primacy of Community law.

According to Articles 47 and 29 EU,<sup>40</sup> the EU institutions are not free to choose between a first or a third pillar instrument, as it is established that the EC Treaty has priority over the EU Treaty. Therefore, an instrument under Title VI EU can only be adopted so long as it does not affect any Community competence.<sup>41</sup>

It also needs to be kept in mind that "Article 47 EU not only refers to conflicts of existing provisions, but also to competencies as such. In this vein, a third pillar act extending to an area in the Community's competence would violate Art. 47 EU even if its contents did not contradict any Community law provision."<sup>42</sup> In the judgement of the ECJ on airport transit visas,<sup>43</sup> it was made clear that third pillar instruments cannot trespass into the area of Community competence and that they can be declared void in an action for annulment.

### *The judgement of the ECJ and its consequences*

Much to the regret of the Council and the considerable number of Member States that submitted written observations, the Court ruled in the Commission's favour. Taking into account the aim and the content of the FD, the ECJ found that although "as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence", "the EC, when the application of effective, proportionate and dissuasive criminal penalties

**The ECJ found that the EC has the power to require the Member States to impose criminal penalties for the purpose of protecting the environment.**

by the competent national authorities is an essential measure for combating serious environmental offences, can take measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective" (paragraphs 47 and 48).

It follows that "Articles 1 to 7 of the FD, having as its main purpose the protection of the environment, could have been properly adopted on the basis of Article 175 EC" (paragraph 51). "In those circumstances, the entire framework decision, being indivisible, infringes Article 47 EU as it encroaches on the powers which Article 175 EC confers on the Community" (paragraph 53).

It is interesting to note that the ECJ went further than the proposals of Advocate-General Ruiz-Jarabo Colomer.<sup>44</sup> In his opinion he proposed to annul Articles 1 to 4, Article 5(1) – with the exception of the reference to sanctions involving the deprivation of liberty and extradition –, Article 6 and Article 7(1) of the FD.<sup>45</sup> The ECJ decided to annul the whole FD and more specifically it considered that Articles 1 to 7, dealing with the definition of offences, the principle of the obligation to impose criminal sanctions, the rules on participation and instigation, the level of penalties, accompanying penalties and the specific rules on the liability of legal persons, could have been properly based on Article 175 EC.<sup>46</sup>

In order to explain the conclusions to be drawn from this judgement, the Commission adopted a communication on its implications on 24 November 2005.<sup>47</sup> It includes a list of the instruments affected by the implications of the judgement and suggests a method to correct the situation with regards to texts which were not adopted on the proper legal basis.

One of the main conclusions, according to the Commission, is that the judgement "lays down principles going far beyond the case in question. The same arguments can be applied in their entirety to the other common policies and to the four freedoms (freedom of movement of persons, goods, services and capital)".<sup>48</sup>

It is clear, in any case, that criminal law is not a Community policy and that it can only be used as a means in order to ensure the full effectiveness of a Community policy or the proper functioning of a freedom. In this vein, "the Court's reasoning can therefore be applied to all Community policies and freedoms which involve binding legislation with which criminal penalties should be associated in order to ensure their effectiveness".<sup>49</sup> On a case by case basis, depending on necessity, the Commission will determine the degree of Community involvement in the criminal field when submitting its proposals.

The clarification by the Court judgement of the distribution of powers between the first and third pillar entails therefore that the provisions of criminal law required for the effective implementation of Community law are a matter for the TEC and those on the harmonisation of criminal law not linked to the implementation of Community policies or fundamental freedoms, fall within Title VI of the TEU.<sup>50</sup>

The consequences of the judgement are of crucial importance for the Member States. Most Community policies

are implemented following the co-decision procedure and decisions are taken by qualified majority. In this respect, one can understand why 11 Member States have so strongly opposed the position of the Commission and the European Parliament in this case. A Member State that would oppose the adoption of a directive aimed at the harmonisation of a certain criminal offence – linked to the need for ensuring the proper functioning of a Community policy – would still have to introduce it into its internal legislation if a sufficient number of Member States voted for it.

Some analysts and politicians consider that as a consequence of the ECJ's ruling, for the first time in legal history, a Member State government will no longer have the sovereign right to decide what constitutes a crime and what the punishment should be.<sup>51</sup> This analysis can only be understood by taking into account the loss of the Member States' power to block a decision taken by other Member States to

impose criminal sanctions on certain offences. It should be noted in this respect that the unanimity requirement – that still applies in the framework of the third pillar – is not necessarily a democratic method. In a national context, as H. Nilsson points out, "there is no parliament that adopts criminal law by unanimity among members of parliament or requires unanimity among political parties".<sup>52</sup> Furthermore, "living under the tyranny of unanimity" has proved to be inefficient and, especially in instruments seeking to approximate criminal law, no real progress can be made.

In the case at hand, the proposal for a Community Directive from the Commission will have to be considered again and the Council and the Parliament will be entitled to adopt it following the co-decision procedure (according to Article 175 EC) and by qualified majority. An eventual reluctance by Member States to assume the new legal regime could only be understood as a rejection of the "Community method" in this field. As already stressed, even those Member States voting against the adoption of the directive could be forced to implement it in their national law if a sufficient number of Member States voted for it. In this respect, the Commission could decide to initiate infringement procedures against those Member States that did not comply with Community legislation and the ECJ could eventually declare non-compliance by certain Member States with the Community Directive, and even impose on them a lump sum or penalty payment, according to Article 228 EC.

The powers of the Commission are not, in any case, unlimited. Every time the Commission decides to propose legislation in the Community framework, checks will have to be carried out in order to establish the necessity of the action to be taken and the observance of the principles of subsidiarity and proportionality. Any use of measures of criminal law must be justified by the need to make the Community policy in question effective.<sup>53</sup>

Concerning the consequences of the judgement for acts adopted and proposals pending, the Commission has already adopted its position in the Communication mentioned above. It is considered that seven framework decisions adopted, apart from the one that has been

## The benefits from the new judgement can be qualified as colossal.

annulled, have been taken on erroneous legal bases.<sup>54</sup> In order to restore legality as soon as possible, the Commission proposes that an agreement should be reached by the three institutions (Commission, EP and Council) on introducing a simple and speedy procedure for the adoption of directives or other Community legislative measures to replace those framework decisions. If this approach is followed, "the Commission's proposals would not contain any provisions which differed in substance from those of the acts adopted, even where the Commission felt that these acts were not satisfactory".<sup>55</sup>

The only case where the Commission already had the possibility to introduce an action for annulment regards the Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution. The action was brought on 23 November 2005 and it should be noted that the Commission has already announced that the action will be withdrawn once the proposal aiming at correcting the legal basis for the framework decision in question is adopted.

For pending proposals, the Commission will make the necessary changes and they will follow the full decision-making procedure applicable to their legal basis.<sup>56</sup>

### *The Constitutional Treaty<sup>57</sup> and the harmonisation of criminal law*

The entry into force of the Constitutional Treaty, in its current form, would be crucial for the completion of the Area of Freedom, Security and Justice. One has to acknowledge, however, that its future is now very much in doubt, mainly after the blows received from the French and Dutch referenda.<sup>58</sup>

As Wasmeier explains,<sup>59</sup> "the Constitution merges the first and third pillars into a single legal framework. This entails that there will no longer be different legal procedures for the Community and the Union. The same legal instruments (European laws and European framework laws) and the co-decision procedure will apply to both areas, and the infringement procedure will be extended to criminal matters".<sup>60</sup>

As a consequence of the unification of both pillars the need for artificially splitting up instruments would be gone. This is particularly acknowledged by Article III-271(2), which foresees the approximation of criminal legislation in a single European framework law if that proves essential for ensuring the effective implementation of a harmonised Union policy. In the light of this Article of the Constitutional Treaty, it is difficult to understand the reluctance of the Member States to assume the Community method.<sup>61</sup>

Regarding the legal nature, the instruments foreseen in the Constitution, both European laws and European framework laws would have direct effect, being able, therefore, to be invoked by individuals before national courts.

Transparency of the decision-making system would also be enhanced thanks to the new role that the Parliament would play as co-legislator in the framework of the co-decision procedure.

Last but not least, the Commission would be entitled to initiate infringement procedures against those Member States that do not transpose into their national legislation Union legislation in the field of harmonisation of criminal law. They could be brought before the European Court of Justice, which would benefit from the general jurisdiction that currently applies only in the framework of the first pillar.



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### Conclusions

The judgement of the ECJ of 13 September 2005 expressly gives the European Community, for the first time, the power to impose on the Member States the obligation to provide for criminal sanctions in the framework of environmental policy, as it is considered that criminal penalties are necessary in order to ensure its effectiveness.

Furthermore, this judgement will not only affect Community environmental policy. As the Commission has already expressed, in its Communication of 24 November 2005, the Community will have the power to approximate/harmonise national criminal laws if it proves essential to ensure the effectiveness of any other Community policy or the proper functioning of a freedom (freedom of movement of persons, goods, services or capital).

However, so long as the current pillar structure remains, criminal law will only be considered as a means of approximating national criminal laws in the framework of the first pillar. Therefore, Title VI EU will still play a crucial role in the field of harmonising the criminal laws of the Member States in those areas that do not encroach upon a Community policy.

The benefits from the new judgement can be qualified as colossal with respect to the new legislative procedure that will apply, the legal effects of the measures adopted and the jurisdiction of the ECJ. The Community method will apply in its entirety: the Commission will have the exclusive right of initiative, the Parliament will participate in the

- decision-making process as co-legislator; the directives
- adopted will be able to entail direct effect; and the ECJ will
- have full jurisdiction to control the Member States' implementation of legal instruments and, eventually, to impose penalty payments in cases of non-compliance.

Those Member States that are currently reluctant to give power to the Community in the field of harmonisation of criminal laws will have to transpose into their internal legislation Community directives if they have been supported

## The application of the Community method is what most of the Member States fear.

- by a sufficient number of Member States – qualified majority voting applies from now on. The Commission could eventually decide to initiate an infringement procedure against those Member States that do not comply with EC legislation.

- This judgement of the ECJ corroborates the changes introduced by the Constitutional Treaty as foreseen in Article III-271(2): European framework laws may approximate national criminal laws if it proves essential to ensure the effective implementation of a Union policy. Furthermore, the suppression of the pillar structure of the EU would avoid the need for artificially splitting up legal instruments.

- The judgement of 13 September 2005 sets, no doubt, a crucial precedent and represents another important step forward in the process towards the necessary communitarisation of the third pillar in order to accomplish a monumental objective ... the establishment of a European Area of Freedom, Security and Justice. ∴

## NOTES

- \* The author would like to thank Professor Dr Edward Best for his useful comments.
- <sup>1</sup> Case C-176/03 *Commission v Council*.
- <sup>2</sup> Council Framework Decision on the protection of the environment through criminal law [2003] OJ L 29/55. See also Denmark's initiative with a view to adopting a Council framework Decision on combating serious environmental crime [2000] C 39/4.
- <sup>3</sup> See, in particular, Articles 29, 31(e) and 34(2)(b) EU. The pillar structure of the EU was introduced by the Maastricht Treaty, which entered into force in November 1993. The third pillar included the bulk of Justice and Home Affairs cooperation. The Amsterdam Treaty transferred immigration, asylum and civil cooperation to the first pillar (title IV EC); police and judicial cooperation in criminal matters remains in the third pillar.
- <sup>4</sup> The European Commission's position is clearly indicated in the judgement of 13 September 2005, cited above at n.1, para. [19]. See also proposal for a Directive on the protection of the environment through criminal law [2001] OJ C 180E/238; and amended Proposal [2003] C 020E/284.
- <sup>5</sup> See paras. [26] and [27] of the judgement cited above at n.1.
- <sup>6</sup> Opinion delivered on 26 May 2005, Case C-176/03, paras. [2] and [4].
- <sup>7</sup> It is remarkable that 11 Member States – Denmark, Germany, Greece, Spain, France, Ireland, the Netherlands, Portugal, Finland, Sweden and the UK – have submitted written observations to support the position of the Council of the EU. The European Commission has been supported by the European Parliament.
- <sup>8</sup> See, for example, the reaction of the British press on 14 September 2005. Editorial from *The Times*: "Legal trespass: The European Court has gravely undermined the sovereignty of EU States", page 19; also in *The Times*: "Europe wins the power to jail British citizens"; *The Guardian*: "Brussels wins right to force EU countries to jail polluters"; *The Independent*: "Europe may impose criminal penalties for breaching EU law"; *The Daily Telegraph*: "Criminal sanctions to enforce EU law". The articles can be downloaded from the corresponding websites.
- <sup>9</sup> For more detailed explanations see S. Peers, *EU Justice and Home Affairs Law* (London, 2000), pp. 141-145.
- <sup>10</sup> See, for example, Art. 31 of Council Regulation No. 2847/93 establishing a control system applicable to the common fisheries policy, OJ L 261 of 20/10/1993. Paragraph 1 establishes that: "Member States shall ensure that the appropriate measures be taken, including of administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where common fisheries policy have not been respected, in particular following a monitoring or inspection carried out pursuant to this Regulation". Similar provisions can be found in the framework of the common agricultural policy and transport policy.
- <sup>11</sup> Art. 31(e) EU establishes that: "common action on judicial cooperation in criminal matters shall include progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking". See also Art. 29 EU.
- <sup>12</sup> See Art. 34(2)(b) EU.
- <sup>13</sup> M. Wasmeier and N. Thwaites, "The battle of the pillars: does the European Community have the power to approximate national criminal laws?", *European Law Review*, Vol. 29, No. 5, October, p. 614 (2004).
- <sup>14</sup> Mainly after the adoption of the Tampere conclusions (European Council of 15-16 October 1999). The Tampere summit was devoted to the creation of an area of freedom, security and justice in the EU, an objective that was put at the very top of the political agenda.
- <sup>15</sup> Cited above at n. 4.
- <sup>16</sup> Cited above at n. 2. This proposal was finally adopted by the Council after appropriate modifications.
- <sup>17</sup> See Commission Communication on "The Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations". COM(2004) 401 final, pp. 4-5. See also the annex to the Communication, SEC(2004) 693, pp. 9-10.
- <sup>18</sup> See M. Wasmeier and N. Thwaites, cited above at n. 14, p. 615; see also E. Guild and S. Carrera, "No Constitutional Treaty? Implications for the Area of Freedom, Security and Justice", CEPS Working Document No. 231, (2005), pp. 2-8. The distinctions between the first and the third pillar are also highlighted by S. Peers, cited above at n. 9, pp. 13-15.
- <sup>19</sup> Art. 39 EU.
- <sup>20</sup> See W. Bogensberger, "The Area of Freedom, Security and Justice after the Draft Constitution for Europe as concerns criminal matters", paper presented at the conference on "EU Reform and Enlargement: Implications for the Schengen Regime" organised by EIPA in Luxembourg on 1-2 April 2004. See also H. Nilsson, "Decision-Making in EU Justice and Home Affairs: Current Shortcomings and Reform Possibilities", *SEI Working Paper* No. 57 (2002).
- <sup>21</sup> The notion of direct effect, according to which individuals may invoke Community legislation before national courts if it is clear, precise and unconditional, has been developed by the case-law of the ECJ, primarily in the context of the Community legal system. See, in particular, Van Gend en Loos judgement, C-26/62 [1963] ECR 1. In the framework of the third pillar it is interesting to mention the recent judgement of the ECJ delivered on 16 June 2005, Case C-105/03, Maria Pupino. In the context of the interpretation of the FD on the standing of victims in criminal proceedings, OJ L 82/1 of 22/3/2001, the ECJ has confirmed that the principle that national law must be interpreted in conformity with Community law also applies in the third pillar. By urging national courts to read domestic law in such a way as to conform to the provisions of framework decisions, the ECJ ensures that these instruments will be given some effect despite the absence of proper domestic implementation. The ECJ has therefore also introduced the notion of indirect effect in the third pillar. In the context of the first pillar see, for example, Case 14/83, Von Colson and Kamann v. Land Nordrhein-Westfalen [1984] ECR 1891. In any case, it is necessary to stress that direct effect remains, for the time being, excluded from the third pillar, as explicitly established in Art. 34 EU.
- <sup>22</sup> For detailed information in this respect, see P. Craig and G. de Búrca, *EU Law: Text, Cases and Materials*, [2003], pp. 178-229.
- <sup>23</sup> See Communication cited above at n. 18, pp. 4-5.
- <sup>24</sup> See, in this respect, E. Guild and S. Carrera, cited above at n. 19, p. 11.
- <sup>25</sup> It needs to be added that an important limitation of the action for annulment is that the European Parliament and individuals are not allowed to bring it before the ECJ.
- <sup>26</sup> See Arts. 226-228 EC. In the framework of the first pillar, the ECJ can even impose a penalty payment on those Member States that have not complied with a previous judgement.
- <sup>27</sup> OJ C 135/21 of 7/6/2003.
- <sup>28</sup> Cited above at n. 2.
- <sup>29</sup> Article 2 provides that "each Member State shall take the necessary measures to establish as criminal offences under its domestic law: (a) the discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes death or serious injury to any person; (b) the unlawful discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes or is likely to cause their lasting or substantial deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants; (c) the unlawful disposal, treatment, storage, transport, export or import of waste, including hazardous waste, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; (d) the unlawful operation of a plant in which a dangerous activity is carried out and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; (e) the unlawful manufacture, treatment, storage, use, transport, export or

import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; (f) the unlawful possession, taking, damaging, killing or trading of or in protected wild fauna and flora species or parts thereof, at least where they are threatened with extinction as defined under national law; (g) the unlawful trade in ozone-depleting substances ...".

<sup>30</sup> References of the Parliament's opinions: A5-0099/2002 and A5-0080/2002

<sup>31</sup> The Council also considered that the present FD, based on Article 34 EU, is a correct instrument to impose on the Member States the obligation to provide for criminal sanctions.

<sup>32</sup> "The Commission takes the view that the Framework Decision is not the appropriate legal instrument by which to require Member States to introduce sanctions of a criminal nature at national level in the case of offences detrimental to the environment. As the Commission pointed out on several occasions within Council bodies, it considers that in the context of the competences conferred on it for the purpose of attaining the objectives stated in Article 2 of the Treaty establishing the European Community, the Community is competent to require the Member States to impose sanctions at national level – including criminal sanctions if appropriate – where that proves necessary in order to attain a Community objective. This is the case for environmental matters which are the subject of Title XIX of the Treaty establishing the European Community. Furthermore, the Commission points out that its proposal for a Directive on the protection of the environment through criminal law has not been appropriately examined under the co-decision procedure. If the Council adopts the Framework Decision despite this Community competence, the Commission reserves all the rights conferred on it by the Treaty."

<sup>33</sup> Paragraph 19 of the judgement cited above at n.1.

<sup>34</sup> See paras. [20] and [21] of the mentioned judgement.

<sup>35</sup> The various pieces of secondary legislation do not call into question the freedom of the Member States to choose between proceeding under administrative or criminal law.

<sup>36</sup> See, for example, Directive 2002/90, supplemented by Council FD 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ 2002, L 328, p. 1.

<sup>37</sup> A summary of the position of the countries that have submitted observations can be found in the *Rapport d'audience* (only available in French) of the Case C-176/03 prepared by Judge Romain Schintgen.

<sup>38</sup> See also paragraph 29 of the judgement.

