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La relation entre l'administration locale, les régions et le gouvernement central – Aperçu européen*

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L'exposé qui va suivre n'est pas celui d'un expert en administration locale, ni même régionale, mais bien celui d'un fonctionnaire d'administration centrale qui, dans le cadre d'une mission à l'Institut européen d'administration publique, s'est familiarisé avec la relation qu'entretiennent les administrations des Etats avec les institutions européennes et donc, avec l'implication des administrations dans le processus d'intégration européenne.

1. L'administration publique, une prérogative nationale

Etablissons d'abord clairement que l'Union européenne n'a aucune compétence formelle en matière de fonction publique des Etats membres. La seule référence explicite à *"l'administration publique"* dans les Traités est celle de l'article 48 qui établit le principe de la liberté de circulation des travailleurs et stipule en son paragraphe 4 que *"les dispositions du présent article ne sont pas applicables aux emplois dans l'administration publique"*.

Ce principe fondamental étant établi, il est donc clair que l'organisation et les règles de fonctionnement des Fonctions publiques des Etats membres sont de la compétence exclusive de ceux-ci. Le principe de *subsidiarité* est donc d'application.

En matière de libre circulation des agents publics, la Cour de justice a nettement établi que l'exception définie par l'article 48.4 ne pouvait vider de son contenu l'objectif même du traité en la matière qui est bien de faciliter la libre circulation et non de la restreindre. Dès lors, l'interprétation de cette disposition doit être limitative. Ne sont exclus du principe de base de libre circulation que les agents des administrations publiques titulaires d'emplois *"qui comportent une participation, directe ou indirecte, à l'exercice de la puissance publique et aux fonctions qui ont pour objet la sauvegarde des intérêts généraux de l'Etat ou des autres collectivités publiques"*.[1]

Par le biais de cette politique de libre circulation, comme par celui des politiques d'égalité des chances et d'égalité de traitement entre hommes et femmes, l'Union européenne s'introduit donc indirectement au coeur des politiques de gestion de personnel des fonctions publiques. Cela a conduit en effet à faire sauter un principe auquel tous les Etats recouraient traditionnellement, à savoir celui de réserver l'accès à la fonction publique aux seuls nationaux. Aujourd'hui cette ouverture des emplois publics – sauf l'exception limitée décrite ci-dessus – est pratiquement réalisée dans tous les Etats membres de l'Union. Elle ouvre *de facto* plus de quatre-vingt pour-cent des emplois publics à tous les ressortissants de l'Union européenne.

La libre circulation ne pouvant se limiter au seul accès initial en début de carrière des fonctionnaires, mais devant permettre également la mobilité européenne en cours de carrière, d'autres éléments sont appelés à évoluer. En particulier les dispositions relatives à la sécurité sociale des travailleurs migrants devront prochainement, *mutatis mutandis*, s'appliquer aussi aux fonctionnaires.

En l'absence de tout Conseil des ministres de la Fonction publique de l'Union européenne, une coopération informelle s'est cependant établie depuis de nombreuses années. Ainsi cinq réunions informelles des Ministres en charge de la Fonction publique ont eu lieu depuis 1988 et vingt-huit réunions semestrielles des Directeurs généraux de la Fonction publique ont été organisées à ce jour. La 29ème rencontre aura lieu à Luxembourg, siège de l'actuelle Présidence de l'Union européenne, en novembre prochain.

Au cours de ces rencontres, des échanges d'expériences menées en matière de gestion des administrations publiques portent notamment sur les réformes administratives, les processus de modernisation, les initiatives prises en matière de gestion de personnel, de dialogue social, de développements en politique de qualité, en politique de décentralisation ou de déconcentration, ou en *"New Public Management"*…

2. L'organisation administrative subnationale, un "patchwork"

L'absence de norme européenne en matière d'organisation administrative des Etats membres de l'Union européenne garantit la souveraineté nationale en cette matière et donc le principe largement répandu d'autonomie locale. Simultanément, cette application du principe de subsidiarité (gestion locale des intérêts locaux) laisse le champ libre à une grande diversité dans l'organisation par les Etats des administrations décentralisées.

Un regard sur le tableau des structures administratives en Europe[2] (voir Tableau 1) nous indique la variété des modèles en place. Ils vont de l'Etat unitaire aux Etats fédéraux, en passant par les Etats unitaires décentralisés.

L'observation des effectifs d'agents publics par niveaux d'administration (voir Tableau 2) donne

* Contribution au séminaire: *'The Local Government in Europe'*, INAP, Madrid, les 4 et 5 novembre 1997.
A summary in English of this article can be found at the end.

également une mesure de l'importance relative des phénomènes de décentralisation des pouvoirs dans les Etats de l'Union européenne.[3]

Le Tableau 2 donne un aperçu statistique des effectifs de l'administration publique dans les Etats membres de l'Union européenne. Il permet de mesurer la très grande diversité des structures et poids relatifs des divers niveaux d'administration de ces Etats.

3. Implications subnationales de l'intégration européenne

L'internationalisation joue un rôle de plus en plus important dans la société contemporaine. Les dimensions nationales et internationales sont de plus en plus interdépendantes et interfèrent dans les processus de décision tant économiques que politiques et, par voie de conséquence, dans la gestion quotidienne des administrations publiques.

Pour les pays de l'Union européenne, le processus d'intégration des 40 dernières années a inséré dans des domaines de plus en plus vastes et nombreux de gestion publique la dimension internationale et a amené les fonctionnaires à participer de plus en plus fréquemment aux travaux préparatoires et aux travaux de négociation internationale des politiques dans les enceintes des institutions européennes.

Pour mesurer l'ampleur de ce changement, il suffit de relever l'éventail des politiques et matières qui sont progressivement entrées dans le champ de compétences, communes ou partagées avec les Etats, de l'Union européenne (voir Tableau 3).

Ce processus d'extension des compétences européennes et d'approfondissement de la mise en oeuvre des politiques affectées par la législation et les initiatives communautaires nous renvoie de plus en plus au niveau régional, voire local, d'administration.

C'est de cette implication régionale et locale dans les processus communautaires que nous traiterons dans la section suivante.

4. Elaboration et mise en oeuvre des politiques européennes

L'appartenance à l'Union européenne implique bien entendu la *mise en oeuvre* de la législation communautaire en commençant par la transposition des directives communautaires en droit interne. Cette seule obligation entraîne un travail important pour les fonctionnaires des services concernés. Il se poursuit par le traitement des affaires ou dossiers dans le respect de ces normes communautaires, ce qui implique des travaux d'exécution, voire d'inspection, combinant l'arsenal législatif et réglementaire national avec celui de l'Union européenne.

Cette phase de mise en oeuvre, qui suit celle de l'élaboration et de la définition de la législation communautaire (directives et règlements européens), fait de plus en plus appel aux administrations des niveaux intermédiaire et local.

Mais le travail européen des fonctionnaires nationaux va plus loin. Les fonctionnaires des Etats participent au processus législatif lui-même, par leur coopération avec les membres compétents de la Représentation permanente nationale auprès des Communautés européennes, et par leur insertion dans des comités à statuts divers: comités d'experts auprès de la Commission pendant la phase de préparation des propositions de celle-ci; ou auprès du Conseil au cours des phases d'élaboration et de décision politique du législateur communautaire. Ils cogèrent ensuite, avec la Commission européenne, la *mise en oeuvre* de la législation au nom de leurs gouvernements nationaux, dans des comités consultatifs, de gestion, ou de réglementation. C'est le vaste domaine de ce qu'il est convenu d'appeler la *comitologie*.[4]

Les administrations des régions qui ont acquis, au sein de leur structure politique nationale, un pouvoir législatif ou normatif, peuvent intervenir directement à ce stade initial de l'élaboration de la législation communautaire, lorsqu'elles sont compétentes dans des matières affectées par les politiques européennes.

C'est le cas de l'Allemagne et de la Belgique qui peuvent être représentées au Conseil de ministres de l'Union européenne, lorsque celui-ci traite des matières de leurs compétences (Education, Formation professionnelle ou Environnement par exemple), par des ministres régionaux. Il faut noter cependant que, dans ces cas, les ministres régionaux représentent leur Etat national, car l'Union européenne est une union d'Etats et non une "Europe des Régions". Il appartient dès lors aux Etats d'organiser des procédures d'organisation interne de concertation entre l'Etat central et les Régions ou Communautés pouvant prendre part à la décision politique européenne. L'Allemagne le fait notamment au sein du *Bundesrat* (Parlement ou Sénat des *Länder*); la Belgique le fait par l'application d'accords de coopération. De cette manière, le ministre bavarois ou flamand qui représente l'Allemagne ou la Belgique au Conseil des ministres de l'Environnement par exemple, ne représente pas simplement son *Land* ou sa Région, mais la position des *Länder* ou des Régions élaborée préalablement en commun.

C'est aussi le cas maintenant de l'Espagne qui, si elle ne peut encore envoyer des ministres régionaux au Conseil de ministres de l'Union européenne, peut cependant depuis peu (octobre 1997) faire participer des fonctionnaires régionaux aux processus précités des comités et de la *comitologie*.

Relevons enfin que cette participation des administrations et gouvernements régionaux au processus européen peut poser un problème aux institutions communautaires lorsque des pouvoirs subnationaux n'exécutent pas ou exécutent mal les normes européennes. Elles ne peuvent en effet que s'adresser directement aux Etats qui, dans certains cas, sont devenus "incompétents" dans les matières concernées. C'est le cas de la Belgique dont l'Etat central (fédéral) a transféré complètement certaines compétences à ses Communautés (éducation par exemple) et Régions (transports par exemple). C'est la raison pour laquelle, la dernière réforme constitutionnelle

(1993) qui a parachevé la structuration fédérale du pays, a en même temps réintroduit la possibilité, pour le pouvoir fédéral, d'intervenir lui-même dans les domaines des prérogatives des Communautés ou Régions, lorsque celles-ci sont en défaut d'exécution d'obligations internationales.[5]

5. Souveraineté nationale en question?

C'est presque un lieu commun de rappeler aujourd'hui l'importance croissante des transferts de souveraineté des Etats, tant vers le haut (niveau supranational) que vers le bas (niveau subnational).

Les influences combinées de la "globalisation" de l'économie, de la politique, de la culture et de l'environnement notamment, ont conduit les Etats à s'organiser pour tenter de maîtriser ces processus. Les organisations internationales – de coopération intergouvernementale ou d'intégration régionale ou de sécurité commune – se sont multipliées afin de traiter les défis internationaux au niveau le plus approprié. Cette évolution a entraîné des transferts croissants de compétences – donc d'une part de leur souveraineté – des Etats vers les organisations internationales les plus structurées.

Parallèlement, mais en sens contraire, les développements de volonté d'autonomie régionale ont conduit à des phénomènes importants de décentralisation. Des Etats fédéraux ou semi-fédéraux ont ainsi transféré, partiellement ou totalement, des compétences – donc une part de leur souveraineté – vers de nouvelles entités régionales. Ici encore, l'objectif est de traiter au niveau le plus opportun la demande de qualité et de services de proximité de plus en plus exigée par les citoyens.

Qu'il s'agisse de transferts vers le haut (en particulier vers l'Union européenne) ou vers le bas (les autonomies régionales), c'est bien d'une application du principe de subsidiarité qu'il s'agit. Le problème difficile à résoudre est de définir dans chaque cas, pour chaque compétence, quel est le niveau le plus approprié pour décider et pour agir dans un domaine déterminé. Ce problème se complique encore lorsque les niveaux appropriés de décision et d'action peuvent rationnellement différer. Ainsi peut-on défendre l'option de confier au niveau européen la définition des normes de sécurité environnementale (parce que la pollution atmosphérique est transnationale et que ses effets ne s'arrêtent pas aux frontières), mais de confier au niveau régional, voire local, les mesures préventives contre les sources locales de pollution, et les mesures d'inspection, voire de répression des pollueurs.

Il est bien clair que dans cette définition des niveaux les plus appropriés de décision ou d'action, des facteurs politiques – volonté de s'approprier le pouvoir – se mêlent à des facteurs plus techniques d'appréciation.

6. Contrôles des autonomies

Ici se pose le problème difficile de la tutelle des organisations autonomes par le pouvoir des niveaux "supérieurs".

Selon un expert du droit administratif belge, la tutelle administrative "*désigne l'ensemble des pouvoirs limités accordés par la loi ou en vertu de celle-ci à une autorité supérieure aux fins d'assurer le respect du droit et la sauvegarde de l'intérêt général contre l'inertie préjudiciable, les excès et les empiétements des agents décentralisés*".[6]

Et une formule traditionnelle du droit administratif belge précise qu'une autorité (réputée supérieure) "*peut annuler l'acte par lequel une autorité* (réputée inférieure) *viole la loi ou blesse l'intérêt général*".

La tutelle de légalité intervient lorsque la loi est violée. La tutelle de conformité à l'intérêt général est plus complexe, car elle met en jeu cette notion relativement floue d'intérêt général que définissait comme suit un célèbre juriste belge: "*l'intérêt général n'est pas seulement l'intérêt de l'Etat, mais tout intérêt auquel l'organe annulateur (./.) accorde une plus grande valeur qu'à l'intérêt poursuivi par la décision annulée*".[7]

Sur le plan européen, la Cour de justice des Communautés européennes dit le droit et exerce par ses jugements un contrôle à la fois de légalité et de conformité à l'intérêt général. Mais aucune "tutelle administrative" ne vient préventivement et autoritairement empêcher la non-application ou l'application abusive ou insuffisante du droit européen. Sans disposer de ce pouvoir de tutelle, la Commission européenne exerce cependant un "contrôle de gestion" de la mise en oeuvre du droit communautaire par voie de communications interprétatives de certaines législations ou par voie de mise en demeure des Etats, préalables à la saisine de la Cour de justice.[8]

Sur le plan intérieur des Etats, l'on peut encore signaler quelques évolutions significatives.

La première est l'abandon progressif des "tutelles d'opportunité". Il est généralement acquis aujourd'hui, dans les pays démocratiques, qu'il ne convient plus qu'une autorité se prononce *a priori* sur l'opportunité de normes ou de décisions prises par des autorités de niveau inférieur, dans le cadre de leurs compétences propres.

La seconde est le recours de moins en moins fréquent à la "tutelle préventive", c.-à-d. le contrôle préalable des budgets ou autres actes administratifs. Les Pays-Bas, par exemple, ont quasiment abandonné leur pouvoir de tutelle préventive ("*preventief toezicht*") au profit du seul recours à la "tutelle répressive" ("*repressief toezicht*"). Cette démarche laisse davantage d'autonomie à la gestion régionale ou locale et n'intervient que "lorsque la loi ou l'intérêt général est blessé".

Une troisième évolution est liée aux processus de régionalisation. Elle se traduit par le transfert de l'Etat central vers les Communautés ou Régions du pouvoir de tutelle sur les autorités locales. Ainsi, en Belgique, les Régions disposent-elles à présent de l'essentiel de ce pouvoir de tutelle sur les provinces et communes du pays. La tutelle sur les actions provinciales ou communales dans des matières relevant de la compétence exclusive de l'Etat ou des Communautés est cependant exercée par ces pouvoirs.

Notons au passage que cette dernière évolution peut

être ressentie comme alourdissant le poids de la tutelle sur les autonomies locales, car le pouvoir de supervision est plus proche du pouvoir local et peut être tenté par un plus grand interventionnisme.

7. Contrôle par la déconcentration ou la législation-cadre

Je voudrais terminer en signalant deux modes de contrôle de l'Etat sur les structures subnationales par des modalités très différentes illustrées l'une par la France, l'autre par l'Allemagne et la Belgique.

La première est liée au phénomène de *déconcentration*. Dans ce cadre, un Etat peut transférer des pouvoirs de décision ou d'administration de ses services centraux vers des services déconcentrés répartis sur le territoire. C'est le cas des administrations départementales et régionales françaises des ministères centraux, placées sous le pouvoir hiérarchique et de coordination des préfets, fonctionnaires de l'Etat. L'administration déconcentrée met en oeuvre des politiques décidées et réglementées par l'autorité centrale de l'Etat. Néanmoins, le préfet est aussi chargé de coordonner l'action de l'Etat avec celle développée par les autorités régionales ou départementales sur le territoire dont le préfet est responsable. Ainsi se développe un jeu subtil d'influences réciproques entre autorités nationales et subnationales qui conduit à une application différenciée, dans des limites d'encadrement plus ou moins souples, d'une politique nationale dans le cadre territorial.

La seconde découle d'une application particulière du fédéralisme. Celui-ci peut être organisé par un partage clairement délimité (aussi clairement que possible en tout cas) des compétences respectives de l'Etat fédéral et des entités fédérées. C'est le cas de la Belgique. Les Communautés et Régions disposent d'un ensemble de compétences propres dans lesquelles ces entités légifèrent avec un pouvoir normatif équipollent au pouvoir législatif de l'Etat. Les "décrets" communautaires ou régionaux sont en Belgique équivalents à la loi. Il n'existe pas entre la loi et le décret de hiérarchie des normes. Par contre, l'Allemagne fédérale est organisée selon un autre modèle. Dans celui-ci, le pouvoir fédéral édicte des lois-cadres (un peu comparables aux directives du Conseil européen) qui fixent les lignes directrices de la législation et confie aux *Länder* le soin d'exécuter la politique ainsi définie par voie de lois régionales (comparable à la "transposition" des directives par les Etats membres de l'Union européenne) et de mesures administratives. Cette formule sauvegarde une plus grande homogénéité des politiques sur l'ensemble du territoire national, mais limite l'autonomie régionale.

8. Conclusion: pour un dialogue constructif entre les rationalités organisationnelle et politique

Nous avons tenté de montrer divers aspects de la relation entre les divers niveaux de pouvoir politico-administratif au sein de l'Union européenne:

- la diversité des structures résultant de l'autonomie nationale en matière d'organisation des administrations publiques (application du principe de subsidiarité en cette matière);
- les implications subnationales de l'intégration: pour certains pays dans l'élaboration même des politiques; pour tous dans la mise en oeuvre des politiques affectées par l'intégration;
- l'observation fréquente du rétrécissement, par le haut et par le bas, de la souveraineté nationale des Etats;
- les phénomènes de contrôle des autonomies par la tutelle, la déconcentration ou la législation-cadre.

Dans tous ces phénomènes, la rationalité organisationnelle basée sur des analyses aussi scientifiques et techniques que possible, et la rationalité politique fondée sur la poursuite d'intérêts collectifs et de partage ou d'appropriation du pouvoir, sont en jeu simultanément.

Selon le degré de relative indépendance de l'administration par rapport au pouvoir politique dans les Etats membres de l'Union européenne, l'efficacité de la *mise en oeuvre* des politiques peut varier dans des marges relativement importantes. Il importe dès lors d'établir entre ces deux niveaux d'action, autant que faire se peut, un dialogue constructif fondé sur le respect mutuel.

SUMMARY

The Relationship between Local Government, Regions and Central Government – A European Survey

In this paper, Robert Polet reminds us that Public Administration remains a national prerogative: there is no basis in the Treaties for the EU to impose any directives on the Member States regarding the way they should organize, structure or reform their public administrations.

Looking then at a general survey of the subnational structures for public administration, the picture that emerges is, not surprisingly, a real patchwork of completely different situations across the EU countries.

As a result of this constitutional and organizational heterogeneity, it would appear that subnational involvement in the EU integration process varies quite considerably. Many regional or even local administrations are in effect involved in the implementation of EU policies, yet some regional administrations also take an active part in the EU legislative process, Belgium and Germany being the most obvious cases.

Increasing roles are being played in government: at regional level with the developments in decentralization, and at supranational level with greater transfer of powers, mainly to the EU. The question as to whether this double-edged process ultimately puts national sovereignty at stake is often debated.

In this respect, it is interesting to look at the possibilities that exist for monitoring regional autonomies. Two such instruments examined in this paper are deconcentration (through territorial services which are closed to the users of public services, but monitored from the centre through administrative,

managerial or budgetary control mechanisms) and the use of framework legislation set up at central level and translated into regional executive legislation.

In order to overcome the difficulties arising from an extremely diversified set-up in public administration across Europe, Robert Polet's paper makes a plea for a constructive dialogue between organizational and political rationality, i.e. between top civil servants and political leaders.