<sup>39</sup> See paragraph 36 of the judgement.

<sup>40</sup> Article 47 EU establishes that "... nothing in this Treaty shall affect the Treaties establishing the European Communities". Article 29 EU states that "Without prejudice to the powers of the European Community ...".

<sup>41</sup> Statement corroborated by the ECJ in paragraph 38 of its judgement.

<sup>42</sup> See M. Wasmeier and N. Thwaites, cited above at n. 14, p. 619.

<sup>43</sup> Case C-170/96, *Commission v Council* [1998] ECR I-2763.

<sup>44</sup> See n. 6.

<sup>45</sup> Paragraph 97.

<sup>46</sup> See paragraph 4 of the Communication cited below at n. 47.

<sup>47</sup> Communication from the Commission to the European Parliament and the Council on the implications of the Court's judgement of 13 September 2005 (Case C-176/03 *Commission v Council*). COM(2005) 583 final/2.

<sup>48</sup> Paragraph 6 of the mentioned Communication.

<sup>49</sup> Paragraph 8 of the mentioned Communication.

<sup>50</sup> Paragraph 11 of the mentioned Communication.

<sup>51</sup> See the article published in Euobserver.com on 25.11.2005: "Commission stakes new claim in European criminal law".

<sup>52</sup> See H. Nilsson, cited above at n. 20, pp. 7-8.

<sup>53</sup> Paragraph 12 of the Communication from the Commission mentioned at n. 47.

<sup>54</sup> Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the intro-

duction of the euro (OJ L 140, 14.6.2000, p. 1) and Council Framework Decision of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ L 329, 14.12.2001, p. 3); Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991 p. 77) and Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1); Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1); Directive defining the facilitation of unauthorised entry, transit and residence and Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, pp. 17 and 1); Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements and Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ L 255, 30.9.2005, pp. 11 and 164); Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003 p. 54); Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems (OJ L 69, 16.3.2005, p. 67).

<sup>55</sup> Paragraph 16 of the Communication from the Commission mentioned at n. 47.

<sup>56</sup> Proposal for a Directive of the European Parliament and of the Council on the criminal-law protection of the Community's financial interests (PIF) (OJ C 240E, 28.8.2001, p. 125); Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights and for a Council framework decision to strengthen the criminal law framework to combat intellectual property offences (COM (2005) 276 final); Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues (OJ C 100, 26.4.2003, p. 27), currently stalled; Initiative of Germany with a view to the adoption of a Council Framework Decision on criminal law protection against fraudulent or other unfair anti-competitive conduct in relation to the award of public contracts in the common market (OJ C 253, 4.9.2000, p. 3), also currently stalled. If in the context of the proposal for a Council framework decision on combating racism and xenophobia (COM proposal of 29.11.2001, OJ C 75 E, 23.6.2002, p. 269), currently drafted in conformity with the distribution of powers between the pillars as set out in the Court judgement, criminal penalties were to be introduced in future amendments to combat discrimination, a Directive on the basis of Article 13 EC would be necessary.

<sup>57</sup> Politically agreed at the European Council of 17-18 June 2004 and signed in Rome on 29 October 2004. OJ C 310/1 of 16.12.2004.

<sup>58</sup> For more detailed information on the implications for the area of justice, freedom and security of the Constitutional Treaty, see E. Guild and S. Carrera, cited above at n. 19.

<sup>59</sup> See M. Wasmeier and N. Thwaites, cited above at n. 14, p. 632-634. See also W. Bogensberger, cited above at n. 21.

<sup>60</sup> Constitution, Arts. I-32 et seq., III-171 et seq., and III-302.

<sup>61</sup> However, the approach of the Constitution is not finally so integrationist, as the UK succeeded by the end of the political negotiations in introducing a mechanism for the suspension of the co-decision procedure in those cases where a Member State considers that a draft European framework law would affect fundamental aspects of its criminal justice system (Art. III-271, paragraphs 3 and 4).

# Rapport sur le déroulement du Programme EuroMed Marché



## LE PROGRAMME EUROMED MARCHÉ: UN PROGRAMME RÉUSSI À MAINS ÉGARDS!

Par **Eduardo Sánchez Monjo\***

En mai 2002, EuropeAid Office de coopération de la Commission européenne décida de confier au Centre européen des régions (CER), l'Antenne de l'Institut européen d'administration publique à Barcelone, la gestion d'un vaste programme de coopération industrielle et marché intérieur entre l'UE et les Partenaires méditerranéens<sup>1</sup> (PM), appelé "Programme régional pour la promotion des instruments et mécanismes du Marché euro-méditerranéen" (Programme EuroMed Marché). Le CER est donc l'Unité de gestion du programme (UGP). A signaler que ce programme est un instrument de la politique euro-méditerranéenne de l'UE et relève du chapitre 2 de la Déclaration de Barcelone de novembre 1995 qui vise la création d'une zone de libre échange euro-méditerranéenne à l'horizon 2010 dans le pourtour méditerranéen. D'une durée initiale de 3 ans, de juin 2002 à mai 2005, ce programme a été prolongé d'un an jusqu'en mai 2006 et est doté d'une enveloppe budgétaire de €9,2 millions.

### Objectifs

Le principal objectif de ce programme est de promouvoir la coopération économique (nord-sud et sud-sud) en vue de contribuer à la création de cette zone de libre-échange. Parmi les objectifs plus spécifiques, il vise à faire connaître la situation actuelle chez les PM dans chaque domaine prioritaire (voir ci-dessous); promouvoir chez les PM l'action législative et une interprétation commune des règles; mettre en place des organismes ad hoc de contrôle et de surveillance ou éventuellement les adapter; former les ressources humaines; identifier le cadre légal et les bonnes pratiques, identifier les domaines nécessitant un changement (assistance technique) et assurer une mise en réseau. Enfin, il vise aussi à améliorer la coopération entre les administrations des pays participants afin de permettre des contacts aisés et un traitement rapide des problèmes rencontrés dans la pratique quotidienne.

### Approche

Pour contribuer à la réalisation de ces objectifs, les activités déployées dans le cadre de ce programme ont suivi une approche à la fois régionale, pour l'ensemble des 10 PM, et intra-régionale, pour des groupes de PM regroupés



selon leurs intérêts et leur situation dans le domaine concerné. Les activités ont par ailleurs suivi une approche très pratique, avec des exposés fait par des praticiens des Etats membres de l'UE ou de la Commission européenne, des exposés en séance plénière et des discussions au sein de groupes de travail pour approfondir certains domaines spécifiques.

Au cours de la première et de la deuxième phases, le programme s'est surtout appuyé sur des ateliers d'information sur la situation dans les Etats membres de l'UE et chez les Partenaires méditerranéens (PM) dans les 8 domaines prioritaires<sup>2</sup> couverts par le programme, sur des séminaires de formation de formateurs, des séminaires sur mesure et la constitution de réseaux à la fois institutionnel et d'experts, réseaux qui sont désormais consolidés sur le site Internet du Programme ([www.euromedmarche.org](http://www.euromedmarche.org)).

### Activités réalisées à ce jour

Les activités organisées entre juin 2002 et juin 2005 sont les suivantes<sup>3</sup> : 8 ateliers d'information sur les 8 domaines prioritaires, 3 ateliers supplémentaires d'approfondissement, 8 séminaires de formation de formateurs, 12 activités intra-régionales, 1 publication, 2 études et 3 conférences régionales. A ce jour, plus de 1.200 participants venant des Partenaires méditerranéens ont pris part aux différentes activités du programme.

Les ateliers thématiques de la première phase du programme avaient pour principal objectif de s'informer mutuellement de la situation dans les 8 domaines prioritaires mais aussi de connaître la situation dans les Etats membres

de l'UE et les normes communautaires, et les PM furent invités à rédiger un projet de plan d'action à mettre en oeuvre à l'avenir dans les 8 domaines prioritaires couverts par le programme. Ces plans d'action doivent tenir compte des aspects suivants: adaptation de la législation nationale par rapport aux règles communautaires; évaluation des moyens disponibles dans chaque PM, et réforme administrative et création d'organes de contrôle et de surveillance. Pour ce faire, les PM ont également été invités à tenir compte des recommandations faites par les ministres euro-méditerranéens du Commerce réunis à Palerme le 7 juillet 2003 pendant la Présidence italienne de l'UE qui touchent à l'ensemble du programme, c'est-à-dire aux 8 domaines prioritaires. Celles-ci sont:

- 1) Identifier les secteurs prioritaires;
- 2) Prendre connaissance de la législation communautaire applicable et les différences avec la législation nationale existante;
- 3) Transposer la législation cadre et la législation sectorielle nécessaires;
- 4) Créer ou réformer les institutions en place;
- 5) Mettre en place les organismes de certification et d'évaluation de la conformité;
- 6) Identifier les besoins d'assistance technique et tirer le meilleur parti des programmes existants.

Quant aux séminaires régionaux de formation de formateurs, leur objectif était d'aider les PM à rédiger un programme national de formation dans chacun des 8 domaines prioritaires en vue de sa mise en oeuvre future dans chaque pays partenaire méditerranéen.

En ce qui concerne les séminaires intra-régionaux sur mesure, ils avaient vocation à aider les PM à mettre en oeuvre efficacement la législation, à partager une interprétation commune des normes et à créer des organismes de contrôle et des mécanismes de recours. Un autre but était le renforcement de la coopération sud-sud, dès lors que les séminaires s'adressaient à des regroupements régionaux, tels que les pays signataires de l'Accord d'Agadir (Egypte, Jordanie, Maroc et Tunisie) ou à des pays ayant conclu une zone de libre échange entre eux. L'Accord d'Agadir fut signé par les 4 pays membres le 25 février 2004 et vise la création d'une zone de libre échange entre l'Egypte, la Jordanie, le Maroc et la Tunisie. Cet accord devra permettre de dynamiser les échanges commerciaux, de développer le tissu industriel, de soutenir l'activité économique et l'emploi, d'augmenter la productivité et d'améliorer le niveau de vie dans les pays signataires. Il a été convenu que tout pays arabe membre de la Ligue Arabe et de la Grande zone arabe de libre échange et lié par un accord d'association ou de libre échange avec l'Union européenne peut adhérer à l'accord d'Agadir après consentement de tous les pays membres.

Parallèlement à ces activités de formation ou d'information, l'UGP a organisé également 59 visites d'études de fonctionnaires des Partenaires méditerranéens dans les administrations publiques des Etats membres de l'Union européenne. Ces visites sont destinées à familiariser les fonctionnaires des Partenaires méditerranéens avec la législation pertinente et avec l'activité législative, la mise en oeuvre et l'exécution des mesures couvertes par le programme. Au cours de ces visites, les participants peuvent profiter de l'expérience pratique de l'administration d'accueil dans un Etat membre de l'UE et jeter les bases d'une coopération future entre celle-ci et leur administration

d'origine.

Par ailleurs, l'UGP organise aussi des missions d'experts européens (assistance technique) dans les administrations des Partenaires méditerranéens destinées à aider les administrations des Partenaires méditerranéens à mettre en oeuvre la législation nécessaire à la création de la zone de libre échange.

### *Activités de diffusion d'information*

Pour chaque activité organisée dans le cadre du Programme EuroMed Marché, l'UGP a produit et remis aux participants un CD-ROM contenant toute la documentation de base dans chacun des thèmes traités. Elle a aussi réalisé à l'issue de la 1<sup>ère</sup> phase du programme une publication en deux volumes: 1) "Actes des activités réalisées pendant la 1<sup>ère</sup> phase"; 2) "Etudes comparatives sur la situation dans les Partenaires méditerranéens au regard des 8 domaines prioritaires du programme". Cette publication est parue à l'automne 2004. Enfin, il convient d'ajouter à cela la réalisation de 2 études comparatives: 1) "Etude sur la propriété intellectuelle: étude comparative sur les différents systèmes des Partenaires méditerranéens et des Etats membres de l'Union européenne et sur les bonnes pratiques, droit matériel, procédures administratives et judiciaires." et 2) "Les différentes techniques de promotion du commerce: techniques traditionnelles, protection des consommateurs, nouvelles techniques: commerce électronique." Ces deux études ont été effectuées par des opérateurs externes, respectivement par ANDEMA, l'Association espagnole de protection des marques, et UNIONCAMERE, l'Union italienne des Chambres de commerce et d'industrie, et ont été publiées à l'automne 2005.

### *Troisième phase du programme*

Alors que la fin du programme approchait, la CE, après avoir réalisé une évaluation positive du programme, décida de le prolonger jusqu'en mai 2006 en vue de consolider certains des acquis des deux premières phases, cette année supplémentaire correspondant à la 3<sup>ème</sup> phase du programme. Depuis le début de cette troisième phase en juin 2005, l'UGP a réalisé 4 activités supplémentaires de portée régionale: Marchés publics, Paris, du 4 au 7 juillet 2005; L'application de la géométrie variable dans le contexte du protocole pan-euro-méditerranéen sur les règles d'origine, Lisbonne, du 5 au 8 juillet 2005; Droits de propriété intellectuelle, Rome, du 14 au 17 novembre 2005; Développements en matière d'audit et comptabilité dans la région euro-méditerranéenne, Londres, du 21 au 24 novembre 2005. D'ici la fin du programme en mai 2006, il reste encore à réaliser 2 activités de portée régionale et 6 activités de portée intra-régionale.

### *Principaux résultats*

Les principales réalisations à mettre à l'actif du programme sont la mise à jour des connaissances spécialisées des délégués des Partenaires méditerranéens, la contribution à l'adaptation législative chez les PM, l'inventaire des besoins de formation, l'identification des secteurs nécessitant une adaptation législative, l'éventuel rapprochement législatif entre les PM; plus concrètement, la rédaction par chaque PM d'un plan d'action et d'un plan de formation dans chacun des domaines prioritaires. Par ailleurs, ce

programme a aussi permis la mise en réseau entre tous les participants, réseau qui est soutenu par le site Internet du programme ([www.euromedmarche.org](http://www.euromedmarche.org)). A signaler qu'à l'issue de chaque activité, les participants sont invités à approuver une déclaration finale dans laquelle ils reconnaissent les résultats obtenus au cours de l'activité et prennent une série d'engagements pour avancer dans le domaine concerné.

En résumé, on peut dire qu'à la fin des 4 années du programme, l'UGP aura réalisé 122 activités d'information et de formation, à la fois dans les Etats membres de l'UE et dans les pays partenaires méditerranéens, et que plus de 2.000 participants auront pris part à ces activités.

### **LA SITUATION DES MARCHÉS PUBLICS DANS LES PAYS PARTENAIRES MEDITERRANÉENS**

Par **Salvador Font Salas\*\***

L'un des 8 domaines prioritaires<sup>4</sup> du Programme EuroMed Marché, rattachés au marché unique et qui sont importants pour la création d'une zone de libre-échange euro-méditerranéenne à l'horizon 2010 dans le pourtour méditerranéen, est le thème des marchés publics. L'Unité de gestion du programme (UGP), le Centre européen des régions – CER, Antenne de l'IEAP à Barcelone, a organisé une série de 6 activités sur ce thème depuis le début du programme. Au total, 229 participants des Partenaires méditerranéens (PM) ont pris part à ces activités. Généralement, ces participants étaient des représentants des services responsables de la passation des marchés publics, des praticiens, des décideurs, des formateurs, des représentants des ministères concernés ou encore des représentants d'associations d'entreprises ou du secteur privé.

#### **Activités et résultats obtenus**

Le domaine des marchés publics est l'un des plus importants des 8 domaines prioritaires du Programme EuroMed Marché, et il a fait l'objet d'un nombre important d'activités pendant la période située entre juin 2002 et octobre 2005.

- 1) Atelier d'information régional sur les marchés publics tenu à l'IEAP Maastricht du 16 au 18 décembre 2002, avec une participation de 56 délégués des Partenaires méditerranéens. Dans la déclaration finale approuvée à l'issue de ce séminaire, les 12 Partenaires méditerranéens de l'époque<sup>5</sup> (10 depuis mai 2004 à la suite de l'adhésion de Chypre et Malte à l'UE) reconnurent qu'il était nécessaire de rendre leurs systèmes de marchés publics davantage convergents avec les règles et principes existant dans l'Union européenne, tenant compte en cela des dispositions contenues dans les Accords d'association euro-méditerranéens.
- 2) Comme suivi de cette première activité, un atelier d'approfondissement de portée régionale sur ce même thème fut organisé à Nicosie du 15 au 17 décembre 2003, avec une participation de 53 délégués des Partenaires méditerranéens. A l'issue de cette activité, les participants approuvèrent une Déclaration finale dans laquelle ils reconnurent qu'il était important d'élaborer un Plan d'action sur les marchés publics qui tienne compte des besoins des Partenaires méditerranéens. Ce plan d'action devra s'appuyer sur un inventaire des moyens disponibles dans chaque PM, une plus grande harmonisation de la législation sur les marchés

publics des 12 PM avec les règles de l'UE, un renforcement des institutions ad hoc en vue de mettre en œuvre une politique pertinente de passation de marchés publics, et l'élaboration de programmes de formation destinés aux ressources humaines chargées des marchés publics.

- 3) La troisième réunion, également de portée régionale, fut un séminaire de formation de formateurs sur les Marchés publics, tenu à Athènes du 24 au 27 février 2004, avec la participation de 2 délégués par Partenaire méditerranéen, au total 24. A l'issue de ce séminaire, les participants reconnurent dans la déclaration finale que cette activité leur avait permis de prendre connaissance du nouveau paquet législatif adopté par le Parlement européen et le Conseil, et de se préparer à rédiger les programmes de formation nécessaires à une passation correcte des marchés publics et à développer et mettre en œuvre les outils pédagogiques de formation dans ce domaine. Ils s'engagèrent aussi à élaborer un Programme de formation aux pratiques de passation de marchés publics à destination des administrations et institutions impliquées.
- 4) Lors du séminaire intra-régional sur mesure pour les pays signataires de l'Accord d'Agadir (Egypte, Jordanie, Maroc et Tunisie) tenu à Tunis du 4 au 7 octobre 2004, avec la participation de 38 délégués des 4 pays d'Agadir, dans la déclaration finale adoptée à l'issue de l'activité, les représentants de ces pays ont proposé de constituer un comité technique composé de représentants des quatre pays. Le rôle de ce comité serait d'élaborer un plan d'action détaillé ayant pour objet d'arriver à un rapprochement des règlements en vigueur dans les pays membres, et cela conformément à l'article 2, paragraphe 4, de l'Accord d'Agadir; de renforcer les instances nationales respectives chargées de la passation de marchés publics, de l'audit et des mécanismes de recours, et d'approfondir la coopération entre ces instances. Il serait aussi d'identifier les domaines dans lesquels l'assistance technique est requise pour mieux soutenir la réalisation des objectifs dans ce domaine, notamment la formation et les technologies de l'information.
- 5) A l'occasion du séminaire intra-régional sur mesure sur le thème des marchés publics, tenu à Bruxelles du 11 au 13 avril 2005 avec la participation de 20 personnes, les délégués des pays présents, à savoir Israël, Autorité palestinienne et Turquie, adoptèrent également une déclaration finale dans laquelle ils admirent que ce séminaire leur avait permis d'avoir un échange d'expériences et d'informations et d'identifier des questions éventuelles nécessitant une action future à déployer éventuellement au sein d'un réseau régional des marchés publics encore à créer.
- 6) Enfin, la dernière activité sur les marchés publics organisée à ce jour dans le cadre du programme EuroMed Marché, fut un séminaire régional de la 3<sup>ème</sup> phase du programme qui s'est tenu à Paris du 4 au 7 juillet 2005 avec la participation de 38 délégués des PM.

Etant donné que cette activité est la dernière activité de portée régionale sur ce sujet, nous nous attarderons un peu plus longuement sur ses conclusions.

Ici aussi, une déclaration finale fut adoptée dans laquelle les participants reconnaissent que ce séminaire leur a permis d'avancer sur la voie du rapprochement des règlements existants chez les Partenaires

méditerranéens dans ce domaine; de la définition des domaines devant garantir ce rapprochement; de l'adaptation et du renforcement des instances nationales chargées de la passation de marchés publics, de l'audit et des mécanismes de recours, ainsi que la coopération entre ces instances; et enfin de l'identification des domaines dans lesquels l'assistance technique est requise en vue d'une meilleure réalisation des objectifs poursuivis dans ce domaine. Par ailleurs, ils ont aussi appelé de leurs vœux la mise en place d'un réseau euro-méditerranéen spécifique sur les marchés publics.

Lors de cette réunion de Paris, les délégués ont proposé notamment que pour arriver à un accord de libre-échange efficace à l'horizon 2010 entre les Partenaires euro-méditerranéens, il est nécessaire de parachever le rapprochement de leur législation et pratiques d'un cadre commun qui soit compatible avec les règles de l'UE et de l'AMP, et de continuer à travailler ensemble pour améliorer leur administration, leur réglementation et leur pratique des marchés publics dans l'intérêt de l'efficacité et de l'efficience et de la compétitivité de leurs opérateurs économiques.

Un autre point soulevé par les délégués présents au séminaire de Paris dans les conclusions de leurs travaux concerne la mise à jour et le maintien du site Internet pour ce qui concerne l'information sur les marchés publics et la création de liens avec chaque PM. A cette fin, il serait bon que chaque PM nomme un point focal chargé de coordonner et de suivre toutes les questions en la matière.

Enfin, la toute dernière activité qui sera organisée sur le thème des marchés publics dans le cadre du Programme EuroMed Marché sera un séminaire intra-régional destiné à l'Autorité palestinienne, à Israël et à la Turquie, qui se tiendra en Turquie du 12 au 15 décembre 2005.

Par ailleurs, il convient de signaler que l'UGP a également organisé 3 visites d'études de fonctionnaires des PM dans les administrations des Etats membres de l'UE sur le thème des marchés publics.

En général, lors de ces visites d'études, les fonctionnaires des PM ont l'occasion de se familiariser avec le travail de leurs homologues étrangers et de tisser des liens de coopération future entre leur administration d'origine et l'administration d'accueil.

### **Principaux résultats de l'étude comparative sur le sujet parmi les PM**

A l'occasion de la première activité sur le thème des marchés publics tenue à Maastricht en décembre 2002, il fut demandé aux PM de remplir un questionnaire détaillé sur la situation dans leur pays dans le domaine des marchés publics. Une fois recueillies, ces réponses furent analysées et présentées sous forme d'étude comparative dans la publication<sup>6</sup> faite à l'issue de la première phase du Programme parue à l'automne 2004. Cette étude comparative<sup>7</sup> a permis de mettre en exergue un certain nombre d'éléments que nous présentons ci-dessous de manière succincte.

L'auteur qui a réalisé cette étude à la demande de l'UGP est Olivier Moreau, Rédacteur au Bureau 1A, Sous-direction de la commande publique de la Direction des Affaires juridiques, ministère de l'Economie, des Finances et de l'Industrie, Paris.

Parmi les éléments qui ressortent de cette étude, tout d'abord il y a lieu de souligner que les données fournies ainsi que les différentes définitions de la notion de marchés publics n'étaient la plupart du temps pas très homogènes. Par ailleurs, en ce qui concerne la typologie des réglementations nationales, il convient de remarquer le caractère récent de la plupart des textes juridiques régissant ce domaine, dont la plupart ont été pris au cours des 10 dernières années et les plus récents remontent à 2002 et 2003. Pour les anciens et les nouveaux Etats membres de l'UE, cela s'explique notamment par la nécessaire transposition des directives communautaires; quant aux Partenaires méditerranéens, c'est là le résultat de l'adéquation à des engagements internationaux tels que l'AMP<sup>8</sup> ou des exigences normatives posées par les organismes de financement internationaux (Banque mondiale, etc.). Enfin, un autre trait caractéristique qui ressort de l'étude est la variété des systèmes juridiques applicables aux marchés publics.

Parmi les autres aspects couverts par cette étude, signalons les règles de publicité préalable. En général, le principal vecteur de diffusion de l'information est le journal, parfois au niveau national, parfois au niveau local, et parfois encore à l'étranger. A ce sujet, l'auteur fait remarquer le problème du multilinguisme dans certains pays où coexistent différentes langues officielles. L'étude s'intéresse aussi à la question de la préférence nationale et de la concurrence étrangère. Si les fournisseurs étrangers ont accès aux appels d'offres sans restriction par les Etats membres de l'UE, la situation chez les PM varie d'un pays à l'autre, certains d'entre eux suivant cette même règle. On retrouve ces mêmes variations pour ce qui est des seuils qui déclenchent des procédures formalisées, ceux-ci pouvant varier selon l'objet du marché ou en fonction des engagements internationaux. S'agissant des litiges et des voies de recours, l'auteur note qu'il y a deux écoles, l'une instituant la compétence directe des tribunaux, l'autre prévoyant l'intervention privilégiée d'un organisme *sui generis* indépendant. Dans plusieurs PM est également prévue la compétence d'une autorité administrative de surveillance. A signaler que certains PM souhaitent l'institution d'un organe neutre d'arbitrage ou de médiation, favorisant l'intervention d'une solution amiable sans avoir à recourir aux tribunaux administratifs. En ce qui concerne l'organisation administrative des marchés publics, ceux-ci sont soit passés par une structure ad hoc centralisée, soit laissés sous la responsabilité de chaque service/entité destinataire de la prestation, avec quelques solutions mixtes. A la fin de l'étude, l'auteur fait également une analyse des problèmes transfrontaliers rencontrés par les PM lors de la passation de marchés publics.

Pour de plus amples renseignements sur cette étude, vous pouvez vous procurer sur simple demande à l'IEAP un exemplaire de la publication qui est disponible gratuitement.

### **Réseau d'experts dans le domaine des marchés publics au niveau euro-méditerranéen**

La partie publique du site Internet du Programme EuroMed Marché<sup>9</sup> contient de nombreuses informations sur chacun des 8 domaines prioritaires, dont les marchés publics. Il donne des informations sur les activités réalisées: programme, liste de participants, Déclaration finale, etc. La partie d'accès restreint, appelée "Réseau externe", accessible uniquement aux participants et experts munis d'un identifiant

et d'un mot de passe, contient entre autres la documentation de base nationale et de l'UE dans chaque domaine. Le site offre aussi la possibilité de consulter un réseau d'experts en la matière. Enfin, les contacts pris par les participants à l'occasion des différentes activités peuvent être poursuivis et approfondis grâce aux possibilités offertes par ce site

- Internet.
- Ainsi, on le voit, en marge du réseau informel qui a pu se constituer au fil des activités, ce site constitue la plateforme toute indiquée pour structurer et consolider un réseau euro-méditerranéen, dans ce cas-ci dans le domaine des marchés publics. ::

## NOTES

\* Superviseur du programme; Directeur du Centre européen des régions, IEAP-CER, Barcelone.

\*\* Coordinateur du programme ; Maître de conférences, Centre européen des régions, IEAP-CER, Barcelone.

<sup>1</sup> Algérie, Autorité palestinienne, Chypre, Egypte, Israël, Jordanie, Liban, Malte, Maroc, Syrie, Tunisie et Turquie. A partir de mai 2004, le nombre de Partenaires méditerranéens est passé à 10, Chypre et Malte ayant rejoint l'UE.

<sup>2</sup> Ces 8 domaines sont: Libre circulation des marchandises; Douanes, fiscalité et règles d'origine; Marchés publics; Droits de propriété intellectuelle; Audit et comptabilité; Protection des données personnelles et commerce électronique; Règles de concurrence; Services financiers.

<sup>3</sup> La liste complète de ces activités est la suivante: 1ère Conférence de lancement du programme EuroMed Marché, Barcelone, les 17 et 18 juin 2002.

### 8 Ateliers thématiques:

- 1) Libre circulation des marchandises, Bruxelles, du 30 septembre au 2 octobre 2002.
- 2) Douanes, fiscalité et règles d'origine, Bruxelles, du 28 au 30 octobre 2002.
- 3) Marchés publics, Maastricht, du 16 au 18 décembre 2002.
- 4) Droits de propriété intellectuelle, Madrid, du 3 au 5 février 2003.
- 5) Audit et comptabilité, La Valette, du 24 au 26 février 2003.
- 6) Protection des données personnelles et commerce électronique, Rome, du 12 au 14 mai 2003.
- 7) Règles de concurrence, Berlin, du 26 au 28 mai 2003.
- 8) Services financiers, Athènes, du 2 au 4 juin 2003.

### 3 Ateliers supplémentaires d'approfondissement:

- 1) Libre circulation des marchandises – Nouvelle approche – Approche globale – Surveillance du marché, Paris, du 13 au 15 octobre 2003.
- 2) Concurrence: Aides d'Etat et pratiques anti-concurrentielles, Barcelone, du 1er au 3 décembre 2003.
- 3) Marchés publics, Nicosie, du 15 au 17 décembre 2003.

### 8 Séminaires de formation de formateurs:

- 1) Règles d'origine: extension du système de cumul paneuropéen aux Partenaires méditerranéens, Bruxelles, du 19 au 23 janvier 2004.
- 2) Présentation du droit communautaire en matière de protection des innovations, des produits et des services en vue d'une convergence réglementaire, Lisbonne, du 26 au 30 janvier 2004.
- 3) Les pratiques douanières concernant la lutte contre la contrefaçon et la piraterie, Paris, du 9 au 13 février 2004.
- 4) Marchés publics, Athènes, du 24 au 27 février 2004.
- 5) Audit et comptabilité, Rome, du 29 mars au 2 avril 2004.
- 6) Libre circulation des marchandises: évaluation des risques, choix des normes, évaluation de la conformité, sécurité

générale des produits, Madrid, du 22 au 26 mars 2004.

7) Services financiers: banque, assurances, valeurs mobilières, Berlin, du 26 au 30 avril 2004.

8) Concurrence, Vienne, du 3 au 7 mai 2004.

### 4 séminaires intra-régionaux sur mesure pour les pays signataires de l'Accord d'Agadir:

- 1) Libre circulation des marchandises. Harmonisation des règles techniques, Rabat, du 28 juin au 1er juillet 2004.
- 2) Règles d'origine pan-euro-méditerranéennes et l'Accord d'Agadir, Amman, du 27 au 30 septembre 2004.
- 3) Marchés publics – Audit et mécanismes de recours, Tunis, du 4 au 7 octobre 2004.
- 4) Droits de propriété intellectuelle, Le Caire, du 29 novembre au 2 décembre 2004.

### 8 séminaires intra-régionaux sur mesure pour des groupes de 3 ou 4 pays:

- 1) Audit et comptabilité (pour l'Autorité palestinienne, Israël et la Turquie), Ankara, du 22 au 25 novembre 2004.
- 2) Règles d'origine pan-euro-méditerranéennes (pour l'Algérie, le Liban et la Syrie), Beyrouth, du 17 au 20 janvier 2005.
- 3) Concurrence (pour l'Autorité palestinienne, Israël, Malte et la Turquie), La Valette, du 24 au 27 janvier 2005.
- 4) Audit et comptabilité (pour l'Algérie, le Liban et la Syrie), Alger, du 28 février au 3 mars 2005.
- 5) Coopération douanière et lutte contre la contrefaçon et la piraterie (pour l'Algérie, Chypre, le Liban et la Syrie), Nicosie, du 7 au 10 mars 2005.
- 6) Concurrence (pour l'Algérie, le Liban et la Syrie), Damas, du 14 au 17 mars 2005.
- 7) Marchés publics (pour Israël, l'Autorité palestinienne et la Turquie), Bruxelles, du 11 au 13 avril 2005.
- 8) Règles d'origine pan-euro-méditerranéennes (pour l'Autorité palestinienne, Israël, et la Turquie), Bruxelles, du 10 au 13 mai 2005.
- <sup>4</sup> Libre circulation des marchandises; Douanes, fiscalité et règles d'origine; Marchés publics; Droits de propriété intellectuelle; Audit et comptabilité; Protection des données personnelles et commerce électronique; Règles de concurrence; Services financiers.
- <sup>5</sup> Algérie, Autorité palestinienne, Chypre, Egypte, Israël, Jordanie, Liban, Malte, Maroc, Syrie, Tunisie et Turquie.
- <sup>6</sup> "Etudes comparatives sur la situation dans les Partenaires méditerranéens au regard des 8 domaines prioritaires du programme", sous la direction de Eduardo Sánchez Monjo, IEAP, 2004, 273 p.
- <sup>7</sup> "Etude comparative sur la réglementation des marchés publics dans les pays de la zone méditerranéenne et dans quatre Etats membres de l'UE", Olivier Moreau, pp. 91-118.
- <sup>8</sup> Accord sur les marchés publics de l'OMC.
- <sup>9</sup> www.euomedmarche.org

# Open Activities April 2006

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

LOCATION	PROJECT NO.
<b>MAASTRICHT</b>	
3-4 April 2006 Seminar: Financial Management of EU Structural Funds	0630204
3-4 April 2006 Seminar: Effective National Coordination	0624001
5-7 April 2006 Public Private Partnerships (PPP) – Practitioners’ Seminar: Public-Private Partnerships – Making Best Use of Public Funds	0630601
6-7 April 2006 Seminar: Understanding Decision-Making in the European Union: Principles, Procedures and Practice	0612201
10-11 April 2006 Workshop: State Aid Procedures and Enforcement	0631202
10-11 April 2006 Seminar: EU Agencies, in collaboration with Maastricht University	0611201
26-28 April 2006 Seminar: Appraisal, Monitoring and Impact Assessment Techniques for EU Structural Funds	0630201
27-28 April 2006 Seminar: European Negotiations II, You and European Negotiations	0611401
<b>LUXEMBOURG</b>	
6-7 April 2006 Seminar: Alternative Dispute Resolution	0651801
<b>BRUSSELS</b>	
24 April 2006 One-day Seminar on European Information	

# Report on the State of Affairs of the Common Assessment Framework (CAF) after Five Years



By Patrick Staes and Nick Thijs\*

## 1. Introduction

The public sector has to cope with a lot of challenges and has to respond to many new needs and demands in society. Due to these challenges and pressures, the public sector is subject to many reforms. *“Over the last two decades there appears to have been a huge amount of public management reform. Although there was also reform in earlier periods, the changes since 1980 have – in many countries – been distinguished by an international character and a degree of political salience which marks them out from the more parochial or technical changes of the preceding quarter-century.”*<sup>1</sup> These reforms introduce new principles. A growing focus on efficiency and effectiveness, attention to transparency and accountability, awareness of public service delivery. Together with these principles, methods and techniques were constructed, focusing on one of these principles or trying to combine them. Techniques like *‘management by objectives’, ‘cost benefit analysis’, ‘market testing’, ‘performance related pay’, ‘value for money’* were introduced.<sup>2</sup>

One of these techniques, Total Quality Management, became a feature of the public sector from the late 1980s and particularly the early 1990s.<sup>3</sup> In the late 1990s, many quality models and techniques (EFQM, ISO ...) and subsequently the Common Assessment Framework (CAF) found their way into the public sector. In recent times, public sector quality improvements have appeared on the agenda of Eastern European countries.<sup>4</sup> The new EU Member States in particular are very active in promoting quality tools.<sup>5</sup>

## 2. The construction of the CAF-model as a European quality tool<sup>6</sup>

Following years of informal consultations, there was an increasing need within the European Union for a more intensive and formal response in order to optimise cooperation with respect to the modernisation of government services. In 1997, this need was given substance by the formation of a steering committee at European level, which subsequently became the IPSG – the Innovative Public Services Group. In addition, the preparatory work that had been performed for several years at informal level by the

public service heads of the various EU Member States, led in November 1998 to a ministerial declaration containing *“the general principles concerning the improvement of the quality of services provided to citizens”*. The IPSG working group then developed a quality tool specifically intended for and adapted to the public sector. This resulted in 2000 in the Common Assessment Framework – a self-assessment framework based on the principles of TQM and derived from the EFQM model and the German Speyer model. In 2002, the model was simplified and improved.

The CAF has four main purposes:

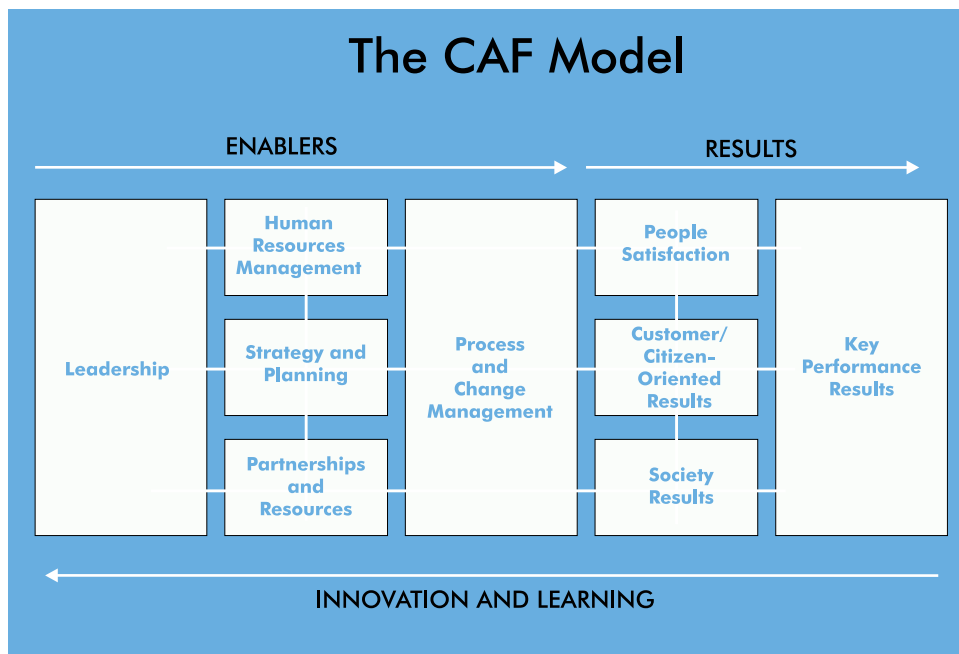
1. To reflect the unique features of public sector organisations.
2. To serve as a tool for public administrators who want to improve the performance of their organisation.
3. To act as a bridge between the various models in use in quality management.
4. To facilitate benchmarking between public sector organisations.

The CAF has been designed for use in all parts of the public sector, applicable to public organisations at a national/federal, regional and local level. It may also be used under a wide variety of circumstances, e.g. as part of a systematic programme of reform or as a basis for targeting improvement efforts in public service organisations. In some cases, and especially in very large organisations, a self-assessment may also be undertaken in part of an organisation, e.g. a selected section or department.