NOTES

1. CJCE, 17 déc. 1980 et 26 mai 1982 (Commission c/ Belgique), 149/79, Rec. 1980, p. 3881 et Rec. 1982, p. 1845.
2. Astrid Auer, Cristoph Demmke et Robert Polet, *La Fonction publique dans l'Europe des Quinze*, IEAP, 1996, 266 pp.
3. Robert Polet et Koen Nomden, *"Public Employment in the Public Administrations of the EU Member States"*, IEAP/EIPA, déc. 1996, 96 pp.
4. Voir par exemple: Pedler and Schaefer, *Shaping European Law and Policy – The Role of Committees and Comitology in the Political Process*, IEAP et European Centre for Public Affairs, 1996, 204 pp.
   Voir également: Tove Lise Schou, "The Role of Danish Civil Servants in the Norm-Creating Process in the EC", ECPR Joint Session, mars 1991.
5. L'article 169 de la Constitution révisée dispose: *Afin de garantir le respect des obligations internationales ou supranationales, les pouvoirs visés aux articles 36 et 37* (pouvoirs législatif et exécutif fédéraux) *peuvent, moyennant le respect des conditions fixées par la loi, se substituer temporairement aux organes visés aux articles 115 et 121* (parlements et gouvernements des Communautés et Régions).
6. J. Dembour, *Les actes de la tutelle administrative en droit belge*, Liège, 1954, p.1.
7. F. De Visschere, *Het begrip algemeen belang in het Belgisch recht*, Haarlem, 1950.
8. Application de l'article 169 du Traité CE. ❑

Tableau 1

(This graphic can be printed in readable quality from the screen version of this file.)

Tableau 2

	ADMIN. Centr.	ADMIN. Région.	ADMIN. Interm.	ADMIN. locale	Autres*	Total	Unité stat.
B	86.934	78.433	15.481	198.235	370.802	749.885	TÊTES
DK	43.373		126.524	384.644	46.660	601.201	EFT**
D	158.086	722.436		1.324.241	2.163.060	4.367.823	TÊTES
GR	239.251			42.814	385.076	667.141	TÊTES
E	277.830	601.327		371.456	542.668	1.793.281	?
F	811.485		193.333	1.077.266	2366.424	4.448.508	TÊTES
IRL	35.863			26.800	151.126	213.789	EFT
I	495.284	96.062	92.338	510.337	2.339.443	3.533.464	TÊTES
L	7.919			3.709	7.536	19.164	TÊTES/EFT
NL	87.533		20.213	173.470	416.827	698.043	EFT
A	47.494	53.170		79.193	248.164	428.021	EFT
P	285.267			90.864	255.480	631.611	TÊTES
SF	58.718			178.140	279.899	516.757	TÊTES
S	112.904		104.000	456.000	372.545	1.045.449	EFT
UK	663.950			1.031.000	1.369.823	3.064.773	EFT
Tot.	3.411.890	1.551.428	551.889	5.948.169	11.315.533	22.778.910	

* La colonne “Autres” inclut le personnel public militaire, policier, enseignant, hospitalier, forestier et gardiens de prison.
** EFT = *Equivalent Full Time*.

Tableau 3:
*Champ de compétences de l’Union européenne**

Compétence dominante	Commerce – Agriculture et pêche – Régulation du marché
Compétence partagée avec les Etats membres de l’UE	Concurrence – Industrie – Politique économique et monétaire – Energie – Transport – Environnement – Politique régionale – Politique étrangère – Pensions – Conditions de travail – Protection des consommateurs – Liberté de circulation des personnes – Lutte contre la drogue et le terrorisme – Formation professionnelle
Compétence limitée**	Santé – Education – Défense – Protection sociale – Criminalité internationale
Compétence négligeable	Logement – Libertés civiles – Lutte contre la criminalité interne

* D’après Neill Nugent, *The European Community 1994*, Oxford, 1996.
** Notons que dans certains de ces domaines, de nombreux pays sont actifs dans d’autres institutions internationales compétentes, telles que l’OTAN ou l’UEO pour les questions de défense, ce qui entraîne par ces biais une importante activité internationale pour les fonctionnaires des Ministères concernés.

Negotiating Effectively for Accession to the European Union: Realistic Expectations, Feasible Targets, Credible Arguments*

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Introduction

As the European Union is preparing to launch the discussions that will eventually lead to the admission of the Czech Republic, Estonia, Hungary, Poland, Slovenia and Cyprus, a question that is increasingly being asked by the prospective members is what should they hope to obtain from those discussions or accession negotiations. They have already been told that the negotiations will determine their terms of accession and will ascertain their ability to assume the obligations of membership or '*acquis communautaire*'. In fact what they like to know is whether they could receive any exceptions or special treatment that will ease the pain of adjustment to life inside the EU.

They want to know whether and how they can obtain derogations from the *acquis*. Yet, 'derogation' is a dirty word in the European Union. No one admits it exists, nor that it is possible to obtain any during the accession negotiations. This short paper attempts to separate myth from reality and highlight what may be realistically pursued in the negotiations.

As a general rule, it is correct to say that prospective members of the Union are expected to apply the full *acquis communautaire* without any exception. But there are exceptions to all rules and this rule is no exception in this respect.

No country has ever been able to apply all the rules on the date of entry into the Union. Some exceptions must necessarily be granted because public administration and private companies need time to adjust to the conditions of membership. On the other hand, exceptions may also be needed to avoid too sudden and too large shifts of resources from one sector of the economy to another. Yet, some other exceptions are introduced because the Union itself needs to adjust to the strains of expanded membership. So it is not absolutely true that derogations are requested only by the prospective members.

These exceptions are often asserted to be only temporary or transitional. The 'official' view is that if a country will never be able to comply with the *acquis*, then it should consider whether it really fits into the EU. This view is again generally correct (although permanent derogations are not unknown) and in this context it should be noted that the term 'accession negotiations' is a misnomer. It is more appropriately to call them 'entry examination' because this term describes more accurately what actually happens during accession negotiations. The actual negotiating part is rather small, while the largest part is devoted to checking whether a prospective member fulfils the conditions of membership.

Even the negotiation of temporary exceptions is not as simple as it may appear at first glance. There is no fixed length of time, which means that the length of a transitional arrangement has to be agreed by both sides. Therefore, requests for such transitional exceptions have to be justified in a manner that is understood and acceptable to the EU.

The rest of this short paper explains why negotiations are necessary, reviews the various types of derogations and provide examples from past accession negotiations to indicate what appears to be a feasible request for derogation and how past applicant countries presented and justified their requests.

Why are negotiations necessary?

If prospective members are supposed to comply fully with the *acquis communautaire* why is there any need to negotiate at all? There are three general answers to this question; a political, a legal and an economic.

First, the members of the EU are sovereign states. They are not simply individuals joining a club. In effect they are conceding part of their sovereignty and, in the process, they have an impact on the character or shape of the EU. It is natural that they would want something in return. This 'compensation' is agreed during the accession negotiations.

Second, the existing *acquis* does not make reference to the rights of future members. The Treaty, for example, does not specify how many votes they may have in the Council. Again this is a matter of agreement between the existing and prospective members. Legally, all Community acts that make references to member states also have to be revised to include the names of the new members. Consequently, accession negotiations are in essence inter-governmental conferences and the acts of accession modify slightly a very large part of the *acquis*.

Third, prospective members can also be 'desirable' members. Existing members may be more than willing to accommodate them by changing the rules appropriately so as to make their entry into the Union more attractive. The expansion of the Union is in itself a political act that shifts outwards its frontiers.

The Treaty hardly lays down any rules on the process and objectives of the accession negotiations. It only provides in article O that the 'conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant state'. This short reference implies that adjustments are in principle possible, although one of the objectives of the Union, as specified in article B, is 'to

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* The views expressed in this paper are purely personal and do not constitute advice on the conduct of the accession negotiations.

Un bref résumé de cet article en français figure à la fin.

maintain in full the *'acquis communautaire' '*.

Therefore, the purpose of the accession negotiations is to define the terms of admission and the necessary adjustment to the Treaties (new members enter simultaneously into the Union, the three Communities and all the other treaties and agreements among the member states and between member states and third countries, unless it is agreed otherwise).

In practice the terms of admission define:

- the new member's participation in the institutions of the Union
- any exceptions from the *acquis* that may be granted to it
- the nature and length of the transitional period(s)
- the contribution to the budget and receipts from particular EC programmes
- any adjustment of common policies to accommodate the new member
- any special programmes to ease the adjustment of the new member.

Why are transitional arrangements necessary?

The main reason why transitional arrangements are defined is to enable the economy and public administration of the prospective member to adjust to the conditions of membership. Not only does the economy have to cope with increased competitive pressure and comply with new rules, the administration itself needs some time to introduce those new rules into the domestic legislation and start implementing them.

Some EU rules can be adopted before the actual date of membership (e.g. prohibition of cartels, tariff classification, technical standards), while others, especially those concerning implementation of Community programmes, have to await entry into the EU (e.g. the price intervention mechanisms of the common agricultural policy, regional support programmes).

The implementation of the *acquis* may require the establishment of national or local agencies and/or enforcement procedures. The setting up of the appropriate administrative machinery may also require considerable amount of time.

Transitional arrangements are absolutely necessary in the case of the financial contributions and receipts of a new member. The contributions can be calculated and effected almost from the moment of entry. By contrast, new members experience a delay in drawing funds from the budget of the EU because the amount they are able to receive depends on the extent to which they are integrated in the various Community programmes. More importantly, the overall share of a member in the structural funds is a matter of political agreement rather than of automatic and objective application of rules.

Agriculture is a case in point. Member states' receipts from the funds of the common agricultural policy are determined on the basis of the previous year's output. These statistics do not exist for new members, because the previous year's output was not generated within the CAP framework. Of course, it is possible to calculate notional output figures for different products, but those are themselves subject to negotiation. The same happens, for example, in the case of structural policy programmes. The initial imbalance between receipts and payments is redressed by a mechanism of temporary and declining credits for new members.

Finally, the gradual introduction of new members into Community programmes or the gradual application of EU rules may be requested by the EU itself in order to adjust to expanded membership. For example, in the past existing EU farmers and steel workers requested gradual application of the principle of free trade so that they could be temporarily protected from the products of new members. The same happened in the case of Luxembourg, which maintained a ten-year restriction on inward movement of Portuguese workers. Indeed all countries that entered the EU after its founding date had to face temporary restrictions on the movement of workers. The movement of workers is likely to be an issue of particular concern to EU in the forthcoming enlargement because of the current very high unemployment level in the Union.

What should be sought in the accession negotiations?

It would be wrong for a prospective member to focus its demands or requests only on derogations during the accession negotiations. Derogations are sought whenever a country expects to have difficulty (political, social or economic) in complying with the *acquis*. But such difficulties can be overcome by other means.

Instead of asking for an exception from the rules because compliance is costly or otherwise difficult (negative attitude), a prospective member could ask for assistance to be able to comply (positive attitude). Such assistance may take the form of a special Community programme supporting adaptation (e.g. de-commissioning polluting factories), introduction of new practices (e.g. training) or improving existing capital and infrastructure (e.g. investment). For example, special assistance schemes were established for Portugal and for the adaptation of Spanish steel industry.

Note, however, that resources in the EU, as anywhere else, are limited. Not all demands for assistance can be met and prioritisation of needs is necessary. Moreover, the entry of an applicant country into the EU requires approval by all existing member states. An applicant may have difficulty gaining that approval if it is perceived to be a competitor for the EU's limited funds.

A different way of avoiding difficult adjustments without asking for derogations is to persuade the EU to change itself. Instead of adaptation of the candidate, there is adaptation of the *acquis* (which is supposed to be immutable). This happened with respect to environmental, health and safety standards in the accession negotiations of Austria, Finland, Norway and Sweden. In that case, the Union committed itself to review its standards with a view to raise them to the level of the candidate countries.

Another example is that of Norway which had a particular problem with opening up its oil fields to companies from other member states. Instead of insisting on an outright derogation (even though that was its initial demand) in the end it settled for a protocol (no. 4 in the act of accession) in which both the EU and Norway acknowledged that all member states had the right to define exclusive rights with respect to petroleum exploration and exploitation. This was an interpretation of

the *acquis* that applied to all rather than only to Norway.

The Union may also accept to expand the *acquis* to apply to cases and/or issues not covered by prevailing rules. This happened again in the case of the negotiations with the four countries mentioned above, when the Union added an 'objective 6' to its structural policy targets so as to accommodate the polar regions of Finland and Sweden with their peculiar regional characteristics which did not fit into the criteria used in the EU structural policies until then. Note, however, that objective 6, together with all the other objectives, will be re-evaluated in 1999 at the expiry of the current regulation on the structural funds.

Types of derogations

As mentioned earlier, most derogations granted by the EU are temporary. This does not mean that a prospective member has no negotiating room for manoeuvre. Temporary derogations are not pre-determined. Their time length varies. Greece had an overall five-year transitional period (for certain products the period stretched to seven years). Spain and Portugal had a seven-year transitional period (although for certain sensitive issues the period was ten years). The most recent members have had transitional periods varying from one year to nine years, with an average period of about three years. So there is much negotiating to be done on the precise time length of temporary derogations.

Prospective members may strengthen their negotiating position by making references to the transitional periods allowed in various EC directives and regulations for existing members. For example, basic telecommunications services are supposed to be liberalised as of 1 January 1998. Yet, some member states have been granted an exception until 2000. The EU will not have enlarged by the year 2000, but prospective members may be able to invoke the same reasons justifying gradual adjustment as those used by existing member states. An even more apt example is a 1994 directive on waste packaging (requiring recovery and recycling of waste package). The directive has transitional periods extending up to ten years because of the substantial cost of adjusting manufacturing and marketing processes to recover and recycle waste. It would indeed be paradoxical if some existing members have up to 2006 to implement the directive but new members have to demonstrate compliance as of the date of their entry into the EU.

Temporary derogations may be granted for a fixed and short period of time but there is no formula for what is fixed and/or short. Their length varies according to the estimated difficulty and extent of adjustment. The fixing of transitional periods is not as simple as it may appear at first glance. Some derogations may be prolonged, if deemed necessary. In this context, the important question is who deems it necessary. The experience of Austria illustrates this point well.

During its accession negotiations, Austria requested restrictions on the transit of heavy vehicles through its alpine region for environmental reasons. The agreement that was reached in the end allows for extension of the present transitional regime if independent studies can show that there is excessive damage on the environment.

Note that those independent studies will play a decisive role because the discretion of both Austria and the Commission on this matter is effectively reduced. Resorting to this kind of impartial arbitration may be indispensable in resolving differences of opinion.

Judging from past enlargements, derogations may be defined in terms of products (e.g. peaches), sectors (e.g. banking), standards (e.g. environmental measures), factors of production (e.g. workers), tax measures (e.g. VAT rates or exempt activities), regions (e.g. certain islands), area of operations (e.g. amount of re-insurance that can be carried out in the domestic market by foreign companies), business practices (e.g. establishment of companies), or private practices (e.g. purchase of land or currency transfers). This list is non-exhaustive and many more examples may be garnered from past accession treaties.

Derogations may be extremely specific and refer to the particular provision of a certain legal act. On the other hand, they need not be specific at all. They may also be general and they may not even take the typical form of an exception. Instead of requesting an outright exception, a prospective member may ask instead the EU to recognise its special needs. This was achieved by Ireland, Greece, Portugal and Spain which had in their treaties of accession protocols acknowledging their efforts towards economic development.

All those protocols begin by noting that economic development and the improvement of living standards and working conditions are fundamental EU objectives. Then they pledge adequate use of Community resources for that purpose and appropriate application of the provisions of the Treaty. Subsequent derogations, especially with respect to article 92 on state aid, have been extended with reference to those protocols.

When a prospective member anticipates difficulties in complying with the *acquis* in a particular area, it may seek safeguards instead of derogations. Such safeguards allow for exemptions from the rules only if the need arises, so it is not imperative to define specific derogations during the negotiations. General safeguards, especially in manufacturing sectors, were agreed in all previous enlargements.

Finally, note that for disagreements on legal issues that are of minor importance, it may be more useful not to allow them to block progress on other more important issues. Yet, instead of simply making concessions, it may also be possible for the two sides to 'agree to disagree'. That is, some disputes are on purpose left unresolved until a later stage when the Court, for example, could provide its own impartial interpretation should the need arise. For example, the sixth VAT directive is subject to continuous legal interpretation and there is a growing jurisprudence on its various technical annexes. Austria had a different view than the EU as to how that directive could be applied to the letting of apartments. In the end, the two sides chose a phrase that was general enough that both their views could be accommodated.

How can requests for derogations be justified?

Derogations are not granted lightly. There must be an evident need. Such a need is more easily understood if it can be quantified, or otherwise, if it can be shown that vital national interests, traditions or important social policies are significantly affected by adoption of the *acquis*.

Requests for derogations from fundamental Community principles are unlikely to be treated sympathetically (e.g. the four freedoms of the internal market). Deviations from such fundamental principles change the character of the Union and a candidate country that wants to change the character of the Union will inevitably be asked to reconsider its application. Even on these issues, however, one cannot be absolute. If, for example, the EU insists on transitional arrangements for the movement of workers or the trade of agricultural products, it will be virtually impossible for it to refuse to grant compensatory derogations to prospective members.

Prospective members would hardly have any problem arguing their case if the derogations they requested were of minor importance to the EU but of major social significance to them. For example, Sweden had little difficulty obtaining a derogation on the marketing of moist snuff tobacco which is illegal in all other EU countries yet it is somehow inconceivable to Swede users that they would have to live without it. Situations like that, however, are rare. Prospective members have to be prepared to argue, to argue convincingly and to argue for feasible derogations.

Given that there is hardly any chance that any of the current prospective members will obtain any permanent exception, they should focus on temporary derogations. Temporary derogations need to be just that – temporary (it does not mean, however, that renewal or extension is inconceivable). Hence, the probability of securing a derogation is higher if the country that requests it, can also demonstrate how it will eventually be able to comply with the *acquis*. The greater the possibility for eventual compliance, the lower the reluctance of the EU.

The most forceful argument that prospective members have at their disposal is the existence of exceptions for existing members provided in the Treaty and in secondary legislation. In the Treaty (articles 36, 55, 56) some restrictions on the freedom to trade, move and establish may be allowed for specific reasons such as the protection of national security or public morality. But the permitted restrictions are very few, very narrowly defined and have to be applied in a non-discriminatory manner which must be proportional to the intended effect. Other exceptions may be possible under article 90(2) for services of general economic interest and under article 92 on state aid.

Secondary legislation contains many more exceptions and, therefore, prospective members need to know well that legislation and the jurisprudence of the Court so that they can back up their arguments with reasoning that is compatible with the EU's own practice. For example, the second banking directive allows under certain conditions the imposition of restrictions for the maintenance of the liquidity of the banking system. The directives on the liberalisation of air transport and maritime transport, respectively, allow for the maintenance of special measures for the encouragement of transport services with remote or island regions.

Indeed, the practice in past accession negotiations should also be considered carefully by prospective members. It will be more difficult for the EU to refuse to grant exceptions similar to those granted in the past or to extend similar treatment.

Every country, however, is unique and past or current EU practice may not provide any useful precedents. In this case, the prospective member has to rely on more general arguments. Insisting that adjustment is costly is certainly not enough. By definition, adjustment is always costly. The prospective member will have to explain how adoption of the *acquis* will somehow cause it permanent and irreparable damage or reduce its welfare (e.g. reduction of economic activity, reduction of national standards, etc). In addition, that country needs to demonstrate that the cost is substantial, that there are no other means of avoiding that cost without a derogation, that the derogation is not contrary to the general principles of the EU (e.g. raise levels of prosperity, reduce regional disparities, etc) and that the requested derogation does not have an appreciable effect on intra-EU trade and competition. Quantified evidence can only help in making such arguments convincing. The steps in preparing a persuasive and credible negotiating argument are identified in greater detail in the table at the end of the paper.

Finally, note that the drafting of credible arguments very much depends on prioritisation of the prospective member's needs and clear ranking of its capabilities. Effective internal preparation is of the utmost importance for the successful conclusion of the negotiations. Moreover, a prospective member should not ignore the hard bargaining that will inevitably have to take place internally, among the various ministries and between the government and the various economic and social groups. Here the experience of past applicants is also instructive. They put a lot of effort in public information campaigns to persuade the sceptics about the benefits from membership of the European Union.

How hard can the prospective members bargain?

There are many factors that determine the bargaining power of a prospective member. But irrespective of size, level of economic development and political importance, any country applying for membership of the EU starts from a position of weakness for at least three reasons. First, it is the applicant that seeks entry into the Union, not the other way around. Second, the applicant has to negotiate on a very large and very complex body of law which may not be well known to it. Third, it is confronted with 16 views and faces across the negotiating table (15 member states plus the Commission which does not formally negotiate but has an important role in making technical proposals for adoption or amendment by the member states).