The CAF constitutes a blueprint of the organisation. It is a representation of all aspects that must be present in the proper management of an organisation in order to achieve satisfactory results. All these elements are translated into nine criteria and further operationalised and given concrete form in subcriteria. On the basis of these subcriteria, a group from within the organisation evaluates the organisation.<sup>7</sup>

## 3. Quality management in Europe: a short term overview

In 2002 a study was carried out on behalf of the Spanish Presidency of the European Union to obtain an overview of



the most important quality programmes, major tendencies and the use of quality management techniques in the Member States.<sup>8</sup> The highlights of this study can be summarised in five points.

1. Almost all countries are conducting a number or even a large number of quality initiatives, relating to various forms of service provision.
2. Most Member States have specific organisation units (at central, regional and local level) which are responsible for the promotion of quality initiatives for the public sector.
3. The use of quality models and techniques to achieve improvements in the public sector has taken root in all Member States.
4. A growing use of quality awards and contests can be noticed. *"The organisation of quality awards or contests is one of the standard instruments used to promote quality, innovation and organisational learning in the public sector, to encourage public administrations to use instruments of quality management and also introduce an element of competition into the public sector."*<sup>9</sup>
5. Benchmarking remains a very difficult issue.

With the organisation of the European Conference on Quality, started in Lisbon in 2000, and the spread of national conferences, a growing dynamic in the quality movement could be noticed. In addition, the decision was taken to set up a CAF support centre within EIPA in Maastricht. Investments were made to design and promote the CAF model as a "light" model, especially suited to gaining an initial impression of how an organisation performs. It is assumed that any organisation that intends to go further will select one of the more detailed models (such as the Speyer or EFQM models).

During the Italian Presidency, the European Institute of Public Administration conducted a study on the use of the Common Assessment Framework within European public administrations.<sup>10</sup> The questionnaire-based study sought to identify the way in which CAF was promoted in the different Member States and how the tool helped public administrations to analyse themselves in an efficient way and to implement improvement actions in the context of a total quality approach. The conclusions of the 2003 study

on the use of the Common Assessment Framework can be summarised in the following points.<sup>11</sup>

The CAF model was applied in more than 500 organisations or organisation divisions in 19 countries. The organisations were spread across the various tiers of the government landscape (central, state, provincial, local ...). In addition, the organisations originated from sectors ranging from the police and judiciary, across welfare and social sector organisations and education, to living environment, economy and organisations charged with coordination or policy functions. The size of the organisations differed from very small (10 employees) to very large (more than 5000), although we must conclude that the middle group is the largest.

The most important reason to use the CAF was as a measuring device to subject the organisation to a quick scan in order to identify a number of strong and weak points, which will then serve as a launching pad for a number of improvement projects. This clear identification of the strengths and weaknesses of the organisation is the most important added value of the self-assessment. This strength/weakness analysis can be further used as a basis to set up targeted improvement actions. In addition, matters such as an increased awareness of organisational problems, a better insight into the total functioning of the organisation and the exchange of ideas in this respect appeared to be important aspects.

We concluded that many of the initiatives launched in the various European countries relating to quality management may be labeled as individual, *ad hoc* initiatives of the countries themselves. However, we observed a growing tendency, both in Eastern and Western European countries, towards a common language and a common reference framework. Quality tools such as the CAF model may serve as a framework for this language. By offering such a framework as a guiding principle for organisation management, principles of proper management find their way into many administrations and many different countries.<sup>12</sup>

In 2004 the CAF support centre at EIPA was evaluated and a vision for the future was drawn up. The CAF support centre intends:

1. To offer a permanent basis for the further development of the CAF, for the promotion of the CAF and for stimulating good practices within the European public sector.
2. To become a reference point for the dissemination and collection of CAF information and expertise.
3. To become an expertise centre for supervising CAF applications.
4. To become a reference point in creating awareness and supporting quality management in the various European countries.

In 2005 the CAF Resource Centre at the European Institute of Public Administration in Maastricht carried out a survey on the use of the CAF on behalf of the Luxembourg Presidency of the EU.<sup>13</sup>

#### 4. The CAF in Europe: State of affairs anno 2005

##### 4.1 Context of the 2005 study

Nearly a year and a half after the first study on the use of the CAF, the Luxembourg Presidency asked EIPA, in accordance with the Mid-Term Programme of the European Public Administration Network, to conduct a follow up study. As was the case in 2003, a questionnaire, prepared in collaboration with the CAF correspondents, was sent to the CAF correspondents and members of the IPSG to acquire information on the status of CAF in their country (the Member States, candidate members and Norway). Slight adaptations were designed to collect information related to the evolution since 2003. All 27 correspondents answered the questionnaire.

For organisations that have used the CAF since then, a questionnaire was put on line on the EIPA CAF website. 131 questionnaires have been returned to EIPA by individual organisations from 22 different countries.

##### 4.2 Policy and support in the Member States

The different national correspondents were asked about the political support for CAF and other TQM tools in their country, to give an idea as to the overall position adopted by governments on TQM in general.

Table 1 indicates that TQM tools and CAF have found their place in most of the European countries. As in 2003, EFQM, ISO, BSC and CAF are the most extensively used TQM tools in Europe in general, not counting specific national tools like VIC (Italy), INK (the Netherlands) and the Swedish Quality model. Most of the conferences on 'Quality Management' or 'Quality in the Public Sector', both national (e.g. Germany, Belgium) and European, support the relationships between these different models. In Austria,

EFQM is mostly used by schools and labour market services and ISO 9000 by specific organisations. CAF is implemented at all levels of government. Belgium has built up significant experience with Business Process Reengineering (BPR), trying to integrate self assessment as a preliminary diagnosis before starting a BPR. The introduction of Balance Score Cards aims at developing indicators together with satisfaction surveys for people and citizens/customers. To support vision and missions, codes of values have been introduced in some public organisations. The Czech Republic is also encouraging the use of CAF to initiate BSC and satisfaction surveys as well as for project management, internal audits, process management and reengineering. It also has some ISO and EFQM applications. Denmark is currently encouraging users of the Excellence Model to use CAF as an additional tool to increase the dissemination of TQM in their organisations. The tools that have been developed in relation to CAF make it easier to ensure a high degree of dissemination with a low use of resources. At local level, the KVIK/CAF is currently a better established brand than the EFQM Excellence Model. Finland is suggesting to users that EFQM and CAF can be used alternately: detailed analysis by EFQM every second year and a midway check by CAF in the year in between the EFQM analysis. The Slovenian annual national EFQM reward is linked to CAF. In Luxembourg, a few public administrations are implementing ISO 9000.

The stability of the political support for TQM tools and CAF is evident in countries with some history in this field – such as the Scandinavian and Anglo-Saxon countries – and in the UK political support is even increasing. In these countries, choices of management tools are basically made at management level. In several other countries the political awareness of CAF and TQM is growing and is expressed in central government initiatives.

In most of the countries, the political support mentioned translates into the recommended use of these tools.

CAF is only obligatory in two new and one candidate Member State: they want all three to make a special effort to encourage quality management in their central administrations. On the basis of the received information, it is impossible to describe the intensity or impact of the recommendations in the other countries. Looking at the activities and actions put into place (see *infra*), even where CAF is applied on a voluntary basis, it is obvious that these activities and actions organised at the central state level provide a very strong impetus.

The organisations responsible for the dissemination and promotion of CAF remain located centrally, meaning close to the central government and its Ministry in charge of public administration. Belgium, Germany and Spain maintain their specific way of involving regional and local levels of government.

**Table 1: TQM tools and CAF and the political support**

No formal policy (1)	Decreasing (2)	Constant (9)	Increasing (12)
Ireland	Estonia, Latvia	Germany, Denmark, Finland, France, Netherlands, Portugal, Sweden, Slovakia, Norway	Austria, Belgium, Cyprus, Czech Republic, Greece, Spain, Hungary, Italy, Lithuania, Luxembourg, Poland, Luxembourg, Slovenia, Romania, UK

**Table 2: The implementation of CAF: voluntary, recommended or obligatory**

Voluntary (9)	Recommended (15)	Obligatory (3)
Austria, Estonia, Finland, Ireland, Italy, Latvia, Netherlands, Portugal, UK	Belgium, Czech Republic (highly), Czech Republic (local level), Germany, Denmark, Greece, Spain (for starters), France, Hungary, Lithuania, Luxembourg, Poland, Sweden (TQM), Slovenia, Slovakia, Norway	Czech Republic (central level), Slovakia (central level), Romania

### 4.3 The use of CAF in the different countries

It remains difficult to centralise information on the number of CAF applications at national and European level. This is due to the nature of the tool itself – a stimulus for individual organisational development via self-assessment – as well as the European context in which it was created – an open coordination or voluntary cooperation between countries. As in the 2003 study, the national correspondents were asked to estimate the use of CAF in their country. In the autumn of 2003, 22 countries estimated roughly having generated 500 applications. In 2005, 20 countries estimated having generated around 885 applications in their countries.

To provide an idea of the spread of CAF, two groups are distinguished. Countries with more than 30 applications can be considered to have already established a sound basis for the further use of the CAF. Countries with fewer than 30 applications can be credited with having gained initial experience with the model. Maybe they are on their way to joining the first group.

**Table 3: The use of CAF in different countries**

More than 30 applications	Austria, Belgium, Czech Republic, Germany, Denmark, Finland, Hungary, Italy, Norway, Portugal, Slovenia, Sweden
Fewer than 30 applications	Cyprus, Estonia, Greece, Spain, France, Ireland, Latvia, Luxembourg, Poland, Slovakia, UK, Romania

### 4.4 Implementation and use of CAF in public administrations: lessons learned from practice

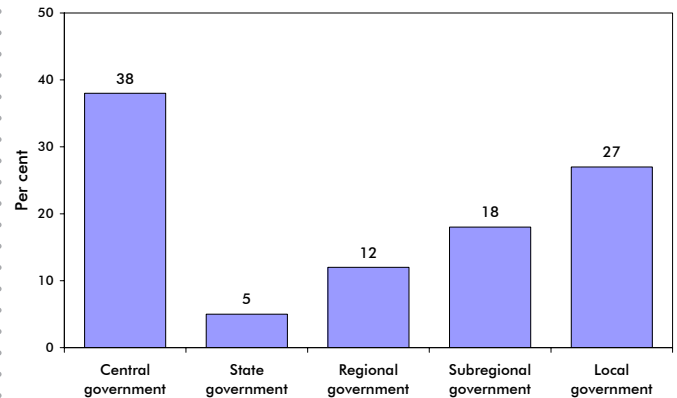
Based on the information gathered from the 131 questionnaires returned to EIPA by individual organisations from 22 different countries, the first observation confirms that the CAF model is used in all tiers of government as shown in previous surveys.

The organisations from the central and state governments (43%) are the best represented in this survey at the expense of the local governments. This gives at least an indication that CAF is finding its way also into the central levels of government.

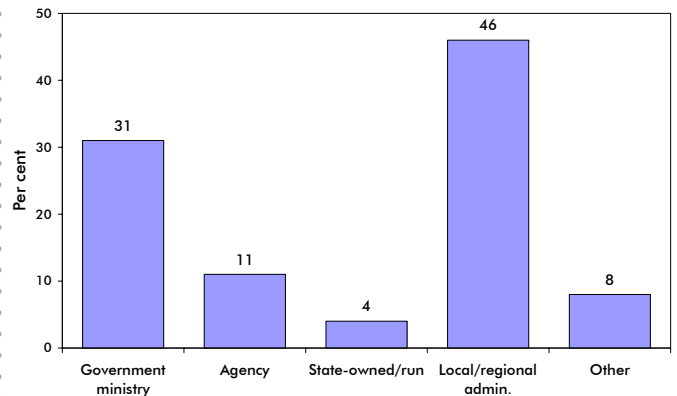
The model is not only used in the different tiers of government, but organisations from different types of administrations are also users

Besides the tier and the type of administration, the size of the organisation is another interesting characteristic to look at.

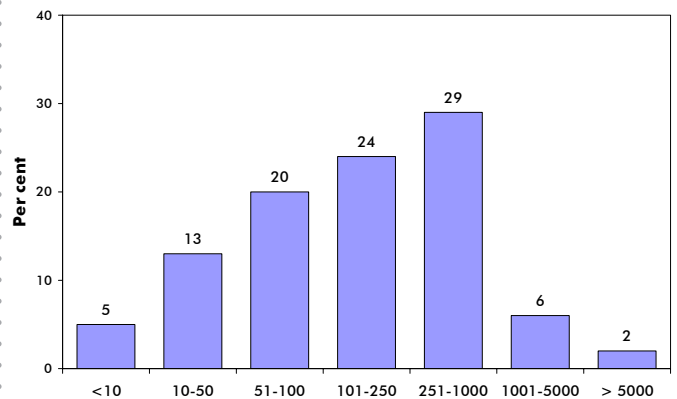
#### Level of government of the organisation



#### Type of administration



#### Size of the organisation



The size of the organisations is comparable with those which took part in the survey of 2003. The model is applied in all size of public organisations but more than 50% have between 101 and 1000 employees. The very small (<10) and the very big (>1000) organisations remain the exception. This indicates that the model suits all sizes.

As described above, organisations can use the model for the whole of the organisation or just for one part of the organisation. Table 4 shows the application of the CAF model in the whole or a part of the organisation and makes a distinction between the years 2003 and 2005.

**Table 4: Application in the whole or a part of the organisation**

2005		2003	
No.	%		%
95	73%	In the whole organisation	72%
36	27%	In part of the organisation	28%

As so many big administrations indicated they have applied the CAF, it should not be surprising that 36 did so in only a part of the organisation.

Much more relevant of course is the question of why organisations went for the CAF. On the basis of the closed questions in the previous questionnaire and the answers to the open questions, a number of possible reasons that could be decisive for using the CAF were presented to the organisations. They were both internal and external. In table 5 the top 10 most chosen reasons are shown.

**Table 5: Why do organisations choose the CAF – Top 10**

Reasons	Average	Type
The organisation wanted to identify strengths and areas for improvement	4.20	Internal
To develop sensitivity to quality issues	3.63	Internal
Intention to involve staff in managing the organisation and to motivate them	3.57	Internal
As an input into ongoing improvement activities, restructuring etc.	3.54	Internal
The CAF was used as a first diagnosis in the start of a strategic planning process	3.53	Internal
To promote the exchange of views in the organisation	3.51	Internal
Because the top management wanted it	3.43	Internal
To prove that the organisation is willing to change	3.17	Internal
To promote cultural change in the organisation	3.14	Internal
To embed a new system of performance management/measurement	3.09	Internal

These 10 reasons considered to be the most important are all internal reasons. There is a clear emphasis on wishing to identify strengths and areas for improvement, which is exactly the purpose of a self-assessment tool. Organisations want to use CAF in the first place for themselves, so ownership is very high. On the other hand, external reasons can also be valuable in case the application of CAF responds to a demand from stakeholders. The benefits from involving stakeholders apparently still have to be discovered.

Self-assessment may have a number of possible benefits. Again a list of typical benefits was provided and in order of importance the following were identified:

**Table 6: Benefits of self-assessment**

Main benefits	Average
Identification of the need to share information and improve communication	4.12
A clear identification of strengths and areas for improvement	3.97
We were able to identify a number of important actions to be undertaken	3.92
People developed a better understanding of the organisational issues/problems	3.89
Self-assessment gave rise to new ideas and a new way of thinking	3.67
The ability to contribute and to share views was felt positively	3.65
We realised how previous improvement activities could be taken forward	3.28
People started to become aware and interested in quality issues	3.22
We developed an understanding of how different initiatives in place fit together	3.21
People started to develop a stronger interest in the organisation	3.15
We did not see any benefits at all	1.25

The most appreciated benefits fit perfectly with the most important reasons for using the CAF as registered in table 5. Unlike the survey of 2003, the relationship between the reasons given for undertaking the CAF and the results achieved is obvious. One could say that the organisations have found what they were looking for. Probably they were better informed this time and knew better what they could expect.

Using the CAF should lead to a structured improvement process addressing the areas for improvement identified through self-assessment. However, ensuring an adequate and structured follow-up is not always easy. Nevertheless table 7 shows that, in 87% of the cases, the CAF resulted in sustainable improvement activities.

This is a remarkable increase compared to 2003. The fact that nearly nine organisations in 10 that applied CAF started improvement actions does not prove that CAF

**Table 7: Sustainable improvement activities as result of the CAF**

2005		2003	
No.	%		%
105	87%	Yes	62%
16	13%	No	26%

guarantees the improvement of the organisation, but it clearly indicates that it is at least a powerful incentive to start such improvements. This evolution is probably explained by a combination of reasons: improved tools, more training, etc. Table 8 shows the nature of the improvement activity.

**Table 8: The nature of the improvement activity**

Improvement activity	No.
Input into the strategic planning process of the organisation	51
A full action plan (directly linked to the results of the CAF self assessment)	38
Implementation of surveys for the staff	32
Improvement of the process	30
Improvement of the quality of leadership	26
Improvement of knowledge management	25
Implementation of surveys for the customers/citizens (needs and satisfaction)	22
Some individual improvement activities (but no full action plan)	19
Implementation of result measurement (targets)	18
Input into running improvement programme(s)	18
A consolidated report handed to the management (leaving implementation to the latter)	16
Implementation of HRM tools (please specify)	14
Improvement of technology	14
Better management of buildings and assets	6
Implementation of new financial management tools	6
Other	1

The fact that the results of self assessment are integrated into the strategic planning process of the organisation and/or that full action plans are developed shows that self assessment is better integrated into the overall management of the organisation than before.

#### 4.5. Promotion and supporting tools

Since the launch of the CAF in 2000, a lot of activities have been undertaken in many European countries to promote and support the use of this common European tool for the improvement of public administrations. A first comprehensive overview was provided in the Italian survey. Apparently, this study and the first European CAF Users Event in Italy that followed it, inspired a lot of European organisations. Many new countries have become active since then in more fields. In Table 9 we compare the activities and initiatives recorded in 2003 with those recorded at the end of April 2005. The table is divided into six sections:

1. Information on the CAF Model
2. Additional tools to help implementation of CAF
3. Training
4. Interactive support
5. Exchange of experiences
6. Information on application

For each section we have listed the tools or activities involved, the countries that were active in this field in 2003 and those active between 2003 and 2005. To highlight the evolution in each area, countries that have undertaken new activities since 2003 are shown in italic in the last column.

#### 4.6. Plans for the future

##### A. at organisational level.

Organisations were asked if they intended to use the CAF model again in the future. Table 10 shows the results.

**Table 10: The intention to use the CAF again**

2005		2003	
No.	%		%
118	95%	Yes	82%
6	5%	No	12%

The fact that 95% intends to use the CAF again is the best confirmation of the value of this tool. As the test of the pudding is in the eating, 117 of 123 organisations must have had a very satisfying experience with the CAF. We notice also a remarkable increase of this satisfaction compared to 2003, when 'only' 82% were ready to use it again. It is also interesting to see that this readiness is well spread over all 22 European countries that were represented, even those with only one application.

##### B. at country level.

What are the plans for supporting and promoting the CAF model and quality management in general in the Member States? 24 countries transmitted information on the actions they plan for the future. We give a short summary.

In some countries actions are not planned (Estonia) or not finalised (France) due to political or administrative changes. In France, the government will probably recommend the use of CAF in the future. Luxembourg hopes that the inclusion of CAF in the national quality programme will give new impetus to the model. Ireland foresees the use of CAF only as part of a tool set in

Table 9: CAF-related activities and initiatives

Tool or activity	2003	2005
<b>1. Information on the CAF Model</b>		
Publications of CAF (e.g. brochures) and on CAF (e.g. articles)	Belgium, Germany, Poland	Belgium, Germany <i>Austria, Czech Republic, Denmark, Greece, Finland, France, Lithuania, Netherlands, Norway, Portugal, Slovakia</i>
Introductory conference or meeting		<i>Cyprus, Slovenia</i>
DVD on self-assessment		<i>Denmark</i>
Provision of information on the website		<i>Austria, Germany, Estonia, Norway, Latvia</i>
Leaflets	Finland	Finland <i>Cyprus</i>
<b>2. Additional tools to help implement CAF</b>		
Special guidelines	Hungary, Portugal	Hungary, Portugal <i>Cyprus, Germany, Denmark, Estonia, Greece, Italy, Slovakia, Norway</i>
Worksheets	Austria, Germany, Portugal, Ireland	Austria, Germany, Portugal <i>Cyprus</i>
Case studies	Spain	Spain <i>Belgium, Estonia, Hungary, Portugal, Slovakia</i>
Pilot projects	Czech Republic, Estonia, Hungary, Italy, Norway, Poland, Portugal, Slovakia, Slovenia	Czech Republic, Hungary, Portugal <i>Austria, Cyprus, Denmark, Finland, Lithuania, Romania</i>
CAF-based projects	<i>Denmark</i>	Denmark <i>Austria, Finland, Hungary, Italy, Poland</i>
CAF versions for specific sectors		<i>Belgium, Germany, Denmark, France, Hungary, Norway</i>
Electronic application and evaluation tools	Austria, Germany	Austria <i>Belgium, Germany (easy CAF), Denmark, Spain, Hungary, Poland, Portugal, Slovakia</i>
<b>3. Training</b>		
Special training on CAF	Austria, Belgium, Denmark, Estonia, Spain, Poland, Sweden	Austria, Belgium, Denmark, Estonia, Spain <i>Cyprus, Germany, Greece, Finland, France, Hungary, Italy, Lithuania, Luxembourg, Poland, Portugal, Sweden, Slovakia</i>
Seminars, workshops		<i>Austria, Cyprus, Germany, Italy, Poland, Portugal, Slovakia</i>
Learning labs		Italy
E-learning	Austria, Germany, Portugal	Germany, Portugal, Poland
<b>4. Individual advice and coaching</b>		
	Austria, Belgium, Germany, Estonia, Italy, Norway	Austria, Belgium, Germany, Estonia, Italy, Norway <i>Cyprus, Lithuania, Poland</i>
<b>5. Exchange of experiences</b>		
User conferences	Germany, Hungary, Italy	Germany, Hungary <i>Portugal</i>
Networks and partnerships	Austria, Belgium, Germany, Denmark, Spain, Italy, Portugal, Slovakia	Austria, Belgium, Germany, Denmark, Italy <i>Finland, Hungary</i>
International Partnerships		<i>Austria, Czech Republic, Slovakia, Hungary</i>
National Quality programmes		<i>Czech Republic</i>
Quality conferences	Estonia, Hungary, Italy, Norway, Slovakia	Estonia, Hungary <i>Czech Republic, Germany, Finland, Lithuania, Poland</i>
Quality awards / contests	Austria, Belgium, Estonia, Germany, Italy, Portugal	Austria (Speyer), Belgium, Germany, Italy, Portugal <i>Hungary, Poland</i>
<b>6. Information on application</b>		
Methodological validation		<i>Austria, Hungary</i>
Database / good practice	Austria, Belgium, Germany, Spain, Hungary	Austria, Belgium, Germany, Spain, Hungary <i>Czech Republic, Denmark, Greece, Poland</i>
Questionnaires	Portugal	<i>Austria, Germany, Denmark, Norway, Poland</i>
Evaluation of the effort to disseminate CAF		<i>Denmark</i>

organisation development projects. The same applies to Latvia where CAF is one of the suggested quality management tools alongside the Latvian Quality Award, ISO, citizens' charters and recommendations by the government. The UK will continue to support the use of CAF in Europe and to act as the conduit for information/communications about CAF to the UK public sector. It will not actively promote CAF in the UK as it will continue to promote the wider adoption and use of the EFQM Excellence Model, but when approached it will provide information and support to those organisations that request it.

Other countries like Austria, Finland, Italy, Lithuania and Spain will continue to execute their current strategy. Italy will decide whether to extend the learning labs and the prize for quality in public services after an evaluation of the results achieved by the current project. It will certainly continue to work on the promotion of the network involving the administrations that have applied the CAF, raise the profile of the administrations that receive prizes for quality and to disseminate their experiences across the wider public sector.

In many countries training is top of the CAF agenda. Belgium plans to organise regular CAF training twice a year in the official training office. Cyprus intends to prepare an action plan on behalf of the Council of Ministers by examining the possibilities for further training on CAF-related matters and the preparation of a quality conference. Greece also seeks to promote the further dissemination of CAF by means of training programmes. Poland plans to hold training sessions for the Directors-General. Portugal will continue with its CAF training courses, focused on the implementation of the tool. Romania envisages training by EIPA for four or six members of the Central Unit for Public Administration Reform to become trainers of the members of the national modernisation network. Slovenia will also further invest in training.

The Czech Republic plans to continue the pilot project of implementing the CAF model at regional and local administration level, to train civil servants as 'regional experts and assessors' for neighbouring public administrations and to develop a CAF manual for organisations at local and regional level. At central state administration level, the activities of the reform project 'Introduction and development of quality management in central state administration' will continue and a CAF manual for central state administration will be updated.

Germany wants to expand the 'easy CAF' to a knowledge database and to continue organising CAF user conferences and producing CAF publications. Denmark aims to increase the number of users of CAF and CAF tools, stressing that CAF is a tool for dialogue that is relevant in a period of transformation and can be used in combination with the Excellence Model.

Like Germany, Hungary will promote its new online CAF system and disseminate CAF further. It wants to increase the efficiency of CAF and is participating in the pilot project of regional bench-learning.

The Norwegian Agency in charge of CAF, Statskonsult, will continue to disseminate the CAF in its daily work and to offer assistance with CAF applications. It will improve its website and conduct a survey to gather more information.

In Poland, the Office of Civil Service plans to continue implementing the information actions in the form of CAF conferences and seminars, and by taking part in similar events in other countries, particularly in EU Member States.

To support the CAF users' community, Portugal decided to create the 'CAF post' on the site of the Directorate-General for Public Administration and to create an electronic worksheet for the self-assessment process to be used by CAF users. The development of a survey of CAF users, of pilot projects or case studies on CAF implementation and on CAF versus other TQM models is also planned.

Slovenia wants to set up a national database on best practices in 2005-2006 and to develop indicators for measuring performance of ministries based on CAF criteria.

## 5. Conclusions

The objective of this questionnaire-based study was twofold. It wanted to identify the further development of the CAF model in Europe since the end of 2003 and to analyse how the use of CAF and the conditions under which it has been used have or have not changed since then. From February to April 2005, 27 countries completed the questionnaire for the national correspondents and 131 CAF users from 22 countries filled in the questionnaire online.

Most countries have continued their political as well as organisational support. A lot of supporting tools have been created, from brochures and information letters, through e-tools and handbooks, to training and individual advice and coaching. It will be very important for the future to organise the sharing of these supporting tools across Europe, so that organisations or countries are not constantly re-inventing the wheel. Conferences like the European CAF users events and relevant networks can play a major role in this. EIPA will maintain its role as the junction of this network and enforce its role as expertise centre on quality management in the public sector.

The CAF is finding its way into the central levels of government and into different sectors of activity besides local administration. Of course, the model has to be adjusted to the proper context of each organisation. The model suits all sizes and helps organisations with little experience on quality management to find their way into Total Quality Management and public management.

On the basis of the estimates of the national CAF correspondents it can be concluded that the use of the CAF has undeniably further increased: from 500 applications in late 2003 to nearly 900 in mid-2005. Furthermore, expectations are that by the end of 2006 the milestone figure of 1900 applications may well be exceeded, i.e. another doubling. All tables indicate that the difference between 'old' and 'new' Member States is fading, the CAF model is growing in its role to present one common language.

As nearly nine users in 10 started improvement actions as a result of the CAF and 95% want to use the CAF again, the value of the CAF is clear. Using it in benchmarking/learning projects is the great challenge for the future.

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- the Common Assessment Framework (CAF) in European Public Administrations. *Maastricht, EIPA, 92 p.*
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## NOTES

- \* Patrick Staes is head consultant of public office at the Belgian Federal Government Service Personnel and Organisation. He is currently Seconded National Expert at the European Institute of Public Administration in Maastricht, where he is responsible for the CAF Resource Centre.
- Nick Thijs is research assistant at the Public Management Institute at the University of Leuven, Belgium.
- <sup>1</sup> Pollitt, C., & Bouckaert, G. (2000). *Public management reform*, London, Oxford University Press, p.24.
- <sup>2</sup> Pollitt C. & G. Bouckaert (Eds.) (1995), *Quality improvement in European public services: concepts, cases and commentary*, Sage Publications, London, 190 p.
- <sup>3</sup> van Dooren, W., Thijs, N., & Bouckaert, G. (2004). Quality management and management of quality in the European public administrations. In: Löffler, E., & Vintar, M. (Eds.). *Improving the quality of East and West European public services*. Hampshire, Ashgate. pp. 91-106.
- <sup>4</sup> Engel, C. (2003). *Quality management tools in CEE candidate countries*. Maastricht: EIPA, 104 p.
- <sup>5</sup> Löffler E. & M. Vintar, *The current quality agenda of East and West European public services*, in Löffler E. & M. Vintar (eds.), *Improving the quality of East and West European public services*, Hampshire, Ashgate, 2004, p. 3.
- <sup>6</sup> This part is largely based upon Staes, P., & Thijs, N. (2005). *Quality Management on the European Agenda. Eipascope*, 2005(1), pp.33-42.
- <sup>7</sup> For more and detailed information on the CAF see [www.eipa.nl](http://www.eipa.nl) and the CAF brochure, recently re-edited by EIPA. Please contact the CAF Resource Centre at EIPA: Ann Stoffels +31 43 329 63 17 or Patrick Staes +31 43 329 63 28
- <sup>8</sup> EIPA (2002), *Survey regarding quality activities in the public administrations of the European Union Member States*, Maastricht, 95 p.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> EIPA (2003), *Study for the Italian Presidency on the use of the common assessment framework in the European public administrations*, Maastricht, 92 p.
- <sup>11</sup> Staes, P., & Thijs, N., *Quality Management on the European Agenda. Eipascope*, 2005(1), pp. 33-42.
- <sup>12</sup> Staes, P., & Thijs, N. *Quality Management on the European Agenda. Eipascope*, 2005 (1), pp.40-41.
- <sup>13</sup> EIPA (2005), *Study on the use of the Common Assessment Framework in European public services*, Maastricht, 89 p. This complete study can be found on [www.eipa.nl](http://www.eipa.nl)

## RELATED ACTIVITIES AT EIPA

22-23 May 2006, Maastricht  
Seminar: CAF (Common Assessment Framework) and BSC (Balanced Score Card)  
0620601 Fee not yet known

16-17 November 2006, Maastricht  
Seminar: CAF (Common Assessment Framework)  
Train the Trainers  
0620603 Fee not yet known

4-5 December 2006, Luxembourg  
Seminar CAF (Common Assessment Framework)  
in Courts  
0652301 Fee not yet known

For further information and registration forms, please contact:  
Ms Ann Stoffels,  
Tel.: + 31 43 3296 317  
Fax: + 31 43 3296 296  
E-mail: [a.stoffels@eipa-nl.com](mailto:a.stoffels@eipa-nl.com)  
Website: <http://www.eipa.nl>

## PUBLICATIONS



Improving an organisation through self-assessment:  
The Common Assessment Framework

October 2002

# Open Activities May 2006

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

## LOCATION

## PROJECT NO.

### MAASTRICHT

15-17 May 2006

Seminar: The Internal Market in Healthcare: The Free Movement of Professionals and Patients, Their Protection against Malpractice and the Payment for "Foreign" Treatment

**0632301**

18-19 May 2006

Seminar: The Future of Rural Development – Making It Simpler, More Coherent and Effective

**0633801**

18-19 May 2006

Seminar: Environmental State Aid Policy and Practice

**0631206**

22-23 May 2006

Seminar: CAF (Common Assessment Framework) and BSC (Balanced Score Card)

**0620601**

### LUXEMBOURG

11-12 May 2006

Seminar on How to Deal with the Press for Judges and Lawyers

**0651901**

# Conference Report on the Results of the eGovernment eEurope Awards – 2005



By **Christine Leitner** and **Morten Meyerhoff Nielsen\***



The fourth set of eEurope Awards<sup>1</sup> organised by the European Institute of Public Administration (EIPA) were announced at the recent Ministerial eGovernment Conference organised by the UK Presidency and the European Commission. Some 1000 participants attended the Conference held on 24-25 November, in Manchester (UK) to discuss the ambitious goals for eGovernment in Europe in the context of the i2010 initiative of the European Commission.

Participants, who included European Commissioners, Ministers, senior civil servants, CEOs, industry representatives, eGovernment experts and academics were led by the co-hosts: European Commissioner with responsibility for the information society, Ms. Viviane Reding and the UK eGovernment Minister, the Rt. Hon. Jim Murphy MP.

The Manchester event was the third Ministerial eGovernment Conference. The first conference in 2001 under the Belgian Presidency of the European Union, was followed by a second during the Italian Presidency in 2003.

The theme of the 2005 Conference, "Transforming Public Services", contained a number of important objectives including:

- reporting on the eGovernment chapter of the 2005 eEurope Action Plan;<sup>2</sup>
- providing a platform to discuss the European Union's strategic direction post-2005;
- reporting on the measurable progress on delivering the benefits of eGovernment to citizens and businesses and to demonstrate their impact (see "Signposts towards eGovernment 2010"<sup>3</sup>);
- publishing international research and benchmarking which will inform the debate on future policy priorities;
- sharing European good practice and successes, highlighted through benchmarking studies, research and the eEurope Awards;<sup>4</sup> and
- showcasing pan-European services or pilots.

Indeed the final objective above will be underpinned by the research report currently being compiled by EIPA on "Transforming Public Services". The EIPA research report will be published in the beginning of 2006 and available to all on <http://www.e-europeawards.org>.

## *eEurope Awards*

The final selection of the winners of the fourth eEurope Awards, the third eGovernment Awards – 2005 took place on the eve of the Conference. A highlight of the process managed by EIPA, on behalf of the European Commission, was the impressive exhibition with stands from the 52 eEurope Awards Finalists. The judges' visits to the Finalists exhibiting at the Ministerial Conference was an integral part of the third and final phase of the intensive evaluation of the projects entered for the eEurope Awards. The eEurope Awards Project Management Secretariat<sup>1</sup>, together with the juries involved ensured an independent evaluation of the eEurope Awards submissions.

The prestigious eEurope Awards were presented to the four Winners by Commissioner Viviane Reding and UK Minister Jim Murphy at the Ceremony on 24 November. The final selection jury was chaired by Mr Gerard Druésne, Director General of the European Institute of Public Administration.

## *Winners spread across Europe...*

The prestigious specially commissioned eEurope Award trophies went to Poland, Denmark, The Netherlands and Ireland. KSI ZUS (PL), EID (DK), Kadaster-on-line (NL) and ROS (IE), representing the most outstanding projects benefiting European citizens and businesses. Of the 234 entries, 76 projects have been granted the European Commission 'Good Practice Label', 52 of these were selected as Finalists, and in the penultimate stage, 15 were short-listed as 'Nominees'. In addition to the four winners, one case in each of four thematic categories received an 'Honourable Mention' (see list below).

Grouped into four award categories – Enabling eGovernment, Transformation, Businesses and Citizens, and Impact – each of the shortlisted projects demonstrated leadership in the transformation of public administrations and service provision. They provide beacons of excellence in Europe, setting the agenda for future eGovernment by contributing to public sector efficiency gains, and to building stronger partnerships between citizens, businesses and administrations.

The list of the Winners, Honourable Mentions and Nominees for each of the four themes is as follows:

### Theme 1 – Enabling eGovernment: The right environment

Creating the best environment to enable government, businesses and citizens to benefit from transformation.

#### Winner

KSI ZUS – Complex Computer System (KSI) for the Social Insurance Institution (ZUS) in Poland (PL)  
<http://www.ZUS.pl/english.pdf>

#### Honourable Mention

FALSTAFF – Fully Automated Logical System Against Forgery and Fraud in the Italian Customs Information System AIDA, Italian Customs Agency (IT) <http://www.agenziadogane.gov.it>

#### Nominees

FAST – Secure Exchange Gateway, Caisse des dépôts et consignation (FR)  
<http://www.fast.caissedesdepots.fr>

PSB.ie, REACH (IE)  
<http://www.reach.ie>

### Theme 2 – Transformation: Government readiness

Transformation of the organisation and innovation in the back office.

#### Winner

EID – Electronic Invoicing in Denmark, Agency of Governmental Management (DK)  
<http://www.oes.dk>

#### Honourable Mention

The DWP/ DoH RTA Automation Project, Compensation Recovery Unit, Department for Work and Pensions (UK)  
<http://www.dwp.gov.uk/cru>

#### Nominee

eHandel.no, Ministry of Modernisation – eProcurement Secretariat (NO)  
<http://www.ehandel.no>

eReadiness of the Polish Customs  
Ministry of Finance, Customs Policy Department (PL)  
[http://www.mofnet.gov.pl/sluzba\\_celna](http://www.mofnet.gov.pl/sluzba_celna)

### Theme 3 – Businesses and Citizens: Service use

Transformation and innovation in external facing services, putting citizens and businesses at the centre, driving use and participation.

#### Winner

Kadaster-on-line, Kadaster (NL)  
<http://www.kadaster.nl>

#### Honourable Mention

IRIS BCN – Promoting Civic Attitudes in Barcelona through a Customer Service Request Platform, Ajuntament de Barcelona (ES)  
<http://www.bcn.es>

#### Nominee

COT – Communities Online Together, Meath County Council (IE)  
<http://www.meath.it/community/websites.html>

SPES – Scottish Parliament ePetitioner System, Scottish Enterprise (UK)  
<http://epetitions.scottish.parliament.uk>

### Theme 4 – Impact

Measuring the impact on and benefits to government, businesses and citizens.

#### Winner

ROS – Revenue Online Service, ROS, Revenue Commissioners (IE)  
<http://www.revenue.ie>

#### Honourable Mention

AeL – An Integrated Solution for Content Management and Computer Assisted Training, Ministry of Education and Research (RO)  
<http://portal.edu.ro>

#### Nominees

Implementing Benefits Realisation and Performance Management in the Public Sector, Scottish Enterprise (UK)  
<http://www.scottish-enterprise.com>

For information on the Winners, Honourable Mentions and Nominees, including descriptions and the jury's comments, please visit the eEurope Awards website on <http://www.e-europeawards.org>. You will also find information on the previous eEurope Awards at this address.