Even though a prospective member talks with the Presidency that represents the member states, it still has to take very seriously into account that the common positions presented by the Presidency are the result of negotiations within the EU itself. Its structure and complex decision-making procedures make the EU a very tough negotiator because it is very difficult for outsiders to understand and identify its weak points.

At the forthcoming accession negotiations, applicant countries may have an even more difficult task because the EU has formulated the so-called Accession Partnerships which establish a procedure for compliance with the *acquis*. The applicants are, therefore, expected to be able

to adopt the *acquis* at least in the internal market area before they enter the Union. The onus will indeed be on the applicants for the additional reason that the provisions of the Europe Agreements will have to be implemented irrespective of the progress of the accession negotiations.

Moreover, the fact that at least initially the EU will be conducting six negotiations in parallel will probably make it even less willing to make any concessions to anyone applicant because the others will naturally demand similar treatment. This may mean, of course, that what one gets, all will get. Also, it will not be surprising to see a kind of competition emerging among the applicants, creating pressure on them to compromise so as not to be left behind in case the others manage to reach agreement quickly on particular issues and move on to new ones.

There is another reason why a prospective member's bargaining power may be affected by developments which are only indirectly related to its own accession negotiations. That reason is that the EU itself needs to adjust to receive new members. The EU has embarked on an internal process of policy reform in the areas of agriculture and regional/structural development. The outcome of this process, which has a lot to do with how the EU supports farmers and poorer regions, will to a considerable extent determine the attitude of existing members towards enlargement. As mentioned earlier, a prospective member should not been seen as a significant competitor for EU funds. If the internal EU debate turns out to be too acrimonious and if the end result is too divisive, prospective members may have to re-think their requests for EU assistance.

In light of the above, it is perhaps not premature to conclude that the prospective members would be more effective in the negotiations by concentrating their efforts in mastering the *acquis* and using the precedents from the EU's own practice in order to support their requests for derogations or special treatment.

Finally, note that even when everything else fails, it does not mean that the prospective member will have to accept 'defeat'. Even a very short derogation may be sufficient because the position of the applicant will change from prospective to actual member. Once inside the Union, that country will have more room to negotiate simply because it will have multiple channels through which to influence decision-making in the Commission and the Council. A case in point is the derogations granted to Sweden and Finland for retaining restrictions on alcohol and tobacco allowances for travellers. The derogations were for a fixed period of just two years, yet in December 1996 those two countries arguing from the inside managed to extend them for another five years!

Conclusions

The EU is a tough negotiator. Prospective members need to master their portfolios and devote sufficient resources to that purpose.

Derogations should be sought sparingly. They should be well motivated and well defined, with the appropriate time length in each case. References to the EU's own practice is indispensable.

Prospective members should remember that it is membership they seek. Whatever their needs and circumstances might be, they should demonstrate how the derogations they request are compatible in some broad sense with the objectives of the European Union.

RÉSUMÉ

De l'efficacité des négociations d'adhésion à l'Union européenne: Attentes réalistes, objectifs réalisables, arguments crédibles

L'Union européenne est sur le point d'ouvrir des négociations d'adhésion avec le plus grand nombre de nouveaux membres jamais réunis jusqu'ici. Ces futurs membres sont censés adopter tous les actes et politiques communautaires connus sous le nom d'acquis communautaire. Cependant, aucun pays n'a jamais été capable d'appliquer toutes les règles à la date d'adhésion à l'Union. Il faut nécessairement accorder certaines exceptions dès lors que l'administration publique et les sociétés privées ont besoin d'un certain temps pour satisfaire aux conditions de leur appartenance à l'Union. Bien entendu, les futurs membres veulent savoir s'ils peuvent aussi obtenir des dérogations qui leur permettraient de supporter les inconvénients de l'ajustement.

La vue "officielle" est que seules des exceptions ou dérogations temporaires seront autorisées. Si un pays sait qu'il ne sera jamais à même de satisfaire à l'acquis, alors il doit se demander s'il a vraiment sa place dans l'UE. Cette vue est généralement correcte (même si l'usage de dérogations permanentes n'est pas inconnu en la matière) et, dans ce contexte, il y a lieu de souligner que le terme "négociations d'adhésion" prête à confusion. Il serait plus opportun de parler d' "examen d'entrée", puisque ce terme décrit plus précisément ce qui se passe réellement au cours des négociations d'adhésion. La partie négociation proprement dite est plutôt restreinte, la plus grande part étant consacrée à voir si un membre potentiel remplit les conditions d'adhésion.

Ce bref article tente de séparer le mythe de la réalité et met en exergue les objectifs que l'on peut raisonnablement poursuivre au cours des négociations. Il explique pourquoi les négociations sont nécessaires; il passe en revue les différents types de dérogations qui peuvent être accordées; et donne des exemples de négociations d'adhésion tirés du passé pour montrer quelles sont apparemment les requêtes réalistes en matière de dérogation et comment les pays candidats de l'époque ont présenté et justifié leurs demandes.

La conclusion de cet article est que l'UE sera un négociateur coriace. Les futurs membres devront maîtriser leurs portefeuilles et consacrer suffisamment de ressources à cette tâche. Ils doivent faire preuve de modération dans leurs demandes de dérogations. Celles-ci doivent être dûment motivées et bien définies, et assorties d'une période de transition appropriée dans chaque cas. Les références à la pratique propre à l'UE seront indispensables. Enfin, les futurs membres ne doivent pas oublier qu'ils cherchent à adhérer à l'Union. Quels que soient leurs besoins et circonstances, ils doivent montrer que les dérogations qu'ils souhaitent obtenir sont compatibles au sens large avec les objectifs de l'Union européenne. ❑

Twenty-eight Questions to Ask in Preparing a Persuasive Negotiating Position

Understand the acquis:

1. What are the relevant Treaty provisions?
2. What is the relevant secondary legislation?
3. Are there any relevant Court rulings?

Understand your own situation:

1. Why does compliance with the acquis cause problems?
2. What is the nature and magnitude of the problems?
3. Are remedies other than derogations unavailable?

Exceptions/safeguards in treaty or secondary legislation:

1. Are there any?
2. Have they been used or invoked by any existing member? How?

Exceptions/safeguards in past accession negotiations:

1. Did past applicant countries have similar problems?
2. What exceptions did they obtain in their treaties of accession?
3. Can you use similar arguments?
4. Do you have the same negotiating power?

Formulate your own position/request:

1. Do you need a permanent or temporary derogation? Of what time length?
2. Should it be general (recording your needs) or specific (modifying a certain EC act)?
3. Would a safeguard do, instead of derogation?
4. Will compliance with the acquis cause irreparable economic/social damage?
5. Is there no other remedy apart from derogation? Is it proportional to the intended effect?
6. Do your identified needs coincide with the objectives of the EU?
7. Do you suggest mechanisms for eventual compliance with the acquis?

Formulate your back-up position:

1. What is the minimum you can accept?
2. Can you accept a shorter derogation that can be extended after you enter the EU?
3. Can you propose "objective" means of deciding later on whether extension is necessary?

Understand the EU's position:

1. What is the EU's offer/target?
2. Are there disagreements among member states?
3. Will the EU itself ask for derogation?

Monitor the other applicant countries:

1. Have they obtained something you have not? Why?
2. Can you request the same?
3. Should you request the same?

Important Judgements Delivered by the Court of Justice of the European Communities in the period 1 October 1997 to 1 March 1998

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The Court of Justice has recently submitted a proposal to the Parliament and the Council, which would enable the Court of First Instance to give decisions in cases when constituted by a single Judge. This proposal, which would alter the essential collegiate and multi-national character of the Court of First Instance, reflects the fact that it is necessary to deal with the still growing caseload and the proposal would, in fact, increase its judicial capacity. However, even if this proposal becomes reality, it will still be necessary to undertake a review of the EC's judicial structure. A debate on the ECJ's future has to be launched.

I

With respect to the **free movement of goods**, the Court upheld the Commission's high profile case against France concerning this country's failure to take all necessary and proportionate measures in order to prevent French farmers from hindering the free movement of fruit and vegetables into France. With regard to the frequency and seriousness of the incidents against foreign products, the Court found that the measures adopted by the French government were manifestly inadequate to ensure *de facto* freedom of intra-Community trade in agricultural products. In our view, some of the arguments put forward by the French government did not deserve the attention granted them by the Court: the 'very difficult socio-economic context of the French market in fruit and vegetables after the accession of Spain' is, of course, not a serious argument, neither is it valid to argue that 'the threat of serious disruption to public order' could in principle justify non-intervention by the French police. (Case C-265/95 of 9 December 1997).

While the Commission was very successful in the 'French Farmers case', the Court did not agree to the Commission's action for a declaration that, by granting exclusive import rights for electricity intended for public distribution, the Netherlands, Italy, France and Spain had all failed to comply with Articles 30 and 37. The Court held that while such exclusive rights *were* contrary to Article 37, which requires abolition of commercial State monopolies, it was however not possible for the Court to decide whether the exclusive rights at issue were necessary to enable the national bodies to perform the tasks of general economic interest assigned to them. Furthermore, the Court criticised the Commission for not having demonstrated that, because of the exclusive import rights, the extent of the development of intra-Community trade in electricity had been and continues to be contrary to the interests of the EC (Cases C-157/94 *Commission v the Netherlands*; C-158/94 *Commission v Italy*; C-159/94 *Commission v France* and C-160/94 *Commission v Spain* (all delivered on 23 October 1997).

Mr *Harry Franzén* (Case C-189/95 of 23 October 1997) became famous in Sweden for trying to bring down the Swedish monopoly on the retail of alcoholic beverages by intentionally selling wine imported from Denmark without a license. Criminal proceedings were brought against Mr Franzén, who broke the Law on Alcohol on the very first day of Sweden's membership of the European Union. From the outset, the Court held that a domestic monopoly on the retail of alcoholic beverages, such as that conferred on *'Systembolaget'*, pursues a public interest aim and could be compatible with Article 37. Subsequently, the Court analyzed several elements of the law in order to decide whether the monopoly *operated* in a way which excluded any discrimination between Member State nationals. The Court did not find the production selection system or the limited number of 'shops' to be discriminatory. Neither did the Court find that the national promotion scheme was discriminatory and thus contrary to Article 37. The Advocate General found that the existence and operation of the monopoly was contrary to Article 37. The Court approached this case in a very delicate way. Contrary to the Advocate General, it held that the operation of the monopoly was compatible with Article 37, but at the same time incompatible with Article 30 because the licensing system, under which only holders of licences were allowed to import alcoholic beverages, meant additional costs (charges and fees for the grant of a licence) and costs arising from the obligation to maintain storage capacity in Sweden.

II

The Court continues to rule on a number of cases concerning trademark rights, especially reselling-cases. In Case C-337/95 *Parfums Christian Dior SA v Evora BV*, the Court decided on 4 November 1997 that when trademark products have been put on the market by the proprietor of the trademark, or with his consent, the reseller is free to make use of the trademark in order to bring the commercialization of those goods to the public's attention. He only has to make sure that he does not

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seriously damage the reputation of the trademark. Unfortunately, the Court did not give a full definition of how these criteria are to be applied in practice.

In Case C-349/95 *Frits Loendersloot v George Ballantine & Son* of 11 November 1997, the Court ruled on another 'repackaging case'. Contrary to the last series of cases, it was not pharmaceuticals but whisky bottles that were involved. The re-importer, Mr Loendersloot, had removed the original labels bearing the Ballentine trademark and, either replaced the mark with copies or simply 'changed' the original ones. He had removed the word 'pure' and the name of the importer on the labels and, furthermore, removed the identification number marked on the original labels and on the packaging of the bottles. The question was whether Mr Loendersloot's actions infringed trademark rights and, if so, whether Ballantine could rely on such rights even if this would constitute a barrier to intra-Community trade. Based on its repackaging case-law, the Court ruled that the owner may rely on his rights unless it is established that this would contribute to an artificial partitioning of the market (a notion which still has to be clarified by the Court) and as long as it is shown that the relabelling cannot affect the original condition of the product, the reputation of the trademark owner is not damaged by the relabelling and the trademark owner is informed about the process.

The Advocate General delivered a very interesting opinion on trade marks in Case C-355/96 *Silhoutte International* of 29 January in which he backed the Europe-wide abolition of trade marks, contrary to the EFTA Court decision of 3 December 1997 (E-2/97). It is very likely that the Court will follow its Advocate General.

III

As regards the **free movement of persons,** the Court declined jurisdiction in Case C-291/96 *Grado* of 9 October 1997. In his reference, the referring judge emphasized that, when referring to Grado and Bashir – who were foreigners and only one of them a Member State national – the public prosecutor refused to use the courtesy term 'Herr', whereas he would have used that polite form if foreigners were not involved. It follows from existing case law that the prohibition of all discrimination on grounds of nationality as laid down by Article 6 applies only within the Treaty's area of application. The Court held that the national judge had failed to prove that he might be required to apply provisions intended to ensure compliance with EC rules. While it was relatively clear that the Court had to decline jurisdiction, it will in any case be interesting to see whether the Court will follow its Advocate General's opinion in the pending Case C-266/96 *Corsica Ferries*.

In Case C-90/96 *Petrie* of 20 November 1997 the Court had to decide whether Article 48 precludes a national rule in Italy which restricts eligibility for temporary teaching posts in universities to tenured teaching staff and established university researchers, this excluding foreign-language assistants who are nationals of other Member States. Does such a national requirement breach the principle of equal treatment? One should believe so, but the Court decided otherwise and thus did not follow its Advocate General. The Court held that the situation of established researchers was not in principle comparable to that of foreign-language assistants, and that the rule was therefore not contrary to Article 48. The Advocate General argued vehemently that the Italian rule constituted unlawful covert discrimination.

On 15 January, the Court had to decide in Case C-15/96 *Kalliope Schöning-Kougebetopoulou* whether Article 48 of the Treaty and Regulation 1612/68 could preclude a clause in a collective agreement applicable to the public service of a Member State. The question raised in a case before the labour court in Hamburg was whether the period of work in another countries' civil service had to be taken into account for the purposes of calculating the seniority required for classification into a higher salary group, contrary to the clause in the collective agreement. The German collective agreement for employed doctors stipulated eight years' practice in the German public service as a pre-condition for classification into a higher salary group, not taking into account periods of employment completed in the public service of another Member State. The Court stated that this was discriminatory and to the detriment of migrant workers and could not be justified on the basis of Article 48(4). Moreover, the Court decided that such a clause in a collective agreement was null and void by virtue of Article 7(4) of Regulation 1612/68 and therefore the national court had to apply the same rules to the members of the group disadvantaged by that discrimination as those applicable to the other workers.

IV

As regards **equal treatment for men and women**, the Court delivered two very interesting judgements on 2 October 1997 in Cases C-1/95 *Hellen Gerster v Freistaat Bayern* and C-100/95 *Brigitte Kording v Senator für Finanzen*. The Court ruled that national legislation which, for the purpose of calculating the length of service of public servants, requires that periods of employment involving working hours of at least one-half to two-thirds of normal working hours be counted only as two thirds of normal working hours, to be indirectly discriminatory and incompatible with Directive 76/207. According to settled case law, indirect discrimination arises where a national measure, although formulated in neutral terms, works to the disadvantage of far more women than men. In both cases almost 90% of the part-time employed persons were women.

Of even greater interest was the decision rendered on 11 November in Case C-409/95 *Marschall*. A question on the interpretation of Articles 2(1) and (4) of the Directive 76/207 had been raised in proceedings between Mr Marschall and the *Land* Nordrhein-Westfalen concerning his application for a higher grade post in a

comprehensive school in Germany. Once again – as in *Kalanke* (ECR I-1995 3051) – a German '*Gleichstellungsgesetz*' was in question. Unlike in the *Kalanke* case, the law in Nordrhein-Westfalen reads that: 'Where, in the sector of the authority responsible for promotion, there are fewer women than men in the particular higher grade post in the career bracket, women are to be given priority for promotion in the event of equal suitability, competence and professional performance, unless reasons specific to an individual (male) candidate tilt the balance in his favour.' (our underlining). This saving clause saved the provision in question. The Court stated that a national rule containing a saving clause does not exceed the limits of Art. 2(4) of Directive 76/207. The provision in question in *Kalanke* did not contain such a savings clause and the Court thus found the law to be incompatible with EC law.

On 17 February 1998 the full Court delivered a very important judgement on equal treatment of persons of the same sex in Case C-249/96 *Jacqueline Grant v South-West Trains Ltd*. This judgement should be considered together with *P v S and Cornwall County Council* [1996] ECR I-2143 in which the Court held that it is discriminatory to dismiss a transsexual for a reason arising from the gender reassignment of the person concerned. Ms Grant took her employer, South-West Trains ('SWT'), to court because the company had refused to award her female partner travel concessions. It followed from Ms Grant's contract that: 'privilege tickets are granted to a married member of staff ...'. Furthermore, it was stated that: 'privilege tickets are granted for one common law opposite sex spouse ... subject to a declaration being made that a meaningful relationship has existed for a period of two years or more ...'. (our underlining). Ms Grant applied for travel concessions for her female partner, with whom she had had a 'meaningful relationship' for over two years. SWT refused the request on the ground that for unmarried persons travel concessions could only be granted for a partner of the opposite sex. The Industrial Tribunal referred preliminary questions to the Court on the interpretation of Article 119 EC. Both SWT, the UK and French Governments and the Commission argued that the difference in treatment of which Ms Grant had complained was based not on her sexual orientation but on the fact that she does not satisfy the conditions laid down in SWT's regulations to which her contract refers. The Court followed this argument and held that SWT's refusal did not constitute discrimination prohibited by Article 119 EC or Directive 75/117. The Court simply held that because SWT's condition imposed by its regulations applies in the same way to female and male workers, it cannot be regarded as constituting discrimination directly based on sex. Community law does not require an employer to treat the situation of a person who has a stable relationship with a partner of the same sex as equivalent to that of a person who is married to or has a stable relationship outside marriage with a partner of the opposite sex. The Member States are free to adopt legislation in this area. The result of this judgement could be changed in the future. Article 6a of the Treaty of Amsterdam will allow the institutions to take appropriate action to eliminate various forms of discrimination, including discrimination based on sexual orientation.

V

In the field of **social security**, another UK case is of interest. The Court's judgement of 4 November 1997 in Case C-20/96 *Snares* concerned the award of a disability living allowance ('DLA') provided for under UK legislation. Mr Snares was employed in the UK for 25 years and as such paid contributions to the UK social security system. He was awarded a DLA in 1993. In November 1993 Mr Snares decided to settle in Tenerife. The authorities decided that Mr Snares was not entitled to DLA whilst resident in Tenerife. The Court noted at the outset that Mr Snares' case fell within the scope of Regulation 1408/71 and that he satisfied the conditions of the award of a DLA, which is governed exclusively by the system of coordination established by a 1992 amendment to Regulation 1408/71. It follows from this coordination system that Mr Snares was only entitled to receive a benefit like DLA within the territory of the Member State in which he resides, in accordance with the legislation of that state, here Spain. This interpretation, in favour of the UK, urged the Court to continue to investigate whether this situation was valid in the light of Articles 51 and 235 of the EC Treaty. The Court argued that benefits like DLA fall within the category of benefits which, as regards the detailed rules for granting them, are closely linked to a particular economic and social context. The principle of a waiver of residence clauses was considered contrary to the Treaty provisions mentioned.

VI

The full Court set aside the Court of First Instance's judgement in *Ladbroke* in the field of **competition**. The Court's decision (Joined Cases C-359/95 P and C-379/95 P) are of great interest. In 1989 *Ladbroke* lodged a complaint with the Commission against France under Article 90 and against 'PMU', which is an economic interest group created by 10 betting companies in France to manage their rights to organize off-course totalizator betting on horse racing, under Articles 85 and 86 of the Treaty. The Commission rejected the complaint regarding Articles 85 and 86 on the grounds that these articles were not applicable and that there was an absence of any Community interests involved. The Court of First Instance annulled the Commission's decision to reject the complaint on the ground that, by definitively rejecting the part of the complaint directed against the PMU and its members without first having completed an exhaustive examination of the compatibility of the French legislation with the Treaty rules on competition, the Commission had failed to fulfil its

duty to examine *Ladbroke's* complaint. The Court did not follow the Court of First Instance's opinion. The Court reasoned that the question as to whether national legislation is compatible with the Treaty rules on competition is not decisive in the context of an examination of the applicability of Articles 85 and 86 to the conduct of undertakings (PMU) which comply with that national legislation. It follows from this judgement that it is not necessary for the Commission to decide whether national legislation is contrary to the rules on competition before rejecting a complaint. The Commission only has to ascertain whether national legislation prevents undertakings from engaging in conduct which prevents or distorts competition.