For more information on the 2005 eEurope Action Plan, i2010 etc. please visit [http://europa.eu.int/information\\_society/index\\_en.htm](http://europa.eu.int/information_society/index_en.htm)

For further information on the Ministerial eGovernment Conference 2005, 24-25 November, Manchester (UK) can be found on <http://www.egov2005conference.gov.uk>



*Winners of the 2005 eEurope Awards with dignitaries.*

## NOTES

- <sup>1</sup> The eEurope Awards have consisted of three sets of eGovernment Awards (2001, 2003 and 2005 and the eHealth Awards in 2004, The Project Management Secretariat, based in EIPA, consists of:
  - Christine Leitner (Head of the eEurope Awards Project)
  - Tore Christian Malterud (Resource Manager)
  - Morten Meyerhoff Nielsen (Researcher)
  - Matthias Kreuzeder (Assistant to Project Manager)
  - Nicolette Brouwers (Programme Organiser)
  - Diane Urlings (Programme Organiser)
  - Thomas Henökl (Assistant)
  - Niels Karssen (Assistant)
- <sup>2</sup> eEurope Action Plan: [http://europa.eu.int/information\\_society/eeurope/2005/index\\_en.htm](http://europa.eu.int/information_society/eeurope/2005/index_en.htm)
- <sup>3</sup> Signposts towards eGovernment 2010: [http://europa.eu.int/information\\_society/activities/egovernment\\_research/doc/minconf2005/signposts2005.pdf](http://europa.eu.int/information_society/activities/egovernment_research/doc/minconf2005/signposts2005.pdf) )
- <sup>4</sup> eEurope Awards: <http://www.e-europeawards.org>

# Tutorial: EU Law for Non-Lawyers

*Day 1 – EU Legal System and EU Acts*

*Day 2 – Fundamental Principles and ECJ Procedures*

*Day 3 – Free Movement of Goods*

*Day 4 – The Free Movement of Services and Consumer Protection*

*Day 5 – The Right to Reside/Work Permits*

## Target Group

All officials and specialists in the Member States should be aware of the EU rules covered in this series as they may well be relevant in every aspect of today's life (e.g. non-discrimination when it comes to the free movement in the internal market). The topics covered in this tutorial have a wide range of interactions with other fields, including those normally falling within national sovereignty under the principle of subsidiarity, e.g. overriding national rules on personal income tax, education policy and criminal law. As a result, no area of government is 'safe' from these issues today. This event is designed for those who are new to these fields and would like to obtain, in the quickest way possible, an overview of EU issues so as to understand their potential impact on their work.

## Description

This series of one-day tutorials will provide a concentrated, in-depth introduction to the most important rules of European law for civil servants. It is divided into modules, starting with fundamental issues and proceeding to the most important field of substantive law: the internal market. This design and the division of the programmes into one-day modules will offer the participants a high degree of flexibility in adapting the event to their needs by enabling them to choose the combination of days and fields most appropriate for them. Furthermore, as these rules must be respected by all, this series aims to inform non-lawyers of the obligations imposed by European law to which they are subject.

## Objective

The aim is to brief the participants on the most important aspects of the EU for civil servants today: the legal system of the EU, the most important principles to bear in mind in any field of government activity, as well as the internal market and its latest developments. This will be presented in a way that clearly shows their relevance and impact on their daily work. In this way they can avoid actions that prove to be incompatible with European rules and that would therefore become devoid of legal force and could lead to compensation claims against officials and their authority. Another aim is to describe these legal topics in a way easy to understand for non-lawyers, as the latter must also know them to avoid errors.

## Day 1 – EU Legal System and EU Acts

The participants will look at the structure of the EU, its legal acts and the various sources of law that often affect national officials directly because of their direct effect and the supremacy of EU law over national law, as well as the interaction with and impact on Member States, their legal systems, constitutional structures, administrations and officials.

## Day 2 – Fundamental Principles, Human Rights and ECJ Procedures

An overview will be given of the most important principles that underlie written EU law and determine its validity – most of these principles, for example that on human rights in the EU, result from a 'common law' of rulings of the European Court of Justice (ECJ). Furthermore, the procedures used in this Court will be presented, showing how national officials may find themselves involved in such litigation. This 'common law' not only shapes and influences the substantive rules of the EU but must also be considered and followed by Member States. These rulings may even determine how national officials can wield the powers under their own national law. This impact on how national sovereignty may be exercised now is often overlooked.

## Day 3 – Trade in the Internal Market: the Free Movement of Goods

One of the cornerstones of the EU is the internal market. Trade in products was an area that gave rise to the first court cases involving the rules of the EU and, as a result, most of the pivotal principles on free movement were established there. Later on, these were applied by analogy to other cross-border issues. After 10 years of the internal market, it appears that many national officials have still not fully learnt these lessons. Others, who are not dealing with the free movement of goods, may also draw useful insights from this field as they may more easily understand how principles applying to them resulted from principles created for the field of trade and then extended by analogy. Without such insight, the application of such rules may at first sight appear surprising.

#### Day 4 – The Free Movement of Services and Consumer Protection

Trade in goods has so far been at the forefront when it comes to the internal market but the provision of services across borders is now gaining importance, giving rise to a new set of problems. These problems often affect not only ministries but also chambers, professional organisations, insurers and consumer protection bodies, especially because officials involved in the regulation and supervision of professional services have often failed to follow their colleagues dealing with trade in goods when it comes to developing their way of working. They may now need to quickly update their systems in order to ensure a seamless protection of clients and patients (healthcare systems are also affected by this development) while fully respecting the rights of the service providers. Although the legal principles and rules that apply in this area and that will be presented today were already established in the 1970s – even for electronic/IT services – many appear to believe that this is ‘virgin territory’, an impression that will be rectified today.

#### Day 5 – The Right to Reside/Work Permits

Despite the fact that detailed rules in this area were laid down in 1968, many authorities in many Member States still over-regulate this area and, as a result, not only lose their powers and authority but may also face compensation claims. In particular the issues of visas and immigration – normally covered by other provisions of the Treaty – are strongly affected by the internal market where it concerns certain family relationships. As a result, the internal market rules may sometimes affect immigration matters to such an extent that the right to deport illegal immigrants may be blocked in such cases. A directive consolidating these rules was enacted in 2004 and should now be transposed.

#### Method

These tutorials will involve high-intensity coaching by an EIPA specialist for a small group of participants (maximum 10) allowing an individualisation of training for the specific situations of participants while also offering the opportunity of seeing new perspectives and situations as a result of interaction with the other participants. Due to the small size of the group the information can immediately be adapted to the situations of the participants to allow them to see the relevance and consequences of the rules for their daily work.

Recent relevant rulings by the European Court of Justice will be distributed in an easy-to-read textbook enabling the participants to know exactly what the Court has ruled on a particular issue without the need to read through the whole judgment to find the relevant passage.

Version	Date	Project No.
English	23-27 January 2006, Maastricht (NL)	0631901
	25-29 September 2006, Maastricht (NL)	0631906
French	6-10 February 2006, Maastricht (NL)	0632001
German	20-24 February 2006, Maastricht (NL)	0632401

**Fee:** €300 per day/€275 for every additional day/€1200 for all 5 days

**Exportability:** This seminar can also be provided on request at any location in Europe in English, French, German or Italian.

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

*Ms Eveline Hermens, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 259; Fax: +31 43 3296 296  
E-mail: e.hermens@eipa-nl.com*

or consult our website:

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

Seminar für Übersetzer/innen

# Neue institutionelle Entwicklungen und Informationsquellen in der EU

*Maastricht (NL)  
30.-31. Januar 2006*

Das Europäische Institut für öffentliche Verwaltung (EIPA) wird am 30.-31. Januar 2006 in Maastricht unter dem Titel „Neue institutionelle Entwicklungen und Informationsquellen in der EU“ erneut ein Einführungsseminar zum Thema Europäische Union für Übersetzerinnen und Übersetzer mit Deutsch als Arbeitssprache veranstalten.

Dieses Seminar bietet eine umfassende Einführung in die Europäische Union. Dabei liegt der Schwerpunkt auf der im institutionellen und verfahrensmäßigen Umfeld der Entscheidungsfindung der EU verwendeten Sprache. Besonders eingegangen wird auf gegenwärtige und künftige Entwicklungen sowie auf deren Auswirkungen auf die in der Europäischen Union verwendete Terminologie. Das Seminar vermittelt Übersetzern/innen mit der Arbeitssprache Deutsch einen Überblick über die verfügbaren Hilfsmittel zur fachlichen und sprachlichen Recherche. Fachleute erteilen ausführliche Informationen über spezifische Aspekte sowie spezielle Ressourcen.

Zunächst erfolgt eine Vorstellung des Politikprozesses und der wichtigsten Institutionen in der EU sowie der EU-Terminologie. Anschließend werden die Informationsquellen und Instrumente zur Recherche in europäischen Fragen vorgestellt. Dabei wird sowohl auf die Veröffentlichung von Dokumenten als Internet-Ressourcen eingegangen.

Die Informationen dieses Seminars vermitteln den Teilnehmern/innen ein umfassendes Wissen über das institutionelle Rahmenwerk der Europäischen Union, die bei der Entscheidungsfindung in der EU verwendete Sprache und die spezifischen Hilfsmittel für Übersetzer/innen bei der Arbeit mit EU-bezogenen Texten.

Die Seminarsprache ist Deutsch; einige Veranstaltungen werden jedoch in englischer Sprache abgehalten. Die Teilnahmegebühr beträgt EUR 650.

**Project No.:** 0613101

Weitere Informationen und/oder Anmeldeformulare sind erhältlich bei:

*Frau Joyce Groneschild, Programmorganisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, NIEDERLANDE  
Tel.: +31 43 3296 357; Fax: +31 43 3296 296  
E-mail: [j.groneschild@eipa-nl.com](mailto:j.groneschild@eipa-nl.com)*

Bitte besuchen Sie auch unsere Website:  
<http://www.eipa.nl>

## Preparing for April 2006, the Deadline for Implementing Directive 2004/38/EC

What Member States and in particular immigration services and local authorities need to have in place in order to avoid breaking the law (even if they think they are complying with their national law)

*Maastricht (NL)  
1-2 February 2006*

### Target Group

To ascertain whether this event is of interest to you, please answer the following questions:

- |  |                           |                          |
|--|---------------------------|--------------------------|
| • Do you issue visas or check them in the course of your work? | <input type="radio"/> YES | <input type="radio"/> NO |
| • Do you issue, check or otherwise handle residence permits?   | <input type="radio"/> YES | <input type="radio"/> NO |
| • Do you deal with work permits (issue and/or check)?          | <input type="radio"/> YES | <input type="radio"/> NO |
| • Are you involved in deportation procedures?                  | <input type="radio"/> YES | <input type="radio"/> NO |
| • Can you refuse requests made by foreigners?                  | <input type="radio"/> YES | <input type="radio"/> NO |
| • Can you refuse requests made by non-EU nationals?            | <input type="radio"/> YES | <input type="radio"/> NO |

If you have answered 'YES' to any of these questions, you work in an area that will be dealt with at this seminar.

### Context

Despite the fact that detailed rules in this area were laid down in 1968, authorities in many Member States still over-regulate the entry, residence and work of foreigners. Over time, the rules coming from the EU have necessitated adaptations in these fields, not only regarding EU nationals but sometimes also for non-EU nationals.

However, practically none of the Member States has done its homework in this respect and, as a result, they not only lose power and authority in such cases but may also face compensation claims as is apparent from the outcome of litigation in this field. Particularly the issues of visas and immigration – normally covered by other provisions of the Treaty – are sometimes strongly affected by the internal market. For instance, as a result, internal market rules may sometimes even block the right to deport illegal immigrants.

To remind Member States of the need to update their situation and to respond to changes in the European legal environment, such as the creation of the "citizenship of the Union", Directive 2004/38/EC was adopted in 2004 and should be transposed by April 2006. However, in view of the existing rules and the wording of the Directive, and in the absence of a correct transposition into national law, this will become a prime area for the application of the doctrine of direct effect.

As a result, the Directive will directly override any conflicting national rules. If a national authority tries to "hide" behind national rules that are defective, it will be committing an unlawful act and will have to pay compensation for any damage caused. Since this involves work and residence permits as well as visas, the possibility of such errors and compensation claims occurring is considerable. Many national officials will need to be aware of the requirements of the Directive in order to be sure that their actions are truly lawful and not just in line with their instructions.

### Description

This 1½ day seminar aims to help such officials to understand the rules they are subject to in order to enable them to stay within the law in their daily work. The existing requirements and those arising from the Directive will be explained in detail and the consequences for national rules will be examined in depth. In this way, ad hoc measures can be developed so that the participants can be prepared for situations where national rules conflict with European ones and where consequently these national rules or instructions will have to be ignored. This will enable the participants to avoid costly litigation and compensation claims.

### Language

The seminar will be conducted in English (simultaneous interpretation into other languages will be possible, subject to a minimum number of participants requiring translation).

### Exportability

A variant of this seminar can also be provided on request at any location in Europe in English, French, German or Italian.

**Project No.:** 0631301

For more information, please contact:

*Ms Nancy Vermeulen, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 212; Fax: +31 43 3296 296  
E-mail: n.vermeulen@eipa-nl.com*

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

Workshop to prepare for the

# Concours for the European Institutions: To constitute a reserve pool from which to Recruit

*Maastricht (NL)  
13-17 February 2006*

The European Personnel Selection Office (EPSO) regularly announces a variety of open competitions for positions within the EU institutions. The competitions are fiercely competitive and, for this reason, good preparation is essential.

EIPA is organising a workshop to prepare those applying to administrator grades ('AD' grades) for the Concours. The training may also be of interest to those who simply wish to update their knowledge of EU affairs and who wish for a comprehensive overview.

The objective of the training is to help prepare candidates for the pre-selection test which covers multiple-choice questions (MCQ) on the main developments in European integration, decision making and policies. The tests are very competitive. The advantages of preparing for the concours with EIPA are:

- Knowledgeable specialists covering a wide array of relevant EU topics;
- Experience in conducting training for the concours;
- Experts are up-to-date and can offer you perspectives on recent developments that may not be available in published training material;
- Training can also be used to assist in gaining a more general familiarisation with the EU, its institutions and policy areas.

The training is divided into modules, each led by a specialist. Each module will include specially designed MCQs, fact sheets, lecture material and links to further information and material.

The workshop will be conducted in English and the participation fee is EUR 995.

**Project No.:** 0632901

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

*Ms Joyce Groneschild, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 357; Fax: +31 43 3296 296  
E-mail: j.groneschild@eipa-nl.com*

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

*Introductory & Practitioners Seminars*

# European Public Procurement Rules, Policy and Practice

*Maastricht (NL)*

*(20\*) 21-23 February 2006 and (18\*) 19-21 September 2006*

The European Institute of Public Administration is organising *Introductory & Practitioners Seminars* on "European Public Procurement Rules, Policy and Practice" which will take place at the European Institute of Public Administration in Maastricht (NL), on 21-23 February and 19-21 September 2006.

\*Prior to the seminars, EIPA will provide a basic introduction to European Public Procurement for newcomers to procurement or non-procurement persons on 20 February and 18 September 2006. These one-day seminars will only take place if there is sufficient demand.

## Objectives

The primary aim of these *Introductory & Practitioners Seminars* is to present and explain the EC directives on public procurement in a simple and accessible way and to enhance awareness of professional procurement practices so as to increase the efficiency of the procurement process in a manner consistent with EC rules and principles. The seminars will also provide specific exercises and cases concerning actual procurement practice. Most importantly, the seminars will offer an excellent platform for participants to exchange experiences and concerns in dealing with public procurement, and will present ways to perfect their purchasing activities.

## Target Group

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

## Contents

- An Overview of the Legislative Package and Recent Developments in European Procurement
- EC Rules and Case Law
- EC Rules in Utilities and Case Law
- Enforcement of the Procurement Regime: Remedies Directives and Case Law
- Environmental Considerations in Procurement
- The European Approach to Concessions and Public Private Partnerships
- International Aspects of European Public Procurement
- The Procurement Process – The Practice
- The Procurement Process: Cases and Exercises

The seminars will be conducted in English. Simultaneous interpretation into French will be provided, subject to a minimum number of participants requiring translation.

**For background information on public procurement in Europe and EIPA activities related to public procurement, please consult: <http://www.eipa.nl/Topics/Procurement/procure.htm>**

Project No.	Date
0630801	21-23 February 2006
0630804	19-21 September 2006

For more information and registration forms please contact:

*Ms Gediz Cleffken, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 279; Fax: +31 43 3296 296  
E-mail: [g.cleffken@eipa-nl.com](mailto:g.cleffken@eipa-nl.com)  
Website: <http://www.eipa.nl>*

Seminar

# The Presidency Challenge

## The Practicalities of Chairing Council Working Groups

*Maastricht (NL), 23-24 February 2006*

The European Institute of Public Administration is organising a series of seminars for officials involved in the upcoming Presidencies. EIPA has systematically assisted various Member States in their preparations for the Presidency and has also provided its services to the General Secretariat of the Council. In this way we have been able to develop practical training for Presidency coordinators, chairs and members of delegations.

In 2006, we will offer open activities on what managing the Presidency and chairing requires. The focus will be on the procedures and tactics involved in leading EU negotiations in a professional way and on the planning and the preparations for the Presidency.

### Objective

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

The objective of the seminars is to discuss and analyse the role of chairs and national delegates as well as the practical details involved in managing Council working groups and responding to critical situations. This will include discussions about agenda setting, developing scenarios, cooperation between Presidencies and the practical arrangements for organising working party meetings. Moreover, they will address the relationship between the Presidency and the EU institutions and provide a forum for debate on the context and preparation of the Presidency. In addition, the sector seminars offer officials involved in the future Presidencies the opportunity to discuss the EU agenda and what it means for their priorities and cooperation in the context of the new Team Presidency.

These seminars explicitly aim at creating possibilities for participants to discuss their future work with each other, with representatives of the EU institutions and with officials who have recent experience in chairing working groups.

The seminars are interactive and offer a mixture of simulations, workshops, case studies and discussions with practitioners.

### Target Group – Team Presidency

Cooperation between consecutive Presidencies is increasingly important. Member States now have to see themselves as members of the Team Presidency, as is also underlined in the 3 annual Presidency programmes. Collective training can be an important instrument to strengthen ties within Presidency teams and to arrive at common Presidency objectives and styles.

Hence, our programmes are aimed at Member States that will prepare for and hold the Presidency in 2006–2008, these being Finland, Germany, Portugal, Slovenia, France and the Czech Republic. But other officials who need to know how Presidencies can successfully steer EU negotiations are also invited.

We will try to balance the number of participants from the different Member States. To ensure an interactive working environment we have limited the number of participants to 25.

The working language in the seminar will be English.

**Project No.:** 0613301

For further information and registration forms, please contact:

*Ms Noëlle Debie, Programme Organisation, EIPA*  
*Dr Adriaan Schout, Associate professor, EIPA*  
 P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
 Tel.: +31 43 3296 226; Fax: +31 43 3296 296  
 E-mail: n.debie@eipa-nl.com

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

# Complying with Europe: The New Public Procurement

*Barcelona (ES)  
23-24 February 2006*

**Target group**

Public officials from national, regional and local authorities, public and private companies, judges, lawyers, consultants and academics. In general, the seminar is intended for all professionals dealing with the new public procurement rules, whether contracting on behalf of public authorities or involved in the provision of goods or services to them.

**Method**

A mixture of presentations, discussions, working groups, exchanges of experiences and specific exercises and case studies concerning actual procurement practice.

**Objectives**

The prime aim of the introductory seminar is to present and explain in a simple and accessible way the EU directives on public procurement, which all public bodies in the EU have to comply with when purchasing above the prescribed thresholds. The emphasis of the presentations will be on the implications of the directives in Spain.

**Language**

Spanish.

**Project No.:** 0665001

For further information, please contact:

*Ms Natalia Doménech, Programme Organisation, EIPA-ECR  
C/Girona 20, 08010 BARCELONA, SPAIN  
Tel.: +34 93 567 23 89; Fax: +34 93 567 23 56  
E-mail: n.domenech@eipa-ecr.com*

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

# Immigration Policy in Europe and the Role of Regional and Local Governments: Analysing, Planning and Influencing Policy

*Barcelona (ES)  
2-3 March 2006*

## **Target group**

Public officials from national, regional and local authorities, public and private associations, judges, lawyers, consultants and academics. In general, the seminar is intended for all professionals dealing with immigration policies in different levels of government, whether from the security perspective or from the economic and social cohesion perspective.

## **Method**

A mixture of presentations, discussions, and exchanges of experiences. The speakers will be both practitioners from different public institutions and academics.

## **Objectives**

The prime aim of this seminar is to reflect on the evolution Immigration policy is taking at the EU level, and how close is it in its response to a highly complex situation, both from policy and governance perspectives. Furthermore, the action that regional and local authorities can take bringing in their experience and influencing the policy will be central. The approach we will adopt is policy analysis and ways to act in a European decision making process.

## **Language**

English and Spanish.

**Project No.:** 0661901

*For further information, please contact:*

*Ms Carol Layous, Programme Organisation, EIPA-ECR  
C/Girona 20, 08010 BARCELONA, SPAIN  
Tel.: +34 93 567 24 18; Fax: +34 93 567 23 56  
E-mail: c.layous@eipa-ecr.com*

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

*Seminar/Séminaire/Seminar*

## Committees and Comitology in the Policy Process of the European Community

### *Comités et comitologie dans le processus politique de la Communauté européenne*

### Ausschüsse und Komitologie im Entscheidungsprozess der Europäischen Gemeinschaft

*Maastricht (NL), 6-8 March 2006, du 7 au 9 juin 2006, 28.-30. Juni 2006*

The training offered mainly aims to provide an overview of the decision-making process in the framework of "comitology", i.e. the role of committees that work in conjunction with the delegation of implementing competences from the Council to the Commission (Article 202.).

The role of advisory committees and expert groups of the Commission as well as of Council working groups will be discussed in order to present a full picture of the work of these bodies.

The objective of the seminar is to provide participants with a better understanding of the workings of this process. In particular, attention will be paid to the role of the Commission and of representatives of the Member States in the adoption of implementing measures aimed at adapting the legislation already in force. This includes a close examination of the different phases of consultation with expert groups, the preparation of legislative proposals, and the implementation of policies.

The seminar will in particular analyse the institutional tension between the executive and legislative function, and thus the role of the European Parliament, the Commission and the Council in the context of comitology committees. There will also be a special focus on recent developments and the future reform agenda in the area of comitology, in particular as regards the Commission's proposal for a revision of procedures as well as the discussion surrounding the delegation of powers and the Union's legal acts that took place in the context of the drafting of the Constitutional Treaty.

*La formation proposée vise principalement à donner un aperçu du processus décisionnel dans le cadre de la "comitologie", à savoir le rôle des comités qui interviennent lors de la délégation de compétences d'exécution à la Commission par le Conseil (article 202).*

*Le rôle des comités consultatifs, des groupes d'experts de la Commission et des groupes de travail au sein du Conseil sera examiné afin de dresser un tableau complet de l'activité de ces entités.*

*L'objectif du séminaire est de favoriser la compréhension des rouages de ce processus. Une attention particulière sera consacrée au rôle de la Commission et des représentants des Etats membres dans l'adoption des mesures d'exécution visant à adapter la législation en vigueur. Ceci implique une analyse approfondie des différentes phases de consultation des groupes d'experts, de préparation des propositions législatives et de mise en œuvre des politiques.*

*Le séminaire analysera en particulier la tension institutionnelle entre la fonction exécutive et la fonction législative, et donc le rôle du Parlement européen, de la Commission et du Conseil dans le cadre des comités comitologie. L'accent sera mis également sur les évolutions récentes et l'agenda de la future réforme dans ce domaine, à la lumière notamment de la proposition de la Commission de révision des procédures et des discussions qui ont eu lieu sur la délégation de compétences et les actes juridiques de l'Union au moment de l'élaboration du projet de traité constitutionnel.*

Dieses Seminar gibt einen Überblick über den Entscheidungsprozess, wie er im Rahmen der Ausübung der „Komitologie“, also dem Ausschußwesen, das zur Anwendung kommt, wenn der Rat an die Kommission Durchführungsbefugnisse überträgt (Artikel 202).

Dabei wird auch – im Interesse einer vollständigen Darstellung der Arbeit dieser Gremien – die Rolle der beratenden Ausschüsse und Expertengruppen der Kommission sowie der Arbeitsgruppen des Rates erörtert.

Das Seminar will den Teilnehmern ein besseres Verständnis des Ablaufs des Entscheidungsprozesses vermitteln. Ein besonderer Schwerpunkt wird auf der Rolle liegen, die die Kommission und Vertreter der Mitgliedstaaten bei der Annahme von Durchführungsmaßnahmen zur Anpassung geltender Rechtsvorschriften spielen. Hierzu zählen auch eine eingehende Untersuchung der verschiedenen Phasen der Konsultation von Expertengruppen, der Ausarbeitung von Vorschlägen für Rechtsakte und der Umsetzung von politischen Inhalten.

Das Seminar wird insbesondere auf das institutionelle Spannungsverhältnis zwischen exekutiver und legislativer Funktion eingehen und die Rolle des Europäischen Parlaments, der Kommission und des Rates im Kontext der Komitologieausschüsse analysieren. Ein besonderer Augenmerk wird dabei auf die jüngsten Entwicklungen und die Reformagenda im Bereich der Komitologie gelegt, vor allem im Bezug auf die von der Kommission vorgeschlagene Novellierung der Komitologieverfahren und der Debatte über die Delegation von Durchführungskompetenzen im Rahmen der Arbeit an dem Entwurf der EU-Verfassungsverträge.

Project No.: 0610001

Project No.: 0610003

Project No.: 0610002

For more information/Renseignements auprès de/Zum Erhalt weiterer Informationen wenden Sie sich bitte an:

*Ms Belinda Vetter, Programme Organiser, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 382; Fax: +31 43 3296 296  
E-mail: b.vetter@eipa-nl.com; Website: <http://www.eipa.nl>*

# Towards the Completion of the Internal Market for Services?

*Luxembourg (LU)  
9-10 March 2006*

## **Target Group**

The seminar is aimed at legal professionals, such as judges, lawyers, national and EU officials, academics, representatives from trade and professional associations, and other interest groups.

## **Description**

The removal of existing barriers to cross-border provision of services is a political priority set by the Lisbon European Council in order to promote growth and employment and strengthen European competitiveness. This seminar will provide a forum for discussion, in which experts – both speakers and members of the audience – can meet to discuss and share experience with the purpose of assessing the current state of the internal market in this sector. Special attention will be paid to the controversial aspects of the much-debated proposal for a directive on services in the internal market, the so-called Bolkestein directive, and its impact on the European social model. Considerations with respect to the protection of consumers' rights and the provision of public services will also be addressed.

## **Objective and method**

This seminar will be conducted in a way to provide a forum for discussion in which experts – both speakers and members of the audience – will meet to discuss and share experience with respect to these issues. All the presentations will last approximately 45 minutes and will be followed by a discussion for another 45 minutes.

## **Language**

English and French.

**Project No.:** 0651201

For more information, please contact:

*Ms Stéphanie Boudot, Programme Organisation, EIPA Luxembourg  
Circuit de la Foire Internationale 2  
1347 LUXEMBOURG, LUXEMBOURG  
Tel.: +352 426 230 301; Fax +352 426 237  
E-mail: s.boudot@eipa.net*

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

Forthcoming seminars on

# European Information and Communication Management 2006

EIPA is organising a series of seminars in the field of European Information and Communication Management. The various training courses are designed for both experienced EU information and communication specialists and those new to the subject.

**Training Course – Europe on the Internet***Maastricht, 23-24 March & 5-6 October 2006***Project Nos.** 0611001 & 0611002

Learn how to quickly and efficiently find useful information through a wide-range of free and commercial internet resources dealing with European issues and policies.

During the course, you will have the opportunity to:

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

A special session will be dedicated to the EU public procurement, grants and funding opportunities and statistics information.

Pleasant atmosphere, expert trainers' advice and guidance and plenty of hands-on time combined with practical exercises: these are the ingredients of our successful training.

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

**Seminar – Who's Afraid of European Information?***Maastricht, 8-9 June 2006***Project No.** 0610201

A beginner's seminar focused on the information and communication implications of the evolving policy-making and legal processes in the European Union. If you are new to EU information, working with EU affairs or have only the basics, this is the right course for you.

At the end of the course, you will have a good understanding of:

- what the EU institutions do;
- how they work;
- how law and policy are made;
- the key information sources and what other useful information networks exist.

**Conference – Keep Ahead with European Information and Communication in the Enlarged Europe***Maastricht, 30 November-1 December 2006***Project No.** 0611101

Annual conference aimed at experienced European information and communication professionals.

It will seek to discuss new and important issues, products and services of interest to those who work with European information and European affairs. Particular attention will be focused on the latest developments in the field of information and communication policy and strategies and the implications of the evolving policy-making process in the European Union.

In addition to the seminars described above, customised versions of the seminars can be held at your organisation to suit your particular needs.

**Project Leader:** *Mr Cosimo Monda*

Lecturer & Head of Department Information,  
Publications, Documentation and Marketing Services

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

*Ms Joyce Groneschild, Programme Organiser, EIPA*  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 357; Fax: +31 43 3296 296  
E-mail: [j.groneschild@eipa-nl.com](mailto:j.groneschild@eipa-nl.com)

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

*Special Twenty-Fifth Anniversary Events*Workshop

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

*Maastricht (NL)**23-24 March, 26-27 October 2006*

The European Institute of Public Administration (EIPA) would like to announce a new workshop on "State Aid Policy and Practice in the European Community". The two-day workshop will be organised twice in 2006, taking place in Maastricht, the Netherlands, on 23-24 March 2006 and on 26 and 27 October 2006.

*As part of the special activities to celebrate EIPA's 25<sup>th</sup> anniversary, the Member of the European Commission responsible for competition, Mrs Neelie Kroes, will address the workshop on 23 March 2006. Mrs Kroes will speak on reform and modernisation of state aid policy.*

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

The purpose of the workshop is to examine in depth the interpretation and application of the Treaty rules and of the frameworks, guidelines and notices that have been developed by the Commission over the years. Landmark Commission decisions and Court judgements will be analysed so that participants can obtain a better understanding of the factors that shape those decisions. Furthermore, information on national procedures concerning state aid will be provided. The workshop will also provide a forum to compare national experiences in granting state aid. This information is continually updated after each workshop.

The workshop will use a mixture of training tools such as lectures, case analyses and working groups, emphasising the acquisition of knowledge that is immediately relevant to the work of officials dealing with state aid. Participants in the workshop are usually middle managers and senior officials from all levels of government and local authorities, as well as officials from public enterprises, academics, representatives of business and trade associations, and other practitioners.

The workshop is also a continuation of the Institute's research and seminars in the broader area of competition policy. The working language will be English.

**Project No.:** 0631201

**Participants will receive a complimentary copy of a handbook on state aid prepared by EIPA.**

For further information and registration, please contact:

*Ms Danielle Brouwer, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 224; Fax: +31 43 3296 296  
E-mail: d.brouwer@eipa-nl.com*

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

Seminar

# Anti-Money Laundering and Anti-Terrorist Financing Efforts in the EU: Recent Developments

*Maastricht (NL)  
30-31 March 2006*

The European Institute of Public Administration (EIPA) is pleased to announce a fourth seminar on anti-money laundering. This new seminar is one of a series of seminars related to financial services, initiated by EIPA in 2001.

The fight against money laundering and terrorist financing is a political priority for the European Union. Recent developments have led to include terrorist financing in the subjects addressed in the seminar. "Terrorist financing, like money laundering and corruption, is accomplished through various techniques which abuse financial markets. Safeguarding the transparency of money flows of both formal and informal sector value transfers is a key element in disrupting both money laundering and terrorist financing. Protecting the world's financial systems by effectively implementing international standards to combat terrorist financing and money laundering techniques remains [...] the highest priority." (Jochen Sanio, Former President of the FATF).

The fourth anti-money laundering seminar will address the ongoing efforts to combat money laundering and terrorist financing. This includes forms of cooperation and exchange of information between the public and private sectors and between EU Member States (and beyond of course). Furthermore, it will focus on recent developments in European legislation, enforcement and current policies. The US Patriot Act will also be discussed, as well as the impact of the revised FATF 40 Recommendations, with the nine Special Recommendations on Terrorist Financing.

The following topics will be covered:

- The new, third, EU Directive on money laundering (Dir 2005/60/EC of 26 October 2005);
- The FATF 40 Recommendations and the Special Recommendations on Terrorist Financing;
- Applying the KYC principles by banks (views from practitioners);
- The role of the EU's anti-terrorism coordinator and recommendations (expected) to the European Council in December 2005;
- The role of Financial Intelligence Units (FIUs);
- The role of Europol and Interpol;
- Practical examples (typologies) from experts in the field.

All those involved in the actions to prevent money laundering and terrorist financing in banks, financial institutions, regulators, lawyers, accountants, consultants, etc. will find the seminar of high interest and relevance to their daily work.

The seminar will be held in English.

**Project No.:** 0633101

For more information and registration forms, please contact:

*Ms Noëlle Debie, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 226; Fax: +31 43 3296 296  
E-mail: n.debie@eipa-nl.com*

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

Public-Private Partnerships (PPP) – Practitioners' Seminar

# Public-Private Partnerships – Making Best Use of Public Funds

*Maastricht (NL)  
5-7 April 2006*

The European Institute of Public Administration (EIPA) is organising a Public-Private Partnerships (PPP) – Practitioners' Seminar on "*Public-Private Partnerships – Making Best Use of Public Funds*" which will take place at the European Institute of Public Administration in Maastricht, the Netherlands, on 5-7 April 2006.

## Objectives

This *practitioners' seminar* aims to present and discuss current and recent experience in implementing, PPP in various sectors and EU Member States. It will be based around presentation and discussion of specific experiences in PPP, led by speakers involved in implementing PPP as purchasers, suppliers and professional advisers. *The format of the seminar is based on the successful model in October 2005 but using case studies from different sectors and EU Member States.*

The seminar is highly topical, given the rapid pace of growth of PPP in Europe and recent European Commission Communication on PPP and concessions. Possible outcomes of the follow up to this Communication and their practical impact on PPP will be discussed in the seminar. The seminar is also topical because of the increasing use of PPP in projects partially financed by EU Structural Funds and will cover both operational and financing aspects of the use of Structural Funds. It also addresses the issue of how to manage a national PPP programme as well as individual PPP schemes.

The style of the seminar will be interactive and, by the use of Working Groups to exchange experiences, it will seek to act as a forum for development of best practice in PPP implementation.

## Target Group

The seminar should be of particular interest to policy makers, public officials, academics and the private sector in EU Member States, in candidate countries, in pre-candidate countries and beyond.

The seminar will be conducted in English.

**Project No.:** 0630601

**For background information on public-private partnerships in Europe and EIPA activities related to public-private partnerships, please consult: [http://www.eipa.nl/Topics/PublicPrivatePartnership/PPP\\_Main.htm](http://www.eipa.nl/Topics/PublicPrivatePartnership/PPP_Main.htm)**

For more information please contact:

*Ms Diane Urlings, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 280; Fax: +31 43 3296 296  
E-mail: [d.urlings@eipa-nl.com](mailto:d.urlings@eipa-nl.com)*

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

## Seminars/Séminaires

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

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

Maastricht (NL)

6-7 April, 22-23 June, 28-29 September, 30 November-1 December 2006

6-7 avril, 22-23 juin, 28-29 septembre, 30 novembre-1<sup>er</sup> décembre 2006

The European Union has come to encompass cooperation in an ever greater number of policy areas. This cooperation is taking place in many different ways, and involves more and more different actors. To understand EU decision-making processes, one cannot only think of a "Community method" in some fields and "intergovernmentalism" elsewhere, nor limit attention to European law. The "open method of coordination" and other forms of soft law are increasingly employed in the social sphere. The pursuit of "Better Lawmaking" also entails consideration of alternative methods of regulation. At the same time, the Union is consolidating an Area of Freedom, Security and Justice and is developing new external capabilities through the common European Security and Defence Policy.

In this context, it is increasingly difficult as well as important to be aware of how European cooperation works in the different fields. Moreover, the institutions and the decision-making process are going through a period of important changes and debate resulting from the 2004 enlargement and the challenges to ratification of the Constitutional Treaty.

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

The courses start by presenting the functioning of the European institutions and their interaction in the classic policy cycle, which remains an essential starting point for understanding the Union. The sessions on decision-making in the Community legislative process include a simulation of a Council working party and a case study illustrating the operation of the co-decision procedure. Some of the new methods of policy coordination and alternative approaches to regulation will then be examined. Finally, the evolution of decision-making in the Area of Freedom, Security and Justice and the Common Foreign and Security Policy will be examined.

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

Project No.	Date
0612201	6-7 April 2006
0612203	28-29 September 2006
0612204	30 November-1 December 2006

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

*Par ailleurs, les institutions et le processus décisionnel connaissent une période de profonds changements et de discussions résultant de l'élargissement de 2004 et des problèmes liés à la ratification du traité constitutionnel.*

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

*Les séminaires débuteront par une présentation des institutions européennes et de leur interaction dans le cycle politique classique, point de départ essentiel pour comprendre l'Union. Les sessions consacrées à la prise de décision dans le processus législatif communautaire comporteront une simulation d'une réunion d'un groupe de travail du Conseil et une étude de cas illustrant le fonctionnement de la procédure de codécision. L'on se penchera également sur certaines nouvelles méthodes de coordination des politiques et d'autres approches de la réglementation. Pour conclure, l'évolution du processus décisionnel dans l'espace de liberté, de sécurité et de justice et en matière de politique étrangère et de sécurité commune fera l'objet d'une discussion.*

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

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

Ms/Mme Araceli Barragán, Programme Organisation, Organisation des programmes, EIPA-IEAP  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 325; Fax: +31 43 3296 296; E-mail: a.barragan@eipa-nl.com;  
Website: <http://www.eipa.nl>

Seminar

# EU Banking and Financial Law: A New Strategy for 2005-2010

*Maastricht (NL), 29-30 June 2006*

In May 1999, the European Commission presented a Communication entitled "Implementing the Framework for Financial Markets: Action Plan". It became known as the Financial Services Action Plan (FSAP) and identified a wide range of issues that called for (urgent) legislative action from the EU if the full benefits of the euro and an optimally functioning financial market were to be ensured. The Action Plan was largely completed within the target of five years, i.e. early 2005.