In 1994 the Court declared non-admissible the *Job-Centre* case because it had no jurisdiction to rule on questions raised by a court under the '*giurisdizione volontaria*' procedure. Two years later the same question was referred by a Court of Appeal and on 11 December the Court had to decide in the second *Job-Centre* case (C-55/96) on the interpretation of Articles 48, 59, 86 and 90 of the Treaty. The Court ruled that public placement offices are subject to the prohibition contained in Article 86, as long as the application of that provision does not obstruct the performance of the particular task assigned to them. A Member State which prohibits any activity as an employment agency, or as an employment business, unless those carried out by those public offices, is in breach of Article 90(1) of the Treaty where it creates a situation in which those offices cannot avoid infringing Article 86.

VII

In the field of **State aids,** on 9 December 1997 the full Court delivered a judgement involving the question as to whether differences in the level of duties on bets taken on horse races could constitute unlawful State aid. The French PMU (group of racehorse undertakings) entered into an agreement with the Belgian PMU under which the French PMU was authorized to take bets in France on Belgian horse races on behalf of the Belgium PMU. Ladbroke, a bookmaking company taking bets in Belgium on horse races run abroad, complained to the Commission. Ladbroke argued that the agreement gave the Belgian PMU an advantage, which constituted unlawful State aids! It is clear that France allowing the Belgian PMU to have access to its domestic market does not involve State aid. In order for there to be State aid it is first necessary for there to be aid favouring the Belgian PMU and, second, for that advantage to come from a French State resource. The Court agreed with the Court of First Instance and found that there the Belgian PMU was not favoured even though bets on French races was treated differently from bets on Belgian ones.

VIII

The Court is expected to deliver a number of judgements in the field of **public procurement**. The *Mannesmann* case of 15 January (C-44/96) is very interesting for those working within the procurement regime. Because procurement rules are very detailed it is here only possible to set out the results. The Court clarified the term 'body governed by public law' especially by showing clearly what is to be understood by 'needs in the general interest, not having an industrial or commercial character'. The Advocate General's opinion is of particular interest for procurement specialists.

IX

The Court continues to deliver a number of judgements interpreting the **Sixth VAT Directive**. The question in four joined cases was whether the Directive allows a Member State to refrain from refunding substantial VAT credits of its residents, because of the existence of serious grounds for suspecting tax evasion. A number of Member States argued that such a national measure is designed to enable the competent fiscal authorities to retain – as a protective measure – refundable amounts of VAT where there are grounds for presumption of tax evasion. The Court stated that, in principle, this would not be contrary to the Directive. However, in accordance with the principle of proportionality, the Member States must not go further than necessary in order to preserve the rights of the Treasury. It is up to the national courts to determine whether the authorities respect the principle of proportionality. While the result might be correct, there is a risk that the fundamental principle of the right to deduct VAT will be undermined by actions taken by authorities in some Member States.

In Case C-408/95 *Eurotunnel* of 11 November 1997 the Court brought an end to the discussion as to whether the transitional arrangements for tax-free shops under the Sixth Value Added tax Directive are valid. The full Court upheld the validity of the provisions in question.

X

As regards the **implementation of EC law**, the Court held in *Inter-Environnement Wallonie* (Case C-129/96 of 18 December 1997) that if a Member State decides to implement a directive before the end of the period prescribed therein, such implementation must not contain measures liable to compromise the result prescribed in a serious way. It follows from this Belgian preliminary case that a Member State can in principle adopt a provision contrary to a Directive before the period for implementation has expired. However, if such a provision might 'seriously compromise' the aim of the Directive it will be contrary to the Treaty. This is, in our view, not a very pro-Community result. It will be up to the national court in question to assess whether the national measure is to be considered 'contrary', or 'seriously compromising'. Even though the Court sets out in the judgement how the national courts are to assess whether the national provisions in question are compatible with EC law, this assessment will differ from one Member State to another. ❑

Agenda 2000: A Blueprint for Successful EU Enlargement?*

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Introduction

The signing of the Joint Declaration on the Establishment of Official Relations between the EEC and COMECON, in June 1988, permitted the opening up of bilateral relations between the EEC and the Countries of Central and Eastern Europe (CEECs). Trade and Co-operation Agreements were signed with the CEECs, in fairly rapid succession, shortly thereafter. However, developments continued to be fast-paced and far-reaching – dramatically embodied by the collapse of the Berlin Wall in 1989 – and many of these agreements were superseded, even before coming into force, by the Europe Agreements, which followed.[1] The European Community, and now the European Union, has struggled to keep up with these developments, and to respond in a way that would foster the transitions taking place and further the process of European integration, while keeping in mind concerns of the Union and its Member States.

In the less than ten years which followed the opening up of relations, all ten CEECs have submitted applications for EU membership.[2] On 15 July 1997 the Commission issued *Agenda 2000*, which included its opinions on these applications, as well as its view on the impact of enlargement on such areas as the EU budget, economic and social cohesion, and agricultural policy.[3] This long-awaited *avis* was expected to indicate how both the Union and the applicant states should prepare for, and successfully undertake, enlargement, but does it fulfil this expectation?

Membership Criteria

In evaluating the applications, the Commission looked to how well the applicant states complied with membership criteria. However, in order to do this the criteria had to first be identified. With regard to such criteria, the European Communities' treaties do not provide much guidance. The Treaty on European Union (TEU) only indicates that a state must be European to apply for membership. As a result of amendments made by the Treaty of Amsterdam, in addition to being European they must respect the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.[4] At the urging of the applicant states, a more developed checklist was identified. The European Council in Copenhagen, in June 1993, put forward three basic criteria:

- stable institutions to guarantee democracy, the rule of law, and respect for human rights, particularly for those of minorities;
- a functioning market economy and the ability to cope with competitive pressures and market forces within the Union; and
- ability to adhere to the political, economic and monetary goals of the Union.

The Copenhagen Council also identified the ability of the Union to absorb new members, without interfering with the pace of European integration, as an enlargement consideration.

The Commission's *Avis*

While relying heavily on the Copenhagen Criteria in formulating its opinions on the applications of the CEECs, the Commission also looked to the progress these countries had made with regard to adopting provisions in the White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market, issued in May of 1995, which identified core pieces of Internal Market legislation, in twenty-three sectoral areas.[5] In addition, it assessed the national pre-accession plans, institutional restructuring, compliance with obligations embodied in the Europe Agreements, and the extent to which the applicants were implementing non-White Paper legislation. The Commission divided its analysis into four basic areas: political, economic, capacity to take on the obligations of membership (generally considered to be the ability to take on the *acquis communautaire*), and administrative and judicial capacities.

In making its assessment, the Commission relied heavily on the answers given in the extensive questionnaires it sent to all applicants in April 1996, as well as on bilateral discussions, reports from embassies of Member States and the Commission's delegations, and, particularly with regard to political developments, input from international organisations such as the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE), as well as reports by non-governmental organisations.

Political criteria

The questions asked, under this criteria, were whether or not the applicant state 'presents the characteristics of a democracy,' and how 'democracy actually works in

* Un bref résumé de cet article en français figure à la fin.

progress'.[6] For all states but Bulgaria, Romania and Slovakia, identical language was used, and it was determined that 'political institutions function properly', are stable, and 'respect the limits on their competences and cooperate with each other'. However, it was also almost uniformly stated for all applicants that 'efforts to improve the operation of the judiciary and to intensify the fight against corruption must be sustained'. In the Bulgarian and Romanian opinions reference was made to the need to protect individuals against abuses by the police and secret services, while for Slovakia it was stated that 'Slovakia's situation presents a number of problems' with respect to the Copenhagen Criteria.

A problem which was identified for a number of the applicant states was with regard to the rights of minorities. The situation of the Roma is mentioned, particularly in Hungary, the Czech Republic and the Balkan states, while the problems of the Russian-speaking minorities in the Baltics was also referred to. Despite identified problems and causes for concern in a number of applicant states, it is only in the case of Slovakia that the Commission concluded that the political criteria was not met.

Economic criteria

The Commission sought to determine whether the applicant states have a functioning market economy and could 'cope with competitive pressure and market forces within the Union' in the medium term (defined as five years). To test for a market economy, the Commission looked for liberalised trade and prices, macroeconomic stability, broad consensus on economic policy, and a well-developed financial sector. The capacity to withstand competitive pressures was judged by the extent to which the government affects competition and trade policy, how it administers state aids and provides support for small and medium-sized enterprises, as well as the country's existing trade links with the European Union.

The five countries the Commission recommended negotiations be begun with were the same five it considered would be able to fulfil these economic criteria in the medium term – the Czech Republic, Estonia, Hungary, Poland and Slovenia – although they all had numerous areas where further reform was considered to be necessary. For example, virtually all applicant states were held to be in need of major structural reform, especially in the areas of banking, financial systems and social security, and with regard to capital markets and competition rules. Bulgaria was held to be 'only at the start of the process of structural transformation.' Latvia and Romania, while being deemed to have made considerable progress, were considered only able to cope with competition in the medium term with 'serious difficulties,' whereas it was considered that Lithuania might be able to cope if it made a 'considerable effort.' Although Slovakia was considered to be advanced in terms of legislation and the system in place, it was not considered to be a fully functioning market economy due to a lack of transparency in implementation of legislation and measures.

Capacity to take on the obligations of membership

In looking at administrative capacities, the Commission focused on how well the applicants had undertaken pre-existing obligations and recommendations. Bulgaria and Romania were determined to have made 'significant efforts' to fulfil Europe Agreement obligations, while Hungary and Slovakia were declared to have met the bulk of these obligations. Poland and the Czech Republic were considered to have implemented 'significant elements' of the Europe Agreements, although in the case of Poland a number of trade related problems have arisen. While Slovenia had not yet ratified its Europe Agreement, it was determined to have been progressing well in complying with the interim agreement obligations.[7] The Baltic countries were generally considered to have met their obligations under their current free trade agreements in a timely manner, and to have made impressive progress towards Europe Agreement obligations even though these agreements had not yet come into force.[8]

With regard to the transposition of White Paper Internal Market measures, public procurement and competition law tended to be a problem in most of the countries, while intellectual property rights and financial services were identified as problem areas for several of the applicant states. Bulgaria was found to have an 'unsatisfactorily low rate of transposition', while Romania's rate was categorised as 'too low'. Latvia and Lithuania were held to have made 'some progress', while the Czech Republic, Poland, Slovenia and Slovakia were held to have satisfactory rates of transposition. Estonia was deemed to have adopted significant elements of the single market *acquis* while Hungary had single market legislation 'almost completely in place.' This evaluation indicates that the five states recommended for negotiations, plus Slovakia, were satisfactorily assessed, in comparison to the others. However, if the actual numbers of White Paper measures transposed are looked at, a different assessment can be reached. For example, Romania has adopted 47% of the White paper legislation, while in Estonia only 31% of the White Paper legislation is in place.

In addition to the above analysis, the Commission looked at eleven separate policy areas.[9] In a number of these areas the uniformity of language and conclusions was even more striking than under the political criteria. For example, the Commission stated, in all the opinions, that in the area of environment 'very substantial/ important efforts will be needed, including massive investment and strengthening of administrative capacity'. With regard to transport policy, they will 'need to provide the investment necessary to complete the European transport network, which is an essential part of the effective operation of the single market,' and that with regard to Common Foreign and Security

Policy, the applicant states 'should be able to fulfil their obligations'.

Such blanket statements give no indication of which states are most, or least, likely to be able to comply with the *acquis*. In other cases the Commission merely identified a division between states deemed likely to be able to participate in certain policy areas in the medium term and those for whom this would present a problem, often without a clear indication of how this differentiation was made. For example, with regard to control at borders, the candidate countries fell into two camps: those for whom 'it is not yet possible to be sure when (it) could become able to take and implement the measures necessary,' in which category Bulgaria, Estonia, Latvia, Lithuania, Romania, and Slovakia fell, and those which 'could be in a position in the medium term to take and implement the measures necessary,' in which group Hungary, Poland, the Czech Republic, and Slovenia fell.[10]

The establishment of independent labour inspectorates and the application of EU health and safety standards in the work place, the need for an appropriate administrative and budgetary framework, as well as structures for financial control with regard to the use of structural funds, and fundamental reforms in the area of agricultural policy were issues raised in many of the opinions. Not surprisingly, with regard to Economic and Monetary Union the Commission stated, for all applicants, '... it is premature to judge whether (the applicant state) will be in a position, by the time of its accession, to participate in the Euro area.' While this is undoubtedly true, it leaves unaddressed the question of whether or not these states would be expected to make efforts necessary to qualify for participation, and what their likely capacities for doing so will be.

Administrative and judicial capacity

The European Council, at the Madrid Summit in December 1995, stated that the administrative and legal capacity of the applicant states to implement and enforce the Communities' legislation was also a membership requirement. For most of the applicant countries the Commission concluded that a significant and sustained effort in this area will be needed. Areas singled out as potentially problematic included environmental and technical inspections, banking supervision, public accounts and statistics. The Commission noted a lack of sufficient numbers of qualified judges and lawyers in most applicant states, and also recommended that the applicant countries be required to establish a timetable indicating their intended institutional, administrative and judicial reforms, as part of their pre-accession strategy.

The Commission's reinforced pre-accession strategy

The Commission proposed a reinforced pre-accession strategy, which would include focusing Phare aid more effectively on preparing for membership, as well as establishing Accession Partnerships – bilateral frameworks within which all aid and co-operation activities would take place, replacing multilateral structured dialogue. According to the Commission, the Accession Partnerships will develop timetables with regard to adoption of the *acquis* not yet implemented, and deal with specific problems identified within the Commission's *avis*. Annual financing agreements would be conditioned upon achieving progress with regard to the timetable.

As was already partially provided for in the Europe Agreements, under the Accession Partnership applicant states would be able to participate, to varying degrees, in Community programmes, although without decision-making powers. This would provide a forum in which potential problems could be solved, before entry of the applicants into the Union, and would also provide the opportunity for the associated countries to become familiar with Community procedures and agencies and related bodies (e.g. – certification and standardisation bodies).

In addition to the Accession Partnerships, a European Conference has been proposed, which would involve the Heads of State and Government of the Member States and all applicant countries, and the President of the Commission, meeting on a yearly basis. The conference would address issues of Common Foreign and Security Policy and Justice and Home Affairs.

Conclusions

Taking into account all of the above, does *Agenda 2000* provide useful guidelines for proceeding with enlargement? Criticisms of the document can certainly be made. Uncertainties arise due to uniformity of language, there is a lack of in-depth analysis in non-economic areas (e.g. – CFSP and JHA), and the failure to clarify why certain distinctions between the applicant states were made leave many questions unanswered.

From the applicant states' point of view, considering the rather generic approach to some analysis the utility to them individually may be less than desired. Further, many of the applicant states, particularly those not recommended for immediate negotiations, have protested that the analysis was based on incorrect or outdated information, and did not consider recent developments and legislation that was likely to lead to further changes in the near future. For these states the Commission's conclusion was that '...negotiations for accession ... should be opened ... as soon as (they have) made sufficient progress in satisfying the conditions of memberships defined by the European Council in Copenhagen.' This does not give any indication of the threshold they must reach before this can occur.

From an EU perspective there may also be a less-than-satisfied response to *Agenda 2000*. For example, one of the areas of almost universal concern has to do with the impact of enlargement on the Communities' budget. While the Commission appropriately stressed that it is far too early to make an accurate determination of this, it did come up with some estimates of the cost to

the EU of accession of the individual applicants, based on the assumptions that reform of agricultural policy and the phasing in of structural measures would be undertaken along the lines it had proposed in its *avis*. These cost estimates, for the year 2005-06, range from ECU 0.3-0.4 billion for Estonia to ECU 7.5-9.5 billion for Poland. Interestingly, the estimates indicate that the cost of accession are generally higher for those countries the Commission has recommended for negotiations. This becomes even more striking when the costs per applicant state citizen are analysed. However, there is no indication of how, or even whether, the Commission took such costs into account in making its recommendations. Another area of major concern has to do with institutional reform within the Union itself, and this was also barely addressed in the *avis*.

Despite that, the opinions provide much useful information. Applicant and Member States, European citizens, non-governmental organisations, and other social actors now have a better idea of what to expect from enlargement. The conclusions, even if identical for all, most, or many of the applicants, still point the way for the individual candidates to go. In fact, this may allow an applicant state to more easily compare its status with that of other applicants, which is useful information in preparing for accession negotiations.

Further, the Commission has identified the steps to now be taken. The Council has agreed with the Commission's suggestions, and accession negotiations with the five recommended, plus Cyrpus, will begin at the end of March 1998. The Accession Partnerships proposed by the Commission will, in part, form the basis upon which these negotiations will proceed. In addition, the Commission stated it will present a report, no later than the end of 1998, on the progress made by all ten applicant countries in pursuing pre-accession preparations for membership. While not always providing the answers, the Commission has certainly set the stage for the necessary discussions both before and during accession negotiations, pointing the way forward.

RÉSUMÉ

L'avis de la Commission européenne sur les candidatures d'adhésion à l'UE des dix pays d'Europe centrale et orientale (PECO), rendu le 15 juillet 1997, représente l'étape la plus récente dans le processus d'élargissement de l'UE. Dans ce document appelé Agenda 2000, la Commission ne s'est pas seulement penchée sur chaque pays candidat, mais elle a aussi examiné l'impact de l'élargissement de l'Union, en particulier dans les domaines de l'agriculture, de la cohésion économique et sociale et du budget.

Dans son examen des candidatures individuelles, la Commission a appliqué les critères d'adhésion présentés au sommet de Copenhague qui sont, schématiquement, des exigences politiques, économiques et administratives. Le document met l'accent sur les domaines auxquels chacun des dix pays candidats doit s'attaquer avant que sa candidature ne puisse être sérieusement envisagée et propose des voies pour mieux canaliser et adapter les efforts pendant la période de pré-adhésion. En ce qui concerne l'évaluation des candidats, les critères économiques ont été déterminants. Les pays candidats avec lesquels la Commission recommande d'ouvrir des négociations d'adhésion sont ceux dont elle considère que l'économie fonctionne bien et qui sont en mesure, selon elle, de supporter les pressions concurrentielles à moyen terme. Il s'agit de la Pologne, de la Hongrie, de la République tchèque, de l'Estonie et de la Slovénie.

NOTES

1. These association agreements provide for further liberalised trade, approximation of laws, political dialogue, and co-operation in economic, scientific, technical, and cultural fields. It is interesting to note that the designation, 'Europe Agreement', was chosen in part to distance these agreements from previous association agreements which were interpreted to promise EC membership.
2. Hungary submitted its request for membership in March 1994, followed a few days later by Poland. Romania, Slovakia, Latvia, Estonia, Lithuania and Bulgaria submitted applications in 1995, while the Czech Republic, and Slovenia submitted their applications in the first half of 1996.
3. Commission of the European Communities, *Agenda 2000 – Summary and conclusions of the opinions of Commission concerning the Application for Membership to the European Union presented by the candidates Countries*, Strasbourg/Brussels, 15th July 1997, DOC/97/8.
4. Article O of the Treaty on European Union, amended by the Treaty of Amsterdam.
5. COM (95) 163 final.
6. Commission of the European Communities, *Agenda 2000 – Volume I – Communication: For a stronger and wider Union,* DOC/97/6, Strasbourg, 15 July 1997, Part II: 'The Challenge of Enlargement' (Hereinafter 'Communication').
7. On the date of the issuance of the Commission's opinion the Slovenian Constitution was amended, with regard to the foreign ownership of property, which allowed the Europe Agreement to be ratified.
8. These agreements have since entered into force, on 1 February 1998.
9. The areas looked at were: industry, environment, transport, employment and social affairs, regional policy, agriculture, energy, borders, economic and monetary union, justice and home affairs, and common foreign and security policy.
10. Communication, supra note 6, p. 69. ❑

Agenda 2000: Reforming the Common Agricultural Policy Further*

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Introduction

Since the establishment of the European Economic Community (EEC) in 1957, the agricultural sector has played a central role in developing the integral economic, commercial and structural policy of the new Foundation formulated in the Treaty of Rome. Several reasons can be put forward for this:

Firstly, agricultural activity was always one of the most essential factors in European economic, social and cultural life. Secondly, the agricultural sector was, historically speaking, a major source of claims and tensions amongst European nations and countries. Thirdly, European farmers had (and still have) a strong political influence in the parliamentarian regimes in the democratic systems of Europe. Fourthly, and most importantly, in the post-war period and following the tragic experience of World War II, a strategic choice for most European countries was to rapidly achieve and guarantee *food security*.

Additionally, it was always realized (and the Council has repeatedly pointed out) that European agriculture has its own specific nature and characteristics related to:

- its territorial coverage;
- the existence of different regions with specific features (e.g. less-favoured areas, remote and mountainous regions, arid and semi-arid regions, urban or high population density regions);
- the large number of family-type farms (a total of 8 million holdings, three times more than in USA) with a small average size (15 hectares in the EU-15 compared to 185 hectares in the USA). In fact, the majority of European farms are considered to be 'small', since 5 million holdings are still under 5 hectares in area, their farmers faced with (geo-physical) competitive disadvantages when compared to their counterparts in the other high-industrialized countries, i.e. the USA;
- the diversity of European agricultural products and the big differences in yields;
- the multiple roles increasingly assumed by farmers and the agricultural sector in general.

In relation to the above, the Common Agricultural Policy (henceforth referred to as the CAP) was formally announced in 1957 as one of the *key elements* of the first Treaty of Rome. It was designed to serve the objectives stated in Article 33 of the Consolidated Treaties (ex Article 39 TEC), taking into account the policy objectives, according to the 1992 Maastricht Treaty, of 'cohesion' (Title XVII of the Consolidated Treaties, ex Title XIV TEC) and 'environment' (Title XIX, ex Title XVI).

In that respect, the CAP, which has been the most important (sectoral) policy of the EU right from the start, stands *at the heart* of the European integration process. In fact, the function of the CAP has been considered as a *'cornerstone'* of the integration process itself, since it is the most comprehensive common policy developed and pursued by the EU and is related, to a certain extent, to most other sectoral policies (structural, social, environment, competition, trade, transport, etc.).

In the some 40 years that the CAP has been in force, the role of agriculture as an economic sector in the EU has steadily declined, accounting today for about *2.5%* of total Gross Value Added, whilst agricultural commodities represent almost *9% of total exports* and *11-12% of total imports*. The contribution of the sector to employment, although it too has dramatically declined, is still substantial since around *16 million people* (5.3% of the total workforce, compared to 2.5% in the USA) still work on farms. However, in 25% of the rural areas of the EU (mainly the less developed and less favoured areas), agriculture still absorbs 10-15% of the labour force. Moreover, taking into account other upstream and downstream activities such as inputs purchased by farmers, food processing and distribution, wholesale and retail sales outlets, rural tourism and leisure pursuits, it is true to say that agriculture has a much wider impact on the European economy than figures for output, trade and employment would indicate.

Additionally, from another point of view, there is a common belief that the role of agriculture has been broadened in the 1990s through a change in the concepts involved:

- As an economic activity, agriculture has, not only to guarantee food security, but also to provide *high-quality* food and non-food products responding to new consumer requirements, started to ensure efficient production and competitive prices in both internal and external markets;
- There is a growing recognition that agriculture plays an increasingly important role in the maintenance, protection and development of the *environment*;
- Agriculture is an important factor when it comes to contributing to balanced economic and social life in rural areas and it should therefore form an essential part of a sustainable, multi-sectoral integrated *rural development policy*. It should be mentioned that rural areas account for 80% of EU territory and for over 25% of its population.

1. The 1992 reform of the CAP

Up until 1992, the basic concept behind the CAP was to provide a framework of support and protection for

***** Un bref résumé de cet article en français figure à la fin.

agriculture, almost exclusively based on a *price support mechanism*, as a means of increasing agricultural output and productivity and securing agricultural income. The most important feature of this mechanism was to ensure that Community farmer prices *were higher* that the world average.

This system proved successful in implementing most of the initial objectives of the CAP, allowing the EEC to move quite quickly from a complete deficit to a surplus of production in the main products and therefore to transform the EU from a net importer to a net exporter on the world market.

The CAP developed spectacularly over time, although various policy adjustments took place in the meantime in order to respond to economic or market developments and cope with budgetary difficulties. The most important of these was the 1992 reform which *served the same objectives* but at the same time took a decisive step towards market orientation *by gradually changing the basic mechanisms* of the CAP from a price support system towards *direct income support*.

The measures adopted under the 1992 reform were designed to achieve the following main objectives:

- To improve the competitiveness of EC agricultural products on the home and export markets, by means of adequate price cuts which, among other things, would allow the halt in the fall in the use of cereals in animal feed (the latter was considered important because, due to the price differentials between high internal prices of cereals and low prices of imported oilseed substitutes, the internal market for animal feed had been lost);
- To effectively control production and bring it down to levels more in line with market demand by implementing an *obligation* for cereal farmers to take a certain proportion of arable land out of production each year *(set-aside)*, by introducing incentives for *voluntary* and/or *permanent* set-aside, and by applying quantitative restrictions, either by decreasing quotas (milk, tobacco) or setting a limit on the number of animals qualifying for premiums;
- To secure stable incomes for Community farmers, with price cuts accompanied by direct compensatory aid, and focus income support where it is most needed (through special treatment for small producers), contributing therefore to lowering inequalities in income;
- To establish or reinforce accompanying measures aiming *to relate the CAP to environmental considerations* through agro-environmental action, incentives for afforestation and the application of an early-retirement scheme.

2. General assessment of the impact of the 1992 reform

With the reform now almost complete, one could argue that important innovations were introduced and certain achievements made:

1. Price cuts, in combination with the introduction of direct compensatory payments, constituted the first decisive move towards *decoupling support from production and trade*.
2. The reform succeeded in drastically reducing the public intervention stock in most of the reformed sectors, thereby preventing any increases in cereal production and getting *surpluses under control*.
3. The cut in the price of cereals made *domestic grain more competitive*; in turn, using cereals as feedstuffs led to a reduction in the cost of inputs for livestock products and the market share of domestic grain increased by supplying more domestically produced grain for use as animal feed.
4. The *gap* between world and domestic prices, though not eliminated, decreased considerably, given that, at the same time, the average level of world prices increased.
5. New rules and incentives were introduced to promote and improve the quality and competitiveness of EC products, (labelling and certification of guaranteed quality, promotion of biological production methods, protection of geographic origin and other indications of product origin, standardization, diversification of products according to regional specialities and traditional processes, etc.).
6. In the *beef & veal sector*, stocks were initially eliminated and there was a market recovery up to 1995, but the *BSE crisis* which appeared in the meantime revived the problem and surpluses thus reappeared.
7. Income support is now provided through the mechanism of direct income compensation rather than through the mechanism of market prices. In most cases, income compensation has *counterbalanced* losses from price cuts.
8. Income compensation aids are related to the policy of production control, through set-aside, limiting the number of animal heads qualified for premiums, etc. However, the problem here is that such aids are not considered to be completely decoupled from production, since they are calculated on the grounds of a historically determined basic area/yield and number of animals (in order to discourage further increases in yields and production).
9. The distinction between 'large' and 'small' farmers (the latter determined as those who do not produce *more than 92 tonnes* of cereals) allowed financial support to be more targeted at the most vulnerable categories of farmers. In particular, the small cereal farmers, though qualified for full compensation, were not subject to set-aside requirements, enabling them therefore to stay in production.
10. With regard to *environmental effects*, assessments of the reform are rather mixed; on the one hand, extensification incentives allowed a decrease in the use of fertilizers and pesticides and has meant that farmers now play a more energetic role in protecting the environment, but there were also some negative effects such as excessive irrigation or the abandonment of certain areas. However, in combination with the other accompanying measures, such as afforestation, structural measures and early retirement, the overall result can be counted as positive.
11. Finally, the reform allowed the EU to comply with the commitments of the Uruguay Round Agreement in Agriculture (GATT).

In general, therefore, for those who believed that the CAP was on the verge of collapse, reform was the best way of ensuring its continued existence.

However, it would seem that some negative effects also appeared as a result of the reform:

1. Budgetary *expenditure rose* in absolute terms as a result of compensatory payments (though within the guideline figures).
2. Cereal producers are currently considered to be *over-compensated*, since they still receive *full* compensation for price cuts that have *not* been reflected in the market, because world prices have in the meantime increased at higher than pre-1992 levels.
3. The administration involved in implementing the new policy became more complicated and costly, leading to calls to simplify the EU law concerned.
4. The set-aside scheme represents a loss in terms of economic efficiency, because it takes out of production land which is a scarce production factor in certain regions of Europe.
5. The disparities in farm incomes between individual Member States and regions remain a problem due to the differences in farm size, yields, the degree of commercialization and the general socio-economic and structural environment.
6. The problem of potential overproduction in the medium or long term has not been completely resolved, since yields and productivity continue to increase as a result of advanced technology and innovations.

3. Current pressures for further reform

The transitional period of the 1992 reform came to an end in *July 1995*. At the same time, the GATT agreement on agriculture entered into force, while the EU was enlarged with three new members and the CEECs submitted their applications for accession.

Under these developments, the CAP could not stay intact. New pressures appeared advocating a deeper reform through moving further towards more competitive EC prices in line with world levels.

The main reasons for further reform are:

- The risk of new market imbalances that could occur at the beginning of the next century;
- The prospect of a new trade round in the WTO, expected to push further for the liberalization of the trade in agricultural products;
- The limitations on the agricultural budget which continue to be bound up with the principle of budgetary discipline being followed since the 1980s;
- The aspiration towards a more 'environmentally-friendly' and quality-oriented agriculture,
- A growing need for a fully fledged rural development policy;
- Finally, the prospect of enlargement to include the CEECs and Cyprus.

All those factors have a certain impact on the future orientations of the CAP. They are to a certain extent interrelated in the sense that the impact of the one influences the impact of the other and therefore cannot be considered separately.

However, among the above pressures, enlargement, the next WTO Round and the budgetary framework for the CAP seem to be the main sources behind the need for further reform.

For instance, many recent reports and studies emphasize the fact that enlargement would be the catalyst for the so-called 'reform of the reforms'. Other reports have already argued that, if the existing policies for the major agricultural commodities remain unchanged, the EU will soon (even without enlargement) again face a serious crisis of over-production, which will create a conflict with its commitments under the Uruguay Round Agreement.

With relation to enlargement in particular, agriculture has been characterized as a *key element* in the pre-accession strategy, determining, to a large extent, the success or not of the future integration of the candidate countries. This is due to the fact that, for the time being, considerable differences exist between the agricultural situation in the candidate countries and the Member States, especially in terms of structures and prices.

4. Reform options

In November 1995, the European Commission presented its 'Agricultural Strategy Paper' in which different options were examined for the future development of the CAP in the light of future developments, in particular enlargement to the east. Broadly speaking, these options fall into three categories:

I. Maintaining the Status Quo

Regardless of future enlargement, this option was almost unanimously rejected as unrealistic. The reason for this is that as world agricultural markets become more and more liberalized, under the present regime the competitiveness of EU agricultural products risks being severely undermined.

As productivity rises, any excess subsidized production in the near future could not be oriented towards external markets, due to the tightness of the GATT commitments. In turn, growing surpluses would lead to market imbalances and, therefore, once again, a major CAP reform would, sooner or later, become unavoidable.

The problem would become more acute if the CAP were to be extended in its current form to the CEECs after enlargement. The main difficulties that might thereby arise can be identified as follows:

(a) International agricultural commitments

It should be reiterated that the most important commitments under the GATT agreement (1993) entailed a 20% reduction in domestic support for agriculture in terms of an Aggregate Measure of Support (AMS). The EC variable levies on agricultural imports would thus be transformed into tariffs (tarification of the border protection) which would be reduced by 36% over six years. The volume of subsidized exports would be reduced by 21% and spending on export subsidies by 36% on a product by product basis.

An upward alignment of farm support prices in the CEECs to meet those currently applying in the EU would generate an *increase* in total agricultural support and this would seriously affect the domestic support discipline.

Additionally, the upper volume and value export restrictions that have been agreed for the present GATT members would have to be redistributed among the EU and the new Members, which would surely lead to additional CAP reform at a later stage.

Furthermore, taking into account the fact that the next WTO Round will call for negotiations on further agricultural liberalization, one can anticipate that EU enlargement will not be concluded without prior negotiations on additional commitments.

(b) Budgetary implications

It should be mentioned that total CAP expenditure, represented by the Guarantee Section of the Agricultural Fund, is limited by the agricultural financial guideline ceiling. This guideline increases each year by almost 74% of GNP growth in real terms and is estimated at some ECU 43 billion for 1999. For the time being (1997 data), Guarantee expenditure amounts already amount to about ECU 41.3 billion (Guidance Section: 3.6 billion) and constitute a decreasing but still very high percentage (49.2%) of the total EU Budget (ECU 82.4 billion in 1997).

According to the available data, however, the accession of the CEECs would double the agricultural labour force and lead to a 50% increase in agricultural land. Expanding the present CAP to the applicant countries could therefore imply a 50% increase in the cost of the CAP. However, within existing budgetary limits, and given that the present Member States would not tolerate a significant increase in their contributions to increase the CAP budget, it is clear that the EU could not afford the cost of such an expansion.

Moreover, with the budgetary constraints remaining unchanged, the full implementation of the existing rules would cause a struggle between the eventual new Member States and the existing ones, due to the implied redistribution of already scarce funds.

(c) Market price implications for the CEECs

The existing price gap between the EU and the CEECs is expected to narrow over the coming years, but will certainly not disappear.

If the CEEC prices were to be aligned to present EU levels after their accession, this would lead to significant price increases which could stimulate production but would also depress consumption. Since incomes are low in the applicant countries and households spend a larger proportion of their income on food (30-60% compared to 19% in the EU), higher food prices could provoke social unrest and political instability. At the same time, higher food prices could lead to lower GDP growth if they result in higher inflation, which in turn forces up interest rates.

Furthermore, higher farm-gate prices would also have a rather negative impact on the food industry by increasing the cost of raw materials in the processing sector, the competitiveness of which is relatively low and which has not yet been fully restructured.

Additionally, if stimulation caused by higher prices were to lead to excess production, the CEECs would have to export onto the world market without subsidies due to the constraints imposed by the Uruguay Round agreement.

Due to the current market situation in the CEECs, a price alignment strategy would in general imply significant increases in their support and protection levels which would not be in line with the WTO schedules of the countries concerned.

II. Radical reform

In budgetary terms, this option appears quite attractive and would certainly simplify negotiations for enlargement. However, it was also rejected for a number of other political, socio-economic and environmental reasons.

A radical reform would imply an elimination of the total support system by drastically reducing EU prices to world market levels and abolishing production quotas and other supply management measures without time for necessary adjustments.

Due to the special characteristics of EU agriculture, however, the great majority of its farmers could not afford a drastic reduction of EU prices without compensation. In fact, most of them would be forced out of the sector, as they could not survive in complete market liberalization conditions.

In turn, this would lead to the abandonment of land, which would have great environmental repercussions and lead to the high social cost of unemployed farmers seeking a job outside agriculture. It would therefore be necessary to allocate a huge amount for income compensation (full or partial through direct payments) the cost of which the EU budget could not cover.

Certain circles have advocated the transfer of direct income and environmental support payments from the Community to national budgets, with or without Community co-financing. However, such a 'solution' would practically imply a full or partial renationalization of the CAP, to which the vast majority of Member States, especially the weaker ones, are opposed. Renationalization would, *inter alia*, mean abandoning (instead of driving forward) integration, plus the abolishing 'financial solidarity' (one of the three fundamental principles of the CAP). It would also go against the economic and social cohesion strategy, since the weaker Member States would have to spend more of their national budgets to compete in internal market conditions.

III. Developing the 1992 Reform

The 1992 approach emphasized the need to improve the competitiveness of EU agricultural products on the home and export markets by increasing the market orientation of the sector.

This implied that the price support system would be gradually diminished, while farmers would be compensated through direct payments for significant price cuts. Those payments (arable payments, animal premiums, accompanying measures) are subject to budgetary margins under the present guideline and in the framework of the new financial perspectives for after 1999.

The main target of this policy was to reduce the gap between the EU internal price level and world prices for a number of key products and to draw a *clearer distinction* between market policy and income support. Meanwhile, income support is considered as a strong incentive for

farmers to adjust their structures and make farming activity viable enough to compete on the internal and external market.

In the light of eastward enlargement in particular, the persistence of this policy in the future will facilitate the integration of the agricultural sector of the new Member States to a great extent as the gap between current EU prices and prices in the CEECs will be eliminated in the pre-accession period.

The option of continuing with the 1992 reform therefore looks to be the most feasible way of developing the CAP for the future, being considered as a less distorting policy strategy from an economic point of view.

The main goals of this concept are to move the sector towards greater *market orientation* and *higher competitiveness*, combined with a greater emphasis on *rural development* policies as a means of addressing the problems of rural areas. The OECD claims that such a policy could serve the interests of both the EU and the CEECs.

5. Agenda 2000 proposals

The strict application of the financial guideline during the last decade allowed the relative share of agricultural spending in the total budget to fall substantially. However, the truth is that almost 50% of the EU budget is still being spent on agriculture, although, as a declining economic sector, it does not create new jobs. On the contrary, for many reasons, potential young farmers are seeking either to move to other sectors of the economy or to find additional sources of income outside agriculture.

Therefore, criticism focuses more and more on the fact that agriculture absorbs huge amounts of money, depriving other policies and tasks of the EU of their potential to create new jobs due to a lack of appropriate financial resources necessary for their development.

The most interesting aspect of Agenda 2000 seems therefore to be the Commission's attempt to define new or rather additional objectives of the CAP, by extending it to a rural development strategy. More precisely, the Commission seeks to:

- focus CAP policy on food safety and quality;
- guarantee decent living standards for farmers;
- integrate environmental objectives into the CAP;
- create alternative sources of income and employment in rural areas;
- simplify EU agricultural law.

To reach these objectives, and taking into account the implications of new Member States entering the CAP, the European Commission proposes to deepen and extend the 1992 reform, that is to introduce *further price cuts* for key products and *continue the shift* from the price support system to direct payments.

Owing to the fear of new market imbalances, likely to appear in the years to come, and the growing competition on both the external and internal markets (through increased market access), the Commission argues that a policy aimed at improving competitiveness should be the most important target of the CAP in the future (as in the recent past).

In that sense, the most important proposals are follows:

- A one-step drop in the intervention price of *cereals* (the most important 'key' product) through a 20% reduction in the price currently applied. In fact, up to now, the success of the 1992 reform on cereals has brought EU prices down to a level which is no more than 10% to 15% above world market prices. Therefore, the partial target for the EU would be to take the final step towards closing this gap and making EU grain production fully competitive with world production;
- An increase in the compensatory *direct payment* for arable crops which should *only partly* offset the reduction in the institutional price, in order to avoid any over-compensation in this sector;
- Aligning the *oilseeds* regime to that of cereals by reducing the (fluctuated) direct aid currently paid, but overcoming the additional commitments imposed on this sector according to the Blair House Agreement (GATT);
- Fixing the obligatory set-aside rate at 0% (maintaining the system as a 'safety net'), while also maintaining voluntary set-aside (with the same specific aid as for crops);
- Gradually reducing the market support of *beef* by 30%, with the elimination of intervention and maintenance of aid for private storage. Compensation for losses incurred is proposed through an increase in the various premiums/direct payments per head: suckler cows (+ECU 70), young bulls (+ECU 233), bulls (+ECU 123) and a new premium for dairy cows (ECU 70);
- A *cautious* approach to the *dairy products* sector, by continuing the quota regime until 2006, *gradually* reducing support prices *by 10%* and introducing a new annual compensatory payment for dairy cows *in addition* to the new premium;
- A reform of all the other products will be proposed at a later stage on a basis similar to the above.

Generally, in the cases of products for which internal prices continue to stand well above the world level and where a full elimination of this price gap cannot be completed at once, supply management measures (quotas, intervention mechanisms etc.) will continue to be applied but more strictly.

Assuming that world prices are likely to remain well below the present EU level, lowering EU prices to world level would be one of the necessary steps required for the EU to participate fully in the expected expansion in world trade by increasing the possibilities of exports without subsidies.

These are the specific proposals related to market operation. However, higher competitiveness is also connected with efforts to differentiate EU agricultural production. In this respect, a number of measures have already been adopted and are to be strengthened, the aim of which is to:

- Improve quality standards and specificity of EU products, respond to consumer demand preferences (denotation of origin, geographical indications, biological products etc.);
- Increase value added through processing;

- Secure food safety and consumer health;
- Promote structural measures to lower production cost;
- Improve distribution and marketing conditions.

On 18-19 November 1997, EU farm ministers agreed on a common position on the Commission's proposals, reaching agreement on most points.

According to the Ministers' position, the reform should mainly aim at a combination of reduced price-support measures and compensation through direct aids as well as flanking measures.

The reform should be designed in such a way as to arrive at economically sound, viable solutions which are socially acceptable, make it possible to ensure fair incomes, to strike a fair balance between production sectors, producers and regions and to avoid distortion of competition.

As regards enlargement, the reform model will serve as a frame of reference for the future efforts of the applicant countries to adjust their agricultural policies to the CAP.

6. Implications of the proposals

1. The major target of the new reform is to achieve a more market-orientated agricultural system in which EU prices will closely reflect those on the world market. On the assumption that world prices will not change dramatically from today's level, a 20% cut in cereal prices should eliminate or reduce substantially the export subsidies and the storage cost in this sector, therefore generating savings of around ECU 5 billion by 2006.
   However, all the existing mechanisms of the Common Organization of Market (COM) for cereals will remain in place even after the implementation of the reform programme in order to keep it legally possible to regulate the cereals market.
   In this respect, a minimum of support is still available, just in case. Therefore, the set-aside mechanism also remains also in place, even if the standard rate would normally be zero. The intervention system would still be functional, even if the intervention price post-2000 would be reduced to a level which would normally be well below market levels.
2. Increases in compensatory payments would only cover half the amount representing the 20% cut of the intervention price, for two reasons:
   a) to avoid over-compensation
   b) actual market prices are unlikely to follow the fall of intervention prices to the full extent.

   However, with zero set-aside and the compensatory payments being paid equally to all farmers and according to the previous yields of the area they cultivate, the previous distinction between large and small producers (see above) will no longer have practical implications for arable crops. If this distinction is still to make sense, small producers will have to maintain some other advantage in relation to the large ones, so as to be able to survive under the new reform. In that respect, various measures are proposed; i.e. differentiating the amount of compensation for large and small farmers by providing the latter with full (instead of partial) compensation, and/or putting an upper ceiling on the compensation awarded to large producers.
3. A major result of the changes in the compensatory subsidy structure is likely to be a substantial reduction in the area and production of *oilseeds*. On the assumption that present market price levels for cereals will be maintained beyond 2001, the Commission's intention to align the current oilseed compensatory payment on a single payment for all arable crops will perhaps result in a substantial reduction in the profitability of oilseed.
   In this case, the decrease in oilseed production will have some additional implications:
   – It is likely to lead to further intensification of the production of wheat;
   – Given that in many areas all of the most suitable wheat-growing land is already fully utilized, a further increase in the area allocated for wheat will lead to the lower quality of a portion of wheat production, which will be difficult to market on either the domestic or international markets;
   – Many areas of the EU will be led further towards monoculture, with consequently harmful effects on the environment;
   – The dependence of the EU on oilseed imports from the USA and other competitors will increase.

   The Commission, however, refuses to acknowledge such a prospect. It argues that the deterioration in the relative profitability of oilseed production can be counteracted by six factors:
   (a) Generalizing the compensatory payments for all main arable products will automatically result in lifting the Blair House limitations on the EU oilseeds area, increasing it to an effective 4.9 million hectares;
   (b) Due to the operation of the Marginal Guaranteed Area (MGA) mechanism, which penalizes farmers for exceeding the Blair House limits, the current compensatory payments have in fact been lower than they could be;
   (c) Market price increases could compensate to a great extent for the reduction in compensatory payments;
   (d) The effective abolition of arable set-aside would allow for an increase in the oilseeds area if profitability is great enough;
   (e) Oilseeds play an important husbandry role in arable rotations;
   (f) World prices for oilseeds are likely to increase sufficiently to encourage an increase in output.

   Furthermore, the expected increase in oilseeds yield, due to biotechnological innovations and the fact that the EU produces only 44% of its current consumption, are also factors that may counterbalance the fall in the aid currently paid. From a budgetary point of view, however, the cut in the oilseeds premium will result in further savings of around ECU 3.6 billion.
4. The Commission receives a lot of criticism for leaving the *dairy* and *sugar* key sectors largely untouched, while the *Mediterranean products* (olive oil, wine,

rice, tobacco, cotton) are left out, without any specific orientation of their future Market Organization.

Apart from the criticism that has already been levelled against the proposals, one question continues to dominate the various discussions, i.e. that as to the future *form of compensation* to EU farmers for the proposed further price cuts. One should take into account the following parameters:

- The cereal aid scheme applied up to now was fixed and not linked to changes in world market prices (unlike the oilseeds payments which can be adjusted up and down to reflect market price movements);
- Other major competitors of the EU on the world market (who are preparing themselves for the next WTO Round), have already argued that compensatory payments for cereals are a kind of 'hidden export subsidy' and therefore oppose the GATT commitments;
- It is quite likely that the above concept will become a major point in the coming agricultural trade negotiations, given that the current Uruguay Round agreement exempts compensatory payments from subsidy reductions ('blue box' agreement). In this case, maintaining 'blue box' status for the compensatory aids in general would seem to be one of the targets of the EU for the forthcoming WTO negotiations.

Additionally, apart from their high cost for the Community budget, the justification for the compensatory payments of the 1992 approach will probably be increasingly challenged in the future, especially because the question of when they will be phased out has been left open.

In that respect, it should be noted that compensatory payments were introduced to *compensate* certain price cuts. In relation to enlargement, and given that CEEC prices are not going to be reduced but most likely increased following accession, the Commission argues that CEEC farmers would not be eligible for reform compensation since they would not have suffered any price cuts. Otherwise, adding the direct payments to expected price increases, would represent an inordinate cash injection for many CEEC farmers. Such a development would risk creating disparities in income that could rapidly lead to social tension in those countries and regions.

However, it is equally under question *whether it would be possible*, both economically and legally, *to exclude* some farmers of an enlarged EU from such payments or, in other words, to discriminate and pay *richer* farmers of the EU-15 direct payments, which may help them to outstrip the CEEC farmers on the domestic enlarged market.

In this respect, the Commission proposes that, instead of making these payments to the CEEC farmers directly, a significant amount of funds could be made available for additional rural development and environmental programmes, *to reshape their agricultural* economies and promote convergence with the EU.

The question now arises as to how significant the proposed amount included into the Agenda's proposals could be (about ECU 5 billion dedicated to the applicant countries out of almost 50 billion dedicated to the present Member States). In that respect, it seems certain that the issue of the direct compensatory payments to farmers is going to dominate the debate in the forthcoming negotiations.

7. Integrated Rural Policy

Concerning the proposals for an integrated rural policy, also included in the Agenda, the Commission accepts that, although the relative economic weight of agriculture continues to decline, farmers must be helped, as long as the necessary adjustment process of CAP takes place, by securing a reasonable and stable income levels which are vital for farming.

To the extent that farmers' income can no longer be sustained via price support policies and that direct payments in the form of 1992 compensation schemes are under question, there is an increasing awareness that one should encourage farmers to continue farming.

In this respect, the concept of an *integrated rural development strategy*, which was introduced in a Conference in Cork, Ireland (November 1996), enters the discussion, with the aim of raising the multi-functional role that many farmers can play in generally managing the countryside in the context of their rural rather than a solely agricultural activity. The 'Cork Declaration' which resulted from the Conference was considered to be a good starting point for reflection on the shaping of a future Common Rural Development Policy, calling for an integrated approach under a ten-point programme. It was however debated whether farmers would become pawns rather than active players in agriculture through this policy.

Although the farm Ministers did not accept the inclusion of the Cork Declaration into the Summit conclusions of that time (Dublin, December 1996), the concept of overall *sustainable development* was ultimately included in the *Amsterdam Treaty* (June 1997), as one of the EU's objectives from now on. This indicates that progress must be made towards environmentally sustainable production and consumption.

Up to now, relevant EU action was rather limited to the development of various measures and programmes, the sum of which gradually formed the structural dimension of CAP. The financing of this action, however, never exceeded the 5% of the total Funds of FEOGA. To this extent, although the reformed structural policy has stressed the attention to rural development aspects by introducing the accompanying measures (for the environment, afforestation, early retirement), it is argued that in the years to come there must be an optimum mobilization of synergies in order to make progress in an integrated rural policy.

To this extent, it is questionable whether this target is served by the Commission's proposal to take rural development aspects (applied in less favoured areas of Objectives 1, 5.a and 5.b) out of the Structural Funds programme and consider them simply as accompanying measures, co-financed by the Guarantee (and not the Guidance) Section of FEOGA.

Finally, it should be noted that the adaptation of the

CAP in the light of enlargement to the east will be influenced by some other developments on the horizon. The most important may be the introduction of a single currency in 1999 in those Member States that meet the convergence criteria laid down in the Maastricht Treaty. The prospect that certain Members will not be ready to introduce the single currency means that, most probably, the agri-monetary system will continue in some form after 1999. In that case, enlargement will have further implications on the CAP, depending on the relevant rules which will be adopted for the new Members.

The Luxembourg European Summit (12-13 December 1997) reached a final decision on the whole issue of Agenda 2000. Concerning the CAP, the Summit concluded that 'the process of reform begun in 1992 should be continued, deepened, adapted and completed, *extending it to Mediterranean production*. The reform should lead to economically sound, viable solutions which are socially acceptable and make it possible to ensure fair income, to strike a fair balance between production sectors, producers and regions and to avoid distortion of competition.'

After this decision, the Commission is bound to issue, in the first half of 1998, concrete legislative proposals for the reform of each product, guided by the orientations of the Agriculture Council on 17-18/11/1997, including proposals for reforms of the olive oil, wine and tobacco regimes plus rural development measures.

RÉSUMÉ

La PAC, qui depuis ses débuts est la plus importante des politiques (sectorielles) de l'UE, continue à être au coeur même de l'intégration européenne.

Jusqu'en 1992, l'orientation de base de la PAC était de fournir un cadre de soutien et de protection aux produits agricoles, basé presqu'exclusivement sur un mécanisme de soutien des prix, afin d'accroître la production et la productivité agricoles et garantir les revenus agricoles. Une fois que ces objectifs avaient été pratiquement réalisés, un certain nombre d'autres problèmes surgirent, notamment la dépense budgétaire élevée nécessaire pour financer le coût de la PAC et l'apparition d'une certaine instabilité du marché causée par des excédents de produits que les marchés interne et externe n'étaient pas en mesure d'absorber.

Après plusieurs ajustements de la politique opérés dans les années 80, une vaste réforme de la PAC fut mise en chantier en 1992 (la réforme McSharry); celle-ci constituait un pas décisif vers l'orientation de marché du secteur, en modifiant progressivement le mécanisme de base de la PAC d'un système de soutien des prix en un soutien direct des revenus. En effet, la réforme se traduisit par des réductions considérables des prix communs élevés pratiqués précédemment, réduisant par là le fossé entre les prix de la Communauté et les prix mondiaux, sans pour autant l'éliminer complètement.

Cependant, l'état actuel des priorités, conjugué aux autres développements politiques et socio-économiques (le futur élargissement, le prochain Round de l'OMC, les contraintes budgétaires, le risque de futurs déséquilibres de marché, les considérations d'ordre régional et environnemental, etc.), plaide en faveur d'un approfondissement de la réforme de la PAC.

La batterie de mesures proposées dans le document "Agenda 2000" de la Commission européenne (juillet 1997) a ouvert le débat en proposant de poursuivre la réforme de 1992 à partir de l'an 2000, afin de faire passer l'ensemble du secteur agricole vers une plus grande orientation de marché et une compétitivité accrue des produits agricoles, et de mettre un plus grand accent sur les politiques de développement rural et sur une agriculture qui soit à la fois davantage soucieuse de la qualité et respectueuse de l'environnement.

Dans ses conclusions, le Sommet européen de Luxembourg (décembre 1997) a pratiquement accepté les orientations de la Commission et l'a invitée à soumettre des propositions concrètes dans les prochains mois, pour la réforme de l'Organisation commune des marchés agricoles, qui devrait à l'avenir indiquer plus clairement la portée et les implications de la réforme envisagée.

Ce train de mesures comporte certainement d'autres modifications importantes de la PAC; dès lors, on peut s'attendre à ce que le débat sur l'avenir de la PAC gagne en intensité dans les prochains mois, voire les prochaines années.

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Address by the Laureate of EIPA's Alexis de Tocqueville Prize 1997*

Professor Sabino Cassese

Professor of Administrative Law, Law Department, University of Rome (I)

Dear Colleagues and Friends,

I wish to thank you for having presented me with this award. I am greatly honoured by your decision, and by the esteem which it demonstrates.

The tradition which the European Institute of Public Administration has managed to cultivate in our field, and in a relatively short period of time, together with the prestige enjoyed by the members of the Scientific Council and the Board of Governors, make the award all that much more welcome.

I can personally identify a third reason for my satisfaction: the fact that the award bears the name of Alexis de Tocqueville. Tocqueville, one of the most brilliant minds of the nineteenth century, was the first scholar of the modern concept of democracy, as well as one of the founders of the social sciences. But he can also be credited with some of the most incisive observations on the trends found in the various public administrations of his age: observations which lay the ground work for modern-day comparative studies in the field.

In presenting me with this award, you have spoken words of praise. To paraphrase one of the maxims of the Duke de La Rochefoucauld, I might say that you have awakened in me the desire to be worthy of such praise. And so allow me to say a few words on the subject of Tocqueville and the public administrations of his time.

I mentioned just now that Tocqueville had formulated telling observations on various public administrations. I should add that these were not contained in a single piece of writing, but rather spread throughout different books, reports, parliamentary speeches, travel notes, recorded conversations, newspaper articles and letters. And yet there is a common denominator which unifies his thoughts. Let us follow it together by examining his work.

In 1831, the twenty-six year-old Tocqueville was in New York, in the midst of his famous trip to the United States, whose stated purpose was to study the penitentiary system of that country. At the same time, however, he was preparing to write his first landmark work, *'De la démocratie en Amérique'*. From New York he wrote to Blosseville in France, informing him that he had found no trace in America of administrative judges, and asking for information on French administrative judges. In a portion of the letter he observes that:

> 'as you know, in our country administrative law and civil law form two separate spheres which do not always manage to live in peace, though they are neither friendly enough nor antagonistic enough to know each other well.'[1]

In 1835, the publication of the first portion of *'De la démocratie en Amérique'* met with enormous interest. In approximately twenty pages of chapter V, Tocqueville provides a rapid, masterful overview of the distinctive characteristics of the public administration in the United States, establishing the comparison with the French administration. At the same time, he sets the underlying concepts for the comparative study of public administrations in general. Ideas which had received little attention until then became a part of the dictionary of social sciences: centralization and decentralization, hierarchy and autonomy, bureaucratic or executive administration and judicial administration, career officers and elected functionaries, etc.

Tocqueville begins by observing that: 'Nothing is more striking to a European traveller to the United States than the absence of what we term the government, or the administration'. This is due – he explains – to a number of causes: the power is divided among a number of different subjects; there is no centralization or hierarchy; the officers are independent; the states govern, but they do not administer, because they draw on the services of the officers of the municipalities and the counties for whatever action is needed; the municipalities do not fall under the supervision of the central state; the law is more detailed, penetrating into the very heart of the administration; judicial power, implemented through the Justices of the Peace, contributes to the administration of the municipalities and counties; widespread use is made of elected functionaries.

In France, on the other hand – continues Tocqueville – the revolution condemned both the crown and the local government institutions, both absolute power and those able to mitigate its rigour. The result is a centralization (and uniformity) which produces 'a sort of administrative torpor', because '... it excels ... at preventing as opposed to acting'.

Tocqueville concludes by illustrating the advantages of the American system and criticizing the French form of administration:

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* EIPA, Maastricht, 14 November 1997.

> 'In America, the force which administers the State is far less regulated and far less enlightened, but a hundred times stronger than its European counterpart'.[2]

And he adds:

> 'What does it matter to me.... that there is an authority always on the alert, guaranteeing that my pleasures are trouble-free, running ahead of me so as to ward off all danger, without I myself having to make the least effort, if that same authority, at the very moment it removes every last worry from my path, is in absolute command of my freedom and my life; if that authority monopolizes my existence to the point where, whenever it falls slack, everything around it falls slack, whenever it sleeps, everything else sleeps, and, should it die, everything else must perish as well?'[3]

In chapter VI of this first major work, Tocqueville writes that in the United States, as in England, any citizen can take legal action against a public official, while judges have the power to hand down sentences condemning them. This was viewed as something natural, which in no way diminished the power of the government. In France, on the other hand, article seventy-five of the Constitution of year VIII stipulated that a decision from the State Council was necessary in order to take legal action against a public official. Tocqueville continues:

> 'I have always found a difficulty in explaining the meaning of this article 75 to Englishmen and Americans, and have hardly understood it myself. They at once perceived that, the Council of State in France being a great tribunal established in the centre of the kingdom, it was a sort of tyranny to send all complainants before it as a preliminary step. But when I told them that the Council of State was not a judicial body in the common sense of the term, but an administrative council composed of men dependent on the crown, so that the King, after having ordered one of his servants, called a prefect, to commit an injustice, has the power of commanding another of his servants, called a Councillor of State, to prevent the former from being punished. When I showed them that a citizen who has been injured by an order of the sovereign is obliged to ask the sovereign's permission to obtain redress, they refused to credit so flagrant an abuse and were tempted to accuse me of falsehood or ignorance.'[4]

Tocqueville returns to the subject of the public administration in chapter V of the second part of the work, presenting three observations on American officials: all of them – he observes – are paid (the replacement of non-paid officials with paid officials represents '*une véritable révolution*'); they are paid at different rates, with those at the lower levels earning more than is the case elsewhere, while the higher-ranking officials earn much less than in other countries; they are given much more freedom within the scope of activity which the law assigns them, given that the ends but not the means of their actions are regulated.

In conclusion, Tocqueville returns to the theme of the administration touched on in chapter VII, placing it within the political framework. He observes that the independence granted to the powers responsible for implementing the law serves as a counterweight to political instability, ensuring that the will of the legislators will continue to be enforced. What is more, the division of powers and the lack of administrative centralization temper the tyranny of the majority:

> 'I have already pointed out the distinction between a centralized government and a centralized administration. The former exists in America, but the latter is nearly unknown there. If the directing power of the American communities had both these instruments of government at its disposal and united the habit of executing its commands to the right of commanding; if, after having established the general principles of government, it descended to the details of their application; and if, having regulated the great interests of the country, it could descend to the circle of individual interests, freedom would soon be banished from the New World. But in the United States the majority, which so frequently displays the tastes and the propensities of a despot, is still destitute of the most perfect instruments of tyranny'.

In the same year in which his first book was published, Tocqueville left on a second voyage to England. As he had done in America, Tocqueville travelled in order to learn: he spoke with scholars, he asked questions to politicians and administrative officials and he took notes, always seeking to understand both the letter and the spirit of society and the State.[5] From the travel notes written on June 29 and July 7 of 1835, three are worth mentioning. The first regards the relationship between the justice system and the public administration in England, while the other two address the public administration in England: 'The need to subject the administrative system to the power of the judiciary is one of the central ideas underlying my research on what has made it possible, and what will make it possible, for men to obtain political freedom'.

> 'The principles of the English with regard to the Public Administration. (Though perhaps it is wrong to say principles, given that the system has developed spontaneously in view of the need to allow elective bodies to exist and to enforce their decisions). The separation of local administrative authorities. The lack of any hierarchical ranking among such authorities. The continual action on the part of the judicial powers to enforce their rulings. The sub-

division of judicial power in order to curb its power. Almost all administrative acts lead to procedures which take on judicial forms. A system of fines takes the place of reprimands or the loss of the official's position. The effectiveness and the significant advantages in terms of governing the details of society. The customary and long-standing power placed in the hands of individuals. The system of obligatory functions, its advantages and the need for such an approach'.

'The Public Administration. In England, there is practically no trace of the administrative action of the central government. Almost all the public services are in the hands of small groups chaired by trustees or commissioners and created for the specific occasion by Parliament, which, at the moment it establishes such groups, appoints their members. If members of these bodies must be replaced, then it is almost never the case (indeed, I feel it is safe to say never) that the king or his agents appoint the replacements. Instead the selection is made by the electorate, or, as more often happens, the remaining members of the group itself. This arrangement is referred to as the system of self-elected bodies, and it plays a predominant role, with its use extending even to professional guilds. One never hears of the king being involved in administrative affairs'.[6]

And so we have a more precise picture of Tocqueville's interests, which are focused on the organizational model of the public administration and its relations with the justice system. Tocqueville approved of the English decentralization, as well as the fact that the public administration was subject to judicial proceedings.

But Tocqueville's interest was not directed solely at the Anglo-Saxon world. On October 10, 1836, in a letter to his friend Louis de Kergorlay, who was about to leave for Prussia, he observed:

'After England, the country which I have always most wished to visit is Prussia. ... The Prussian government .... makes a conscious effort .... to induce its subjects to forget that they lack the major political freedom by freely allowing them all those secondary freedoms which do not clash with an absolute monarchy; in this way the government prepares the people – either voluntarily or unbeknownst to itself – to make do without it, and to reach a point, without attendant trauma, where they can govern themselves. I ask that you please take notes in as much detail as possible on the Prussian provincial and municipal systems, as well as on the limitations of centralization. This is very important for me. It is not by building arguments on the practices of republican or semi-republican nations that we can hope to press our attack against French centralization. Only motives drawn from nations ruled by absolute governments can make an impression on the anti-liberal bunch which governs us.'[7]

So far I have quoted from letters, travel notes and portions of *'De la démocratie en Amérique'*. For the years which follow, reference must be made to parliamentary speeches, newspaper articles, academic reports and notes take on conversations.

An initial reflection was offered by Tocqueville on April 20, 1843, in the course of a speech before the National Assembly on the jurisdiction of administrative courts over crimes committed on public roadways.[8] Here, Tocqueville observes that the administrative courts, the State Council and the prefects' councils are not actually judges because they are not independent. He continues: the real problem is the deep-rooted distrust of the ordinary justice system, and hence the principle that, whenever the interests of the State are involved, the Public Administration must be provided with a judge of its own. But this is a false principle: it is precisely when the interests of the community as a whole are at stake that an impartial, independent judge is called for.

Later, during a period which begins on February 16, 1845, Tocqueville writes four unsigned articles which appear in 'Commerce' and address the responsibility of public officials, though they also touch on in the issue of the double jurisdiction.[9] The right to take legal action against public officials when they abuse their power is freedom in its most concrete, practical form. The provisions of article 75 of the Constitution written in the year VIII oblige citizens to present requests for the righting of administrative abuses to the Administration itself. From 1827 until 1835, all liberals asked for article 75 to be repealed, so that the Administration would become responsible for its acts.

As for the double jurisdiction, Tocqueville affirms that the situation was a monstrous one, given the bastardized nature of the administrative jurisdiction. Whether a civil or a criminal question was being examined, whenever the interests of the Public Administration became involved, then the case fell under the jurisdiction of the State Council, though this body was neither independent nor, strictly speaking, suitable for the role of judge, in as much as it only issued opinions. This detestable situation- he concludes – goes against all liberal principles.

The most important contribution of all, however, was Tocqueville's report to the Academy of Moral and Political Science on Macarel's *'Cours de droit administratif'* (1846).[10] Here Tocqueville gives full and unified expression to his thoughts on the Public Administration.

Napoleon – writes Tocqueville – removed the state administration from the control of the citizens, making public officers invulnerable; for ages attempts had been made by absolute monarchies to introduce such an audacious rule, but no despot had ever dared make it part of a law, and none of the world's countries had ever

accepted it as a general principle.

As for the distinction between two types of justice, ordinary and administrative, this is a principle which no free country, and no civilized population, would ever agree to in general and absolute terms. Administrative justice can occasionally be separated from ordinary justice, but only in rare, exceptional cases. The general rule should hold that all trials are to be brought before the judge who guarantees the fairest possible treatment to the different parties, no matter who those parties may be. It is wrong to transform a bizarre and risky procedure, such as that carried out by the State Council, in which the real judge is the prince, into a habitual, normal form of justice. Nor is it right to speak of *'justice réservée'*, given that the Crown's right to modify the decisions issued by the State Council has become a legal fiction, in as much as the government has made use of this option only once in the last forty years. Here lies the reason for Tocqueville's criticism of Macarel, who is accused of having elevated to the level of a guiding principle the splitting of justice into an ordinary branch and administrative branch.

And so, up to this point, Tocqueville does nothing more than repeat his criticism of the guarantees offered to officials and the double jurisdiction. Later, however, he adds a number of pages praising administrative law, which he hopes will eventually lose its authoritative element. With his usual foresight, he deems it safe to say that our *'droit administratif'* will eventually be adopted by the entire civilized world, thanks to the way in which it mirrors the condition of Man in our time, as well as the fact that it represents the inevitable outcome of the social revolution. Wherever privileges are abolished and equality is introduced, something similar to our administrative law comes into being. Administrative law, therefore, is one of the forms of the world's new condition: we call it the French system, but it would be more accurate to speak of the modern system. The problem which remains to be solved is the removal of the illiberal elements from administrative law: the French administrative system was designed around liberty, but it was ultimately put into practice by despotism. And this is why in England and America, the two great liberal nations of the present day, no one would think of adopting the administrative law in its entirety, complete with the fingerprints left by the all-powerful hand of Napoleon.

Tocqueville was to return once more to the subject of administrative justice in a conversation held with an Englishman on January 8, 1852.[11] Tocqueville says: there are now three different procedures in France: the judicial system, under which you are brought before a judge, and, if the crime is serious, you are sentenced to one or two years in prison; the military system, under which you are given a court martial and then shot; and the administrative system, under which you can be sent to Cayenne or Algeria without any trial whatsoever.

Tocqueville's judgment of the French administration was to become more critical during his work on the other great book, *'L'Ancien Régime et la Révolution'*: in a letter to Freslon dated August 10, 1854,[12] Tocqueville briefly illustrates the underlying thesis of his second great work: a study of the administrative documentation of the *Ancien Régime* produced clear evidence of the on-going interference of administrative power in the judicial sphere. Those charged with enforcing the law had always complained that, during the *Ancien Régime*, the judges performed administrative acts. But it could also be objected, and with equal justification, that administrative officials handed down legal judgments. The only difference with the situation of the present day – continued Tocqueville – is that we have corrected the first mistake on the part of the Ancien Régime, while we have simply imitated the old system with regard to the second error. Up until now I had believed that administrative justice was created by Napoleon. On the contrary, it is an undiluted residue of the *Ancien Régime* (*'pur ancien régime conservé'*). The principle which holds that, even in the case of a contract between the State and a private party, it is the State which hands down the judgment, was held to be sacred by the overseers of the *Ancien Régime*, as well as by the prefects.

These concepts were to be illustrated in greater detail in *'L'Ancien Régime et la Révolution'*, published in 1856.[13]

In chapter II of the second book, on the subject of centralization, Tocqueville explains that the centre of gravity of the Ancien Régime was the *'Conseil du Roi'*, which simultaneously filled the roles of a supreme court of justice, a supreme administrative court, a government advisory body (in which capacity it played an important part in the legislative process) and a high council of the Public Administration. In the provinces, a lower-ranking official of the Council, the Overseer, also served as the administrator and judge.

Chapter IV of the second book is entitled: administrative justice and the invulnerability of public officials were established under the Ancien Régime. Tocqueville observes that, during the Ancien Régime, in order to avoid falling under the jurisdiction of the judges, who were among the most independent in Europe, the executive power adopted two solutions: the appointment, through royal edicts or decrees issued by the Council, of special judges, or the transfer of individual controversies through rulings to the Council (thanks to this last method, entire sectors, such as taxes, transportation, navigation, etc., were removed from the authority of the judges and placed under the jurisdiction of the State Council).

Tocqueville further observes that much is made of the fact that the Revolution introduced the separation of administrative power from legal power, making administrative officials immune to the actions of judges. But the immunity of public officials was first established under the old monarchy, with the lone difference being that the Ancien Régime protected its officials by resorting to illegal, arbitrary measures, while, under the later

government, they were able to violate the law with legal impunity.

In general terms, observes Tocqueville – following the line of reasoning laid out in his letter to Freslon – the new regime has driven justice out of the sphere of administrative activities, but it has not prevented the administrative branch from interfering in legal matters.

In chapter V of the second book and chapter VI of the third book, Tocqueville briefly returns to the subject of the union of administrative activities and legal jurisdiction in the administrative courts, as well as that of the protection of public officials (not to mention the limitations placed on judicial power): 'there are exceptional courts for the trial of cases involving the administration or any of its officers'.

In other words, Tocqueville criticizes France because – as he observes – there one finds 'a people whose aristocracy consists exclusively of government officials and in which an all-powerful bureaucracy not only takes charge of affairs of State but controls men's private lives.'[14]

In 1858, a year before his death, Tocqueville once again addressed one of the subjects most dear to him, namely the issue of centralization-decentralization. Writing on February twenty-seventh to Louis de Kergorlay,[15] he foresees the gradual onset of centralization in England:

> 'The local government presents many shortcomings, in terms of details, which I believe are perceived and felt. The superiority of the central government is widely recognized in a number of these affairs, when it becomes involved in the same. Nevertheless, there are not only a significant mass of individual opinions, but also an insurmountable public prejudice against the extension of its sphere of influence. I believe this can be traced to a number of causes. In the first place, there is the aristocratic make-up of English society. The aristocracy is enlightened enough to understand that the day on which the central government takes control of the country's administrative affairs, then the aristocracy will have lost its *raison d'être*. This presentiment arises from the confused but vital feeling that the system, though weak in a number of details, is still suitable for a way of life, a series of activities and a variety of circumstances thanks to which, in general terms, the public prosperity has been well served, making England one of the world's richest and freest countries. Finally, what prevents the government from handling such affairs, however well it might do so, is the simple desire of the citizens to look after themselves. It is this passion for being in charge of one's own affairs, if we want to get to the root of the issue, which characterizes the English today. I would rather drive my wagon poorly than give up the reins to the State. We ourselves experience some of this same sentiment in our private lives. But the English elevate the conviction to the highest level of public life. All the same, I believe that centralization is slowly gaining ground in England, though so slowly that the progress is almost imperceptible'.[16]

Having reached the end of this anthology of citations from Tocqueville on the theme of the Public Administration, I would like to determine the characteristic elements of his examination of the problem.

First of all, it should be remembered that Tocqueville was writing in the early years of the development of the Public Administration along modern lines. It was with the coming of the new regime and Napoleon that a Public Administration, though decidedly limited in size, finally took definitive shape. And it was in the early decades of the XIX century that the subject of administrative law first began to be cultivated and taught. In other words, Tocqueville was moving in a relatively new and little known area.

In the second place, for almost thirty years Tocqueville pursued two themes: the relationship between the Public Administration and the judicial authorities, and the issue of centralization. In his eyes, it was these topics which most closely concerned France. And so he gathered documents, materials and information on them, travelling to England, America and Prussia to do so. Never before had anyone focused such attention on these subjects, and Tocqueville chose them without hesitation. In the centuries to come they were to remain the cornerstones of the science of Public Administration.

In the third place, Tocqueville was extremely critical of the removal of the Public Administration from the jurisdiction of the courts and the immunity granted to state officials. His opinion of centralization, on the other hand, was more neutral: though it had been introduced under the absolute monarchy of the *'Ancien Régime'* and reinforced by Napoleon, it was to be given new life – as foreseen by Tocqueville in his own masterful analysis – on account of the need to guarantee equality (a development which – as Tocqueville observes – leads all the different powers to hasten towards the centre).

At the heart of Tocqueville's interest for public administration there lies – in keeping with the accepted view of the nineteenth century – the judicial element, though not in an abstract, purely formal sense: indeed, Tocqueville was always more interested in reality than in legal measures.

In the field of administration as well, Tocqueville was not only an accurate analyst of his own time, but also an excellent prophet of future developments.

The response to his criticism of the absence of justice in the French administrative system – a stance shared by all pure liberals – came in 1872, when the State Council was transformed into a full-fledged judge. The victory was incomplete, in as much as Tocqueville favoured the English or American model, in which there is only one type of judge. But the twentieth century saw the two models draw closer to each other, thanks to the introduction in England of special procedures and judges specialized in 'judicial review'.

The forecast of a gradual centralization of the English administrative system also proved to be well founded. In fact, in the nineteen eighties the trend towards centralization suddenly accelerated to a significant extent, and this at the very moment when the central government was busy carrying out privatizations.

In the final analysis, administrative law, once it had been purged of its despotic element (though it did not always lose a certain authoritative bent), was put into practice more or less everywhere, including England, and this despite the harsh criticism voiced in 1885 by Albert Venn Dicey, who had been strongly influenced by Tocqueville, though for the wrong reasons.

But Tocqueville made an even more important contribution to our science. His unflagging attention for the two sides of the English Channel (England was his second home) and the two shores of the Atlantic made him aware of two distinctive traits of the French administration which, until then, had remained unobserved: its centralization and its regulation under a special type of law, namely administrative law. In keeping with his liberal creed, Tocqueville criticized – though to different degrees – both aspects, taking as his ideal the Anglo-Saxon system in which 'self-government' and 'common law' were the dominant traits and there was only one type of law and one judge.

These opinions drew the attention of an English observer, Albert Venn Dicey, who stressed these aspects of the English constitution in his 1885 'Introduction to the Study of the Law of the Constitution', laying particular emphasis on the absence in England of administrative courts or of a special body of administrative law.

Dicey's work became almost as renowned as the two books by Tocqueville. Translated into French in 1902, it met with criticism, with the principal attack coming from Maurice Hauriou, who held that the *'régime administratif'* (meaning the system characterized by a *'droit administratif'* and a *'Conseil d'Etat'*) was more liberal than the English system.

In the wake of Dicey and Hauriou's work, the idea spread that there existed two models of public administration: the first governed by special laws and special judges, and the second regulated under the same laws applied to private citizens.

In the end this comparison proved to be erroneous, in part because the two models were gradually modified, drawing closer to each other (in France the immunity of state officials was eliminated in 1870, while the State Council was granted the status of a judge in 1872; in England the existence of a body of law different from Common Law became accepted in the 1930s, while the second half of the twentieth century saw the establishment of specialized judges and specific procedures of judicial review). Nevertheless, the comparison also proved to be fruitful, making it possible in countries whose systems resembled the French model to accept mixtures of public and private law. For if, as Dicey, Hauriou and their followers say, there exists a system of administration, namely the English one, governed by private law, then there should be no problem in mixing private and public law in France, Italy, Germany and Spain, so as to soften the unilateral and authoritative nature of the latter.

For all this we must once again thank Tocqueville, who had initiated the comparative approach to the subject.

And so, dear colleagues and friends, in thanking you for having presented me with the 1997 Alexis de Tocqueville prize, I have done my best to review the contribution made to our society by this great thinker, demonstrating how his work still provides the underpinnings of any comparative analysis of public administrations.

NOTES

1. A. de Tocqueville, *Nouvelle correspondance*, Levy, Paris, 1866, p. 67.
2. A. de Tocqueville, *De la démocratie en Amérique*, Laffont, Paris, 1986, p. 93; also see A. Jardin, *Alexis de Tocqueville*, Hachette, Paris, 1984, pp. 111-113.
3. A. de Tocqueville, *De la démocratie en Amérique*, cit., p. 112; also see A. Jardin, op. cit., p. 201.
4. A. de Tocqueville, *De la démocratie en Amérique*, cit., p. 122.
5. As he writes in his letter of July 6, 1835 to Louis de Kergorlay, from which I quote further on.
6. A. de Tocqueville, *Oeuvres complètes*, t. V, vol. II, *Voyages en Angleterre, Irlande, Suisse et Algérie*, Gallimard, Paris, 1958, pp. 68, 70 and 89 (underlining by the author).
7. A. de Tocqueville, *Oeuvres complètes – Tome XIII Correspondance d'Alexis de Tocqueville et de Louis de Kergorlay*, Gallimard, Paris, 1977, p. 407 on.
8. Now found in *Ecrits et discours politiques, Oeuvres complètes*, tome III, II, Gallimard, Paris, 1985, p. 168.
9. Now found in *Ecrits* cit., p. 155 on.
10. In *Oeuvres complètes*, IX, *Etudes économiques, politiques et littéraires*, Levy, Paris, 1866, p. 63.
11. *Correspondence and Conversations of A. de Tocqueville with Nassau William Senior from 1834 to 1859*, edited by M.C.M. Simpson, 2 vols., King, London, 1872, vol. II, pp. 19-20.
12. Published in *Oeuvres et correspondance inédites d'Alexis de Tocqueville* (Beaumont Edition), Levy, Paris, 1861, tome II, pp. 221-222.
13. Now found in *Oeuvres complètes*, Gallimard, Paris, Tome II, vol. 2, s.d., but 1952; note that, in this work as well, Tocqueville makes constant comparative references to England, stating that it is a modern country, having freed itself of the remanants of the Middle Ages in the 1600's.
14. A. de Tocqueville, *L'Ancien Régime et la Révolution*, Laffont, Paris, 1986, p. 1052, vol. III, ch. III.
15. A. de Tocqueville, *Correspondance d'Alexis de Tocqueville et de Louis de Kergorlay*, II, Gallimard, Paris, 1997, p. 331.
16. A. de Tocqueville, *Oeuvres complètes – Tome XIII, Correspondance d'Alexis de Tocqueville et de Louis de Kergorlay*, Gallimard, Paris, 1997, p. 333. ❑

Enforcement in the Internal Market

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A businesswoman in the USA telephoned the author in London late one evening a couple of years ago to complain that French Customs officials had seized a consignment of helmets made by her company for a customer in France. She could not understand the reason for this action and was even more bemused when she was told that it was because the helmets did not conform with the requirements of the Personal Protective Equipment Directive (PPE) 89/686/EEC, as amended. Not only had she not heard of the directive, she could not understand why the goods had not received similar treatment in the company's other EU markets. Most seriously, how could she place the CE marking on the goods within the short time allowed by the French? Panic struck – the order was a very valuable one which her company could ill afford to lose. Failure to bring the goods into line with the requirements of the directive would result in their being destroyed. Fortunately, there is a happy ending to this story because the manufacturer was able to arrange for the helmets to be properly CE-marked and so disaster was avoided. Moreover, the manufacturer ensured the experience would not be repeated elsewhere. Steps were taken to understand the directive and to comply with it and thus the *new* European legislation concerning the goods in question.

Later, another (British) PPE manufacturer complained that having had his goods tested and the CE marking affixed in accordance with that directive, he could not sell them as they were more expensive than items still freely available on the market which did not conform with the directive.

Sadly, these examples are not unique. They demonstrate one of the major problems being encountered as the Internal Market (formerly called the Single Market, 'the market'), which opened formally for business on 1 January 1993, settles into place. Politicians and administrators who thought their work was done when the directives they had painstakingly negotiated were transposed into national law, found that the real work only began when directives were implemented in practice and manufacturers and others started to comply with their requirements. They were surprised to find that words and phrases agreed after lengthy debate, were interpreted differently as those affected by them started to make and supply products in accordance with the relevant directive(s).

Questions were therefore asked of many different sources in the quest for a definitive view. Depending upon the nature of the question put and the expertise of the authority consulted, various answers were possible – even to the simplest of queries. This heightened concerns and encouraged scepticism and criticism of the Internal Market and anyone and anything concerned with it. Clarity and certainty were demanded. In some instances, these were relatively easily provided. In others, experience had to be gained and various possibilities explored before any view could be formed. Given the nature and magnitude of the changes involved in establishing the Internal Market, is that so unreasonable? Compare that Market with, say, the USA. Each comprises areas of different cultural and political make-up. Each is also made up of states with established different laws. The US model appears to work better. But does it? Certainly, it has had time to settle. Perhaps that has allowed the US to develop a more harmonised system of federal law. Or perhaps experience has simply taught us to understand, accept and work with that system better. (Maybe trade benefits from opportunities offered under slightly differing systems?) In the case of the Internal Market, it is still very new. We are still adapting to it and the changes it involves. Therefore, is it wise to jump to conclusions and make judgements so early? Common-sense would probably support that view. Commercial pressures dictate otherwise. Businesses are irritated when *the level playing field* appears absent to them and this encourages them to question the Internal Market. Because their immediate concern is likely to be the directive with which they are currently having 'problems', they initially seek clarity and certainty in matters concerning that directive. But, where is such clarity and certainty to be found?

Leaving the issue of clarity to one side, the short answer to the second point is that only the text of the relevant directive(s) and the implementing national legislation are authoritative in law. But, full circle has been turned as we return to the matter of how, why and to what extent interpretations differ within and between the Member States. Currently, there is insufficient scientific evidence on which to base conclusive views about the nature of this problem – or indeed if a fundamental problem really exists. It may be that what is being experienced is no more than teething problems, which will disappear as further experience is gained. Whatever the truth, there seems to be a general expectation that everything should be equal within the Internal Market and that *the level playing field* is laid

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from the beginning. Because some experiences, like those summarised in the opening paragraphs above, found differently, a perception grew that things were not working well. Consequently, feelings developed of having been let down by 'the system'. And because bad news spreads faster than good, attentions were turned to 'the problem(s)' which started to develop lives of their own. It is debatable whether this is either valid or reasonable. But, it gave rise to the assumption that 'proper enforcement' of the directive(s) concerned would iron out the wrinkles and provide the necessary answers.

What actually does 'enforcement' therefore mean and how is enforcement action applied across the 15 markets of the European Union? From the foregoing, readers will understand that these questions are frequently asked by administrators and businesses seeking to benefit from *the level playing field* promised by the EU technical harmonisation process designed to abolish barriers to trade. Apparently, from the above and similar examples, the term 'enforcement' is understood differently across the EU and beyond. Consequently, actions taken in its name also differ. This may or may not be in business' and the Market's interest. It is too soon to tell. Further investigations and consideration are required before any conclusions should be drawn. But first, a clear definition of the term (and what it involves) has to be agreed. Such are the concerns being expressed about these and related issues, that the EU Presidencies of Luxembourg (until 31 December 1997), the United Kingdom (currently), Austria (second half of 1998) and Germany (from 1 January 1999) are co-operating closely for the achievement of a more effective Internal Market.

Clearly, there needs to be continuing and increasing awareness about the Internal Market and of the directives which help to cement its base. Whilst it is true that ignorance is no defence in the eyes of the law, one cannot help but sympathise with those who genuinely find it difficult to understand or discharge their new obligations. However, the directives in question here have been in force for some time and the transitional arrangements provided under them to assist businesses etc. to adapt to the changed requirements have largely expired. So, why do difficulties persist and what is being done to overcome them?

In the first place, it is important to determine whether the opening experiences are truly representative of deeper, more fundamental concerns – or is it simply that more is known about them because of the publicity they attract? It has to be said that for the most part, many directives appear to be working as intended and well. This is mainly due to the co-ordination and co-operation efforts of the parties involved, often at the encouragement of the European Commission. But, naturally, increasing practical experience of working to the requirements of directives has raised a number of questions of interpretation.

These issues may be settled reasonably during meetings of expert technical working groups. Where significant policy issues are involved, it may be that meetings will have to be convened of the committee of expert officials established under the relevant directive to consider questions of interpretation and application.

But, should no forum be able to resolve the issue(s) in question, it may be that recourse to law is necessary. Because of the cost and time involved, most hope that legal proceedings can be avoided. But, if they are to be avoided, other mechanisms must be in place and function properly to provide the required clarity and certainty. Simpler (easier to understand and follow) legislation may help. But, effective, uniform enforcement of EU directives arguably holds the most important key to establishing confidence in the Internal Market. That is why the new UK government is committed to using its Presidency to speed up the completion of the Internal Market, making June 1998 the deadline. The aim is to see all Member States effectively implementing directives *and* introducing systems for remedy and enforcement.

Such is the importance of the latter, that when the UK Prime Minister, Tony Blair, gave a lecture in the Netherlands last January on his European policy, he repeated his call for 'better enforcement (of market rules) through faster and more rigorous complaints procedures, underpinned by more effective sanctions'. Only time can tell how these words and aims will be translated into reality. But, there should be no doubt that they *will* become reality. Therefore, all of the parties involved should be liaising with each other now, nationally and across the EU and wider, to ensure that what develops will be both fair and reasonable.

There is no question that directives oblige those affected by them to satisfy their requirements properly. For governments, this means that directives have to be implemented faithfully in national laws – and that only products complying with the relevant requirements *including* the affixation of the CE marking will be allowed to be placed on the market. Anything less (particularly unsafe items) should normally be removed from the market. This is probably the closest that directives generally come to addressing the issue of enforcement. Perhaps that is why the term is open to such wide interpretation and why there is currently no uniform approach to enforcement action across the EU?

Whatever the reason(s), EIPA considered this to be such an important new policy issue that it held a two-day Colloquium dedicated to the subject on 12 and 13 January and, unusually, invited representatives from industry and commerce to join Ministers and administrators to consider enforcement issues generally. About 70 participants from 10 EU Member States as well as from Cyprus, Hungary, Norway and the USA gathered to hear 17 speakers explain their understanding of what enforcement means and, from their personal experiences, what difficulties are currently being encountered with regard to it.

Building on the *Conference on Market Surveillance* (which addressed only consumer safety issues),

organised by the Swedish Ministry of Industry and Trade, the European Commission and the Swedish Board for Accreditation and Conformity Assessment (SWEDAC) and held in Stockholm in October 1997, Nigel Griffiths, Minister for Competition & Consumer Affairs at the Department of Trade and Industry in London gave the keynote address in which he thanked EIPA for giving him the first opportunity under the UK Presidency to emphasise his government's commitment to the above aims, which are widely supported and shared across the EU and beyond.

Graham Watson, UK Member of the European Parliament for Somerset and North Devon, told the audience of the importance attached by the European Parliament to proper enforcement, on which the success of the Internal Market depends. Noting its absence, he suggested the formation of an all-Party Group of MEPs to liaise with enforcement agents, industry and others on enforcement matters. Acknowledging the progress made in establishing the Internal Market, he encouraged consideration of new ideas to make it work better e.g. establishing a sophisticated system for monitoring enforcement (a role for specialised agencies?); transforming Europe Information Centres into redress and compliance centres and the need for an Internal Market Ombudsman.

Speaking for the European Commission, Jacques McMillan Head of Unit, DG III/B/4 – Quality, Certification & Conformity Marking, said that one of the main problems concerning enforcement was that the Commission did not know who was actually responsible in each of the Member States for enforcement policy issues under each of the *New Approach* directives in question. Aware that enforcement issues were of topical political and public concern, the Commission was considering what needed to be done. Senior colleagues were drafting a possible directive on Market Surveillance in order to achieve the desired certainty. But that may be unnecessary if the same ends might be achieved through informal guidance and voluntary co-operation, training and co-ordination of activities.

The Colloquium then went on to hear a succession of speakers tell of their organisations role in making the Internal Market work by assisting in the enforcement process. Starting with the enforcement agencies, LACOTS in the UK, the Swedish Consumer Agency and Prosafe explained how they saw and undertook their work. They repeated their request for adequate resources (financial and human) to fulfil their role properly, including the need for collaboration and co-operation – encouraged by the Commission.

George Hongler, Secretary-General of CEN in Brussels, spoke of the role and responsibilities of standards-makers in ensuring that directives requirements were met properly by good (i.e. clear and unambiguous) harmonised European standards. The standardisation bodies (CEN, CENELEC and ETSI) had expensive and heavy workloads. Success depended upon the availability, dedication and expertise of participants – some of the most knowledgeable were unable to participate personally because of commercial and budgetary constraints. Reaching a balanced, representative view was a constant aim but never easy to achieve. Increasing financial and time constraints added to the pressures, but cannot be ignored.

Other speakers talked of the roles played by implementing administrations in issuing guidance and sharing views and experiences. And businessmen added their voices to the growing call for central guidance to encourage uniformity of approach. Without that, they felt the *level playing field* would never be properly achieved.

Finally, a complete hush fell while Georg Haibach (a lawyer and lecturer at EIPA) gave a lawyer's impressions of what had been heard over the two days. His inclination was that a new directive was required to achieve the desired aims of uniform interpretation and application of relevant directives. Such an instrument was also needed to ensure that the Member States met their obligations to implement directives properly and to suffer the appropriate sanction(s) if they failed to ensure they were properly enforced. This may be inevitable. But, such a directive would take some time to draft, negotiate, formally adopt, transpose into national laws and enter fully into force. Industry demanded action now!

In the concluding Open Forum, many added their support for the central themes which emerged. SMEs again urged dispensation wherever possible as unnecessary burdens fell heavier on such businesses than their bigger counterparts. Brian Prime, President of the European Council for Small and Medium-Sized Independent Enterprises felt that a Legislative Audit Commission was needed to scrutinise European legislation to ensure that directives were not over-implemented or unnecessary burdens placed on business.

Whilst it is always difficult to summarise such a wide-ranging debate, the main conclusions reached by the participants were that because those responsible for the enforcement of each of the New Approach directives in each of the Member States have not been identified, it was recommended that the British Presidency should seek a commitment from the Council of Ministers that those details will be given to the Commission within three months of that meeting. Thereafter, having identified those persons, they should be called together for an analysis to be made of their current practices (including any inaction) and the reasons therefor. This should show where harmonisation already exists. It should also reveal significant differences and common problems, which can then be evaluated and appropriate action(s) considered.

Summing up for the participants, the author noted that their other significant points were:

- further legislation should be avoided and existing legislation simplified to increase understanding of and assist proper compliance with relevant directives;
- the Commission might consider issuing Guidance to

promote a common understanding of the term 'enforcement' and encourage uniformity in its application, perhaps through the joint training of those involved;

- hopefully, much of the above might be advanced voluntarily through increased and improved informal co-operation and co-ordination. But, *if necessary*, the Commission should propose a specific directive on enforcement to provide clarity and legal certainty; and finally
- the need for a Legislative Audit Commission and an Internal Market Ombudsman (to consider complaints from consumers) should be considered, as appropriate.

EIPA has been pleased to facilitate discussion on the above issues and its Director-General, Isabel Corte-Real, has offered all possible support to continuing the European harmonisation process. As a result, the author will shortly visit interested MEPs to inform them of the outcome of the Colloquium. He will also produce a report on the proceedings, which, when published, may be obtained (for a charge) from EIPA. He is already liaising with the Commission, Ministers and others to ensure that the impetus is not lost. However, to ensure the participants' conclusions are representative across the EU, EIPA plans to take a shorter version of the Colloquium later this year to Spain or Portugal, Greece and Strasbourg, as the Southern Mediterranean countries, France and Germany were conspicuous by their absence at the January event. Ideally, a concluding event might be arranged in Stockholm in early 1999 to round off the current deliberations and pave the way forward. Readers interested in any of these events should contact the author at EIPA for further details. ❑

Nigel Griffiths, Minister for Competition and Consumer Affairs at the Department of Trade and Industry (UK) delivering his keynote address at the colloquium 'Enforcement in the Internal Market' held at EIPA, Maastricht on 12-13 January 1998

Newsletter of the Regions in the European Union
Bulletin des Régions de l'Union européenne
Bulletin der Regionen der Europäischen Union

Rapide survol du bassin méditerranéen à travers les siècles

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1. Réflexions préliminaires

Ce que fut la macrorégion de la Méditerranée, ce qu'elle est aujourd'hui, ce qu'elle peut être ou ce que nous voulons qu'elle soit, autant de questions auxquelles chacun a sa réponse en fonction de sa perception particulière des faits.

Loin de moi l'idée de vouloir écrire ici une thèse qui jette un éclairage définitif sur ce qui est souvent complexe et opaque. Je compte simplement survoler les siècles à travers notre histoire et nos réalités communes. Ainsi, je souhaite revenir sur certains faits que je considère importants pour faire connaître à ceux qui sont nés sous d'autres latitudes ce que fut notre mer commune, ce qu'elle a signifié dans le passé et tout ce que nous souhaitons qu'elle soit.

Des écrivains, penseurs, artistes, économistes, philosophes et hommes politiques ont réfléchi ou ont écrit sur les multiples facettes qu'offre le cadre méditerranéen. Edgar Morin (F) avait coutume de dire que sans la Méditerranée, on ne pourrait pas parler d'Europe, ni d'Asie ou d'Afrique. "La Méditerranée redevient un espace émergent" selon l'expression de Baltasar Porcel, un des écrivains méditerranéens qui la connaissent bien. Et dans un autre passage de son oeuvre, il ajoute que "la Méditerranée a créé l'homme moderne". Il y a quelques jours, un écrivain marseillais disait que la Méditerranée est une mosaïque de cultures, qui est à la fois l'Orient et l'Occident réunis, qui n'est pas une zone frontière mais bien plus, même si dans sa diversité il s'agit d'un même "pays". D'autres disent que le bassin méditerranéen possède sa propre identité et est doté d'une unité, quoique dans la diversité.

Depuis quelque temps, on entend dire que l'Union européenne (UE), que l'Europe, a le regard tourné vers la Méditerranée, vers les pays méditerranéens du Sud et de l'Est, alors qu'en fait, elle ne les a jamais quittés et qu'elle a toujours été présente dans leur devenir historique.

La mer Méditerranée, notre mer située au milieu de terres connues dès l'Antiquité, était le cadre commun qui nous unissait et non pas un facteur de séparation et de rejet. Depuis toujours, ce fut une mer de communication, de trait d'union, de convergence, d'échanges et non une mer d'isolement ou de séparation. Cependant, elle fut parfois aussi source de divergences et de marginalisation. La Méditerranée est véritablement un creuset qui connut à travers les siècles et connaît encore aujourd'hui la fusion des diverses cultures des différents peuples installés sur ses rivages. A l'époque classique, ce fut un lieu de savoir, d'échanges, de culture civique, de création et de richesse. Gibraltar, dans sa pointe la plus occidentale, était sa minuscule porte de sortie qui ouvrait sur l'inconnu.

2. Au fil de l'histoire

Si l'on remonte jusqu'à l'époque la plus reculée, on peut dire à coup sûr que les peuples de l'Orient méditerranéen entretenaient déjà des relations commerciales avec les peuples de l'Occident, avec la Péninsule ibérique. Les Phéniciens ou les Crétois furent peut-être les premiers à naviguer vers l'Occident, attirés par l'étain d'Ibérie qui faisait l'objet d'un commerce intense dans le Sud de la péninsule. Il semble certain également que les Egyptiens, les Mycéniens et les Crétois s'aventurèrent aussi jusqu'à la péninsule à la recherche de métaux. Et c'est à partir de l'an 1000 av. J.-C. que l'Ibérie fut incorporée pleinement dans le commerce méditerranéen, comme l'attestent d'ailleurs plusieurs documents et vestiges archéologiques.

Le fait que les Phéniciens, les Grecs et les Carthaginois se lancèrent dans le commerce méditerranéen est dû essentiellement à des motifs de nature économique. Le commerce entraîna une croissance de la population sur les rives de la Méditerranée et, grâce aux mouvements migratoires, furent ainsi créées des "emporia" (comptoirs) (places commerciales sur des côtes éloignées), ainsi que des "colonies" (représentation de la ville-mère) et finalement des "*clerukias*" (postes stratégiques destinés à contrôler l'accès à une route commerciale importante).

Dans tout le pourtour méditerranéen, les peuples commercèrent mais luttèrent aussi pour des causes éminemment économiques. Ces conflits firent rage pendant plusieurs siècles et ne s'apaisèrent qu'après l'intégration de l'Hispanie dans l'Empire romain. Les Phéniciens, établis sur les côtes actuelles les plus orientales de la Méditerranée – aujourd'hui le Liban – étaient un peuple composé essentiellement de commerçants et doté d'un sens aigu des affaires. Les Grecs classiques, quant à eux, mirent le cap sur l'Occident et atteignirent ainsi le Sud de l'Italie (Nova Grecia) et même l'Hispanie. Ils y fondèrent des colonies, des peuplements, des "*emporia*", et y créèrent une zone de richesse grâce aux nombreux échanges. L'aspect le plus important ici est que la colonisation hellénique jeta les bases nécessaires pour l'apparition d'un sentiment de communauté hellénique dont l'élément de base était le développement du commerce.

Les Carthaginois étaient un peuple d'aventuriers mais aussi de commerçants, qui firent honneur à leurs origines phéniciennes et qui succédèrent à ceux-ci dans le Nord de l'Afrique et dans le Sud de l'Espagne, où ils créèrent des peuplements. Pendant cette période, le transport maritime connut un grand essor.

L'an 750 av. J.-C. marqua la fondation de Rome et les guerres puniques produisirent des blocus commerciaux; à partir de la 2ème guerre punique, qui se déroula en Hispanie, les Romains expulsèrent les Carthaginois et pénétrèrent en Espagne qu'ils incorporèrent à l'Empire romain. La paix d'Auguste favorisa le commerce et Rome devint le centre de toutes les communications. Grâce à l'essor que connut Rome, la Méditerranée devint une véritable mer intérieure, le *Mare Nostrum*, entourée des territoires de l'Empire (Galia, Hispania, Lusitania, Mauritania, Tracia, Grecia, Dacia, etc.). A partir des années 450 de notre ère, les

Vandales, peuple venu du centre de l'Europe, s'établirent en Hispanie et leurs vaisseaux dominèrent la Méditerranée occidentale.

Du Maghreb nous parvinrent – entre le VIIIème et le XVème siècle – d'autres cultures, la berbère et l'arabe, entre autres, qui exercèrent une grande influence sur nos us et coutumes et sur notre langue. Leur influence au plan commercial fut également très importante au cours de cette période.

Dans le monde médiéval, Barcelone (qui fut reconquise par Charlemagne et faisait partie de l'empire carolingien dans la région appelée *Marca Hispanica*) était une importante ville commerciale et fut l'un des grands ports de contact entre le monde chrétien et le monde musulman dans la Méditerranée occidentale. A partir du XIème siècle, le commerce arabe dans la Méditerranée disparut à la suite de la Reconquête espagnole et des Croisades. A partir de ce moment, le commerce et l'économie se développèrent de manière significative. On peut dire que ce sont là les origines du capitalisme. Les premières compagnies sont ainsi créées dans différentes villes européennes et quelques-unes des grandes places bancaires sont établies dans la Méditerranée.

Le commerce catalan-aragonais au bas moyen âge se développe aux XIIIème, XIVème et XVème siècles dans l'espace méditerranéen. Toutefois, il faut remarquer que la rivalité entre Génois, Vénitiens et Catalans-Aragonais donna souvent lieu à des affrontements.

Dans le bas moyen âge on créa en Espagne des "*alfóndigos*" (concessions d'extraterritorialité que les souverains musulmans donnaient aux commerçants pour créer des zones commerciales); ces concessions donnèrent naissance au "Consulat de la Mer", un important système mercantile (corporation professionnelle des gens de la mer réunis en vue de la défense de leurs intérêts) répandu dans tout le pourtour méditerranéen. Grâce à cette institution, le commerce dans la Méditerranée connut la prospérité (lettre de change, sociétés commerciales, compagnies).

En bref, on peut dire que cette période fut marquée par des conflits religieux, économiques, politiques et militaires entre les empereurs chrétiens et l'empire ottoman.

Comme on le sait, la Renaissance marqua un retour vers le passé, vers les valeurs classiques, et la Méditerranée redevint le centre de ces valeurs dont allaient s'inspirer les Etats modernes.

Reportons-nous à présent à des événements historiques plus récents. Il faut dire cependant que si par le passé la Méditerranée a été une zone d'expéditions et de conquêtes, d'échanges, d'apparition et diffusion de cultures, son destin aujourd'hui est d'être un lieu d'éclosion de valeurs universelles telles que la concorde, la fraternité, la culture, le progrès économique et la justice sociale.

3. L'Union européenne et la Méditerranée

Au moment de la signature du Traité de Rome (1957) on assiste à l'indépendance du Maroc et de la Tunisie et en 1962 à celle de l'Algérie. Dans ce contexte, la Communauté économique européenne et les pays de cette région conclurent un certain nombre de conventions bilatérales de nature commerciale et à durée limitée. Dans la deuxième moitié des années 60, on envisagea même à un certain moment une stratégie régionale plus grande par la création d'une zone de libre-échange.

Dans la période 1972-1990, avec le passage de l'Europe des Neuf à l'Europe des Douze, les voisins du flanc méridional et oriental de la Méditerranée renégocièrent les conditions des conventions et on envisagea déjà le développement économique et social de la région dans ce qui fut appelé la Politique Globale Méditerranéenne (PGM). Celle-ci reposait sur deux instruments de base:

a) les préférences tarifaires (exemptions pour certaines exportations, principalement de nature agricole); et
b) les accords de coopération technique et financière (aides à l'industrie, à des projets de formation et de recherche).

Cependant, face à la situation de la région, on crut opportun de doter la politique méditerranéenne d'un nouveau cadre. De 1990 à 1996, on lança la Politique Méditerranéenne Rénovée (PMR) qui envisageait cinq domaines d'action:

i) renforcer les mesures de soutien pour la réforme de l'économie des pays de la Méditerranée méridionale et orientale (PMMO);
ii) encourager les investissements privés;
iii) accroître le financement bilatéral et communautaire des ajustements structurels;
iv) ouvrir l'accès au marché de l'UE; et
v) renforcer le dialogue politique et économique.

Toutes ces mesures se voulaient un pas important à la fois sur le plan quantitatif et qualitatif, mais – sans entrer dans les détails – l'impact sur ces pays a été inégal et l'enlisement de cette région est évident.

A plusieurs reprises lors des Conseils européens de l'Union européenne, les relations de l'UE avec ces pays ont été au centre des débats. Je ne citerai que quelques-uns de ces Sommets européens. A Lisbonne (P) en juin 1992, on proposa la création d'un partenariat euro-maghrébin. A Corfou (G) en juin 1994, on reconnut que la Méditerranée doit être une zone de coopération