Since then, the success of this legislative initiative, resulting in over 40 new or revised pieces of EU financial services legislation, has been both applauded and debated. Subsequently, a new EU consultation paper was presented. The Commission asked stakeholders whether they agreed with the overall objectives of the Commission's policy over the next 5 years as outlined in the Green Paper on Financial Services (2005-2010), which was published on 3 May 2005.

On 5 December 2005, the European Commission presented its new financial services strategy for the next five years. The new strategy explores the best ways to effectively deliver further benefits of financial integration to industry and consumers alike. There are five main priorities:

- to dynamically consolidate progress and ensure implementation and enforcement of existing rules;
- to carry through the better regulation principles into all policy making;
- to enhance supervisory convergence;
- to create more competition between service providers, especially those active in retail markets;
- to expand the EU's external influence in globalising capital markets.

These and other ideas were presented in December 2005 as Final Policy Conclusions in the form of a "White Paper", setting out the future strategy for the completion of the single market in financial services. Some crucial areas such as clearing and settlement, asset management and retail banking services have been singled out as areas where there is still work to be done.

The **objective of these EIPA seminars** is to present the outcome and future of the FSAP and to examine the new strategy presented by the Commission. An overview will be provided of the most important FSAP legislation adopted so far and its degree of implementation as well as the new areas that will be subjected to legislative or other action by the Commission.

Expert speakers from the Commission, academia and the financial services sector will comment on the progress made and provide documentation of interest to EU policy makers in Member States (Ministries of Justice, Finance, European Affairs etc.), lawyers and the private sector (financial services institutions in general).

The seminars will be held in English.

**Project No.:** 0630001

For more information and registration forms, please contact:

*Mrs Adriana Holtslag-Alvarez, Project Leader Financial Services  
or Ms Noëlle Debie, Programme Organisation, EIPA  
P.O. Box 1229, 6201 BE MAASTRICHT, THE NETHERLANDS  
Tel.: +31 43 3296 226; Fax: +31 43 3296 296  
E-mail: n.debie@eipa-nl.com*

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

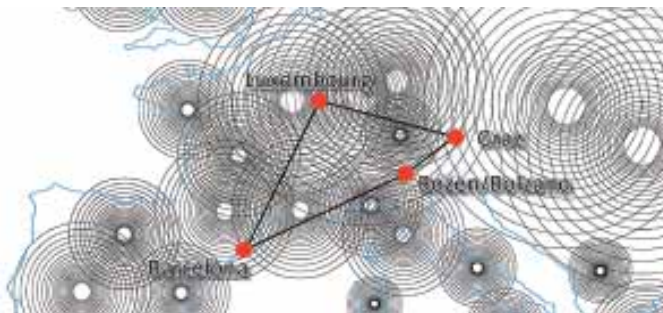
# Launch of the 2006-2007 Master in European Integration and Regionalism (MEIR)

EIPA's Antennae in Luxembourg (European Centre for Judges and Lawyers) and Barcelona (European Centre for the Regions) cooperate with the University of Graz and EURAC (European Academy of Bolzano) in offering an innovative Master's programme entitled **Master in European Integration and Regionalism (MEIR)**. The programme targets mainly

- civil servants from local, regional or national administrations;
- lawyers, economists, social scientists and people working for non-governmental organisations; and
- journalists and teachers.

Following a medieval European tradition, MEIR students will not focus on the European integration process from one single perspective within the European Union but go on an exciting trip taking them to centres of excellence in various EU countries. This will enable them to grasp what is meant by the European Union being "united in diversity".

In joining a small group of participants carefully selected for this Master's programme, you, as a future leading expert, will have the opportunity to travel Europe and study its major trends, underlying legal structures and political processes in the framework of an interdisciplinary, high-level programme. This innovative Master's programme consists of five modules that will take place in four European cities: Bolzano/Bozen (Italy), Luxembourg (Luxembourg), Graz (Austria) and Barcelona (Spain).



## The modules

The first module (in Bolzano) on **"The Enlarged European Union and Its Regions"** will provide an overview of different national historiographies by discussing the role of myths and the (mis)use of history for nationalistic purposes and exclusion or inclusion mechanisms. The module will also explore the development of federalism in the history of European integration. Much attention will focus on the

processes of Eastern enlargement, combining sociological with legal and economic questions, as well as on the position of Turkey and the Western Balkans. A thorough analysis of the concepts of federalism and regionalism in Europe will lead to a two-day case study, i.e. on the example of South Tyrol as a strong region in an enlarged Europe. The module will provide participants from various disciplines with the necessary foundational knowledge in politics, law and economics so as to enable their full involvement in an interdisciplinary programme.

The second module delivered by EIPA's Antenna in Luxembourg on **"European Union Law"** was originally designed with the aim of attaining two principal aims: firstly to provide a comprehensive view of the constitutional organisation of the European Union (including the functioning, interrelation and rule-making processes of the various institutions), and secondly to introduce fundamental concepts of European Union law (general principles, non-discrimination, fundamental freedoms, internal market harmonisation and competition). In 2005, a third – and new – element was included in the module, i.e. an overview of the implementation of European Union law and the consequences thereof for the EU Member States in terms of development of administrative capacities and human resources. The overall objective of this module is to provide participants with a practical understanding of current EU legal issues and the resulting effects on national administrations.

The third module (in Graz) will be on **"Political and Economic Aspects of Regionalism and Federalism"** and aim at providing understanding of the different possibilities for regions not only to determine their own affairs using instruments of self-government but also to influence decision making at national and European level. The considerable diversity of regions in Europe will raise the question of how a model region should be created. Last but not least, the federal nature of the EU itself will be thoroughly explored by examining how greater transparency, accountability and more active participation in the development of a genuine European civil society may be achieved.

The fourth module, **"Regional and Social Cohesion"**, will provide a thorough understanding of how regions may steer their own economic destiny. In order to take full advantage of EU regional policy and funds, civil servants have to be familiar not only with policies such as those on technology and innovation, but also with the various funding schemes of the EU. The second part of the module

will deal with the EU measures against social exclusion. The participants will be familiarised with principles in the areas of equality, anti-discrimination and affirmative action under European law. This module will be organised in Barcelona, the capital of Catalonia, which is one of the 17 Autonomous Communities in Spain and a prominent example of a strong and prosperous region. The population speaks Catalan, a regional language in European terms, and thus has a strong regional identity. All this makes it well-suited for studying the EU's regional policy and the issue of social inclusion at EIPA's European Centre for the Regions (EIPA-ECR).

The last module (in Bolzano) will deal with the complexities of **"Cultural Diversity and Minority Protection"** in Europe, mainly through discussion of the international and interregional protection mechanisms of the European Union, United Nations, OSCE and Council of Europe with leading experts from these organisations. Moreover, the wide range of linguistic, educational and political rights to be found in different national constitutional systems will be studied. Special attention will be paid to the concept of cultural diversity under European law since it is gaining increasing significance beyond the context of minority protection.

#### The method

The proposed curriculum will be highly interdisciplinary and designed to provide in particular a firm understanding of institutions and fundamental concepts of EU and European Community law, regional and social policies, regionalism and federalism, cultural diversity and minority protection in

the context of the European integration process. The sessions will be of a highly interactive nature, combining theory with practice and making use of individual and group exercises, presentations by participants and simulations.

Each module will last 2 weeks, taking place at eight to ten weeks intervals. Internships at a local, regional or national authority of an EU Member State, an international organisation or other bodies at regional level may be carried out during the programme. Participants who wish to obtain a formal Master's degree will, during the third semester, be expected to produce an academic thesis on an appropriate topic. Research and preparation for this thesis may be undertaken either at a partner university or as part of the internship.

#### Participation in individual modules

Applications may be made for either the full study programme or for individual modules. Modules may be "collected" at a pace suitable to the student and lead to the award of the Master's title once all five modules and the thesis have been completed.

#### Application process – Start and deadlines – Contacts

The application process will start on **1 March 2006**, with the deadline for applications for the academic year 2006/2007 being **31 May 2006**.

Applications for participation in individual modules may be lodged until 2 weeks before the module will take place.

The first module of the academic year 2006/2007 will start on **28 August 2006**.

Further information about the overall programme as well as the application form can be found at  
<http://www.eurac.edu/meir>

and/or by contacting:

*Peter Goldschmidt,*

*Senior Lecturer, Head of Unit ad interim, European Centre for Judges and Lawyers (EIPA Antenna Luxembourg),  
Member of Executive Board M.E.I.R.;  
E-mail: [p.goldschmidt@eipa-nl.com](mailto:p.goldschmidt@eipa-nl.com)*

*Alexander Heichlinger,*

*Senior Lecturer & Project Leader, European Centre for the Regions (EIPA Antenna Barcelona),  
Member of the Executive Board M.E.I.R.;  
E-mail: [a.heichlinger@eipa-ecr.com](mailto:a.heichlinger@eipa-ecr.com)*

# Institutional News

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## Board of Governors

At its meeting of 14-15 December 2005 held in Maastricht, the Board of Governors approved the following appointments:

### **Czech Republic**

Mr Ivan PRIKRYL, Head of the Office of the Government of the Czech Republic, as full member, and Mr Josef POSTRÁNECKÝ, Deputy Minister of the Interior for Public Administration, Office of the Government of the Czech Republic, as substitute member.

### **France**

M. Paul PÉNY, Directeur général de l'administration et de la Fonction publique, Ministère de la Fonction publique et de la Réforme de l'Etat, as full member, replacing M. Raymond Piganiol, Chef de la mission des affaires européennes et internationales, Direction générale de l'Administration et de la Fonction publique, Ministère de la Fonction publique, de la Réforme de l'Etat et de l'Aménagement du Territoire, and M. André GIANNÉCHINI, Chef de la mission des affaires européennes et internationales, Direction générale de l'administration et de la fonction publique (DGAFP), Ministère de la Fonction publique et de la Réforme de l'Etat, as substitute member.

### **United Kingdom**

Mr Roger WILSHAW, Deputy Director and Head of the Workforce Development and Statistics Division in the Corporate Development Group at the Cabinet Office, as substitute member.

### **Romania**

Mr Adrian BADILA, General Director of the National Institute of Administration (INA), as full member, replacing Mr Viorel Coifan, Director-General of the National Institute of Administration, and Mr Christian BITEA, Deputy General Director INA, replacing Mr Bogdan Draghici, Deputy Director-General of NIA as substitute member.

# Visitors at EIPA



Prof. Dr Gérard Druesne, Director-General of EIPA and Dr Godwin Grima, Principal Permanent Secretary, Office of the Prime Minister, Malta, for the official signing of the Cooperation Agreement between the Government of Malta and EIPA (on the occasion of the 45th Meeting of Directors-General responsible for Public Administration in the EU, Newcastle, 5 December 2005).

© *Bill Allon (Camera Angles) 2005*



Prof. Dr Gérard Druesne, Director-General of EIPA and Mr Adrian Badila, Director-General of the National Institute of Administration of Romania, for the official signing of the Cooperation Agreement between NIA and EIPA (Maastricht, 15 December 2005).



Prof. Dr Gérard Druesne, Director-General of EIPA and Senator André Rouvière, member of the French Parliament, Maastricht, 8 December 2005.

# Visitors at EIPA

Photographs taken on the occasion of the visit to EIPA Maastricht on 5-6 October 2005 by Dr George VOUTSINOS, Secretary-General of the Greek National Centre for Public Administration and Local Government, accompanied by Mr Helias PECHLIVANIDES, Director, Personnel Directorate, Mrs Aimilia GARDIKA, Research and Studies Officer, Institute of Training, and Mrs Antigoni MACRIYANNI, Head of Unit, International Affairs and Programmes Department.

During this visit, a Memorandum of Cooperation between the NCPALG and EIPA was signed.



Prof. Gérard Druésne, Director-General of EIPA and Dr George Voutsinos, Secretary-General of NCPALG.



*First row:* Prof. Gérard Druésne and Dr George Voutsinos

*Second row:* Mrs Rita Beuter (Expert and Head of Unit III – European Policies); Mr Tore Malterud (Senior Expert, Head of Unit II – European Public Administration and Public Management); Mrs Beatrice Vaccari (Senior Lecturer, representing the Head of Unit I – European Decision-Making); Mr Helias Pechlivanides; Mrs Aimilia Gardika; Dr Mihalis Kekelekis (Lecturer, Unit III – European Policies) and Mrs Anigoni Macriyanni.

# Alexis de Tocqueville Prize 2005



Mr Henning Christophersen, Chairman of EIPA's Board of Governors, awarding the 10th Alexis de Tocqueville Prize to Mrs Maria Gintowt-Jankowicz, Maastricht 14 December 2005.



Mrs Maria Gintowt-Jankowicz, Director and co-founder of the National School of Public Administration (KSAP) of Poland.



Mr Mariusz Blaszczak, Head of the Chancellery of the Prime Minister of Poland.



Prof. Dr Gérard Druésne, Director-General of EIPA, pronouncing Mrs Maria Gintowt-Jankowicz's eulogy.

# Staff News

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## Maastricht



**Sylvia Archmann** (AT) joined EIPA on 1 November 2005 as a Seconded National Expert in the Unit on Public Management and Comparative Public Administration.

She has a Master's degree in economics and informatics from the University of Vienna (Austria). She joined the Austrian civil service as an IT specialist in 1980. During her professional career to date, she has worked at the Austrian Ministry of Defence, Federal Chancellery and Ministry of Finance.

Before joining EIPA, she was the Director of the unit in charge of running the award-winning internet platform HELP ([www.help.gv.at](http://www.help.gv.at)). She is a founder member of the IPSG Group (Innovative Public Services Group under the umbrella of EUPAN), involved in and leading projects on performance indicators and benchmarking. She was the Austrian representative for several OECD-PUMA (Public Management) projects such as the Strengthening Citizen-Government Connections working group. Her fields of specialisation include public administration, organisational development, eGovernment, benchmarking, change management and communication.

# Recent Publications

more details at:

[http://www.eipa.nl/Publications/Indexes/Books\\_2005.htm](http://www.eipa.nl/Publications/Indexes/Books_2005.htm)

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

*Christoph Demmke*

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

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

*Sous la direction de Michel Mangenot*

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

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

*Under the direction of Michel Mangenot*

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

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

*Herausgegeben von Michel Mangenot*

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

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

*Phedon Nicolaidis, Mihalis Kekelekis and Philip Buyskes*

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

## Die europäischen öffentlichen Dienste zwischen Tradition und Reform

*Christoph Demmke*

EIPA 2005/02, 234 Seiten,  
ISBN 90-6779-186-5, € 30.00  
(Auch in Englisch erhältlich)

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

*Danielle Bossaert and Christoph Demmke*

EIPA 2005/01, 270 pages,  
ISBN 90-6779-196-2, € 35.00  
(Only available in English)

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

*Michel Mangenot and Robert Polet*

EIPA 2004/09, 161 pages  
ISBN 90-6779-195-4, € 27.00  
(Also available in French)

## Dialogue social européen et fonction publique.

### Une européanisation sans les Etats?

*Michel Mangenot et Robert Polet*

IEAP 2004/8, 161 pages  
SBN 90-6779-194-6, € 27.00  
(Disponible également en anglais)

## Programme régional pour la promotion des instruments et mécanismes du Marché euro-méditerranéen (EuroMed Marché)

- 1ère phase (juin 2002-juin 2003)
- **VOLUME II: Etudes comparatives sur la situation dans les Partenaires méditerranéens au regard des 8 domaines prioritaires du programme**
- *Sous la direction de Eduardo Sánchez Monjo*
- IEAP 2004/07, 273 pages, ISBN 90-6779-193-8,
- gratuit

## Programme régional pour la promotion des instruments et mécanismes du Marché euro-méditerranéen (EuroMed Marché)

- 1ère phase (juin 2002-juin 2003)
- **VOLUME I: Actes des activités réalisées pendant la 1ère phase**
- *Sous la direction de Eduardo Sánchez Monjo*
- IEAP 2004/06, 552 pages, ISBN 90-6779-192-X,
- gratuit

## Regional Programme for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed Market)

- 1st Phase (June 2002-June 2003)
- **VOLUME II: Comparative studies on the state of affairs in the Mediterranean Partners regarding the 8 priority areas covered by the programme**
- *Eduardo Sánchez Monjo (ed.)*
- EIPA 2004/05, 258 pages, ISBN 90-6779-191-1,
- Free of charge

## Regional Programme for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed Market)

- 1st Phase (June 2002-June 2003)
- **VOLUME I: Proceedings of the activities carried out during the 1st phase**
- *Eduardo Sánchez Monjo (ed.)*
- EIPA 2004/04, 524 pages, ISBN 90-6779-190-3,
- Free of charge

## eGovernment in Europe's Regions: Approaches and Progress in IST Strategy, Organisation and Services, and the Role of Regional Actors

- *Alexander Heichlinger*
- EIPA 2004/03, 118 pages,
- ISBN 90-6779-187-3, € 15.00
- (Only available in English)

## European Civil Services between Tradition and Reform

- Christoph Demmke
- EIPA 2004/01, 202 pages,
- ISBN 90-6779-185-7, € 30.00

## Enlarging the Area of Freedom, Security and Justice

- Conference Proceedings
- *Cláudia Faria (ed.)*
- EIPA 2004/C/01, 77 pages
- ISBN 90-6779-189-X, € 21.00
- (Mixed texts in English and French)

## Mapping the Potential of eHealth: Empowering the Citizen through eHealth Tools and Services

- Research Report presented at the eHealth Conference,
- Cork, Ireland, 5-6 May 2004
- *Petra Wilson, Christine Leitner and Antoinette Moussalli*
- EIPA 2004/E/01, 52 pages, ISBN 90-6779-188-1
- Free of charge

\* These prices include postage and packing.

\*\* €45.00 for EIPA members and participants in the State Aid seminars.

# Editorial Team



- **Dr. Edward Best (UK)**
- *Professor; Head of Unit "European Decision-Making"*
- European institutions and decision-making processes;
- comparative regional cooperation and integration



- **Cosimo Monda (IT)**
- *Lecturer; Head of Information, Publications, Documentation and Marketing Services*
- European information; eLearning; consumer protection;
- information society



- **Guadalupe Soto Mora (ES)**
- *Seconded National Expert*
- Public administration; human resource management;
- administrative cooperation; equal opportunities



- **Dr. Phedon Nicolaides (CY)**
- *Professor of Economics*
- Economic integration; community policies;
- EU enlargement process



- **Denise Grew (UK)**
- Publications Department
- Coordinator



- **Willem Huwaë (NL)**
- Publications Department
- Design and layout

# REQUEST for INFORMATION

## Conferences & Seminars

Please complete in black and capital letters

Project No.	Date

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Mr/Mrs/Ms:

Surname: ..... First name(s): .....

Organisation: .....

Department: .....

Current Position: .....

Address: .....

Postal code: ..... Town: ..... Country: .....

Tel.: ..... Fax: ..... E-mail: .....

For general information on conferences and seminars, please contact:

**Ms Wytse Veenman**

Head of Programme Organisation and Linguistic Services  
European Institute of Public Administration

P.O. Box 1229

6201 BE MAASTRICHT

THE NETHERLANDS

Tel.: +31 43 3296 247

Fax: +31 43 3296 296

Email: [w.veenman@eipa-nl.com](mailto:w.veenman@eipa-nl.com)

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

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\* There will be no extra charge for payments within The Netherlands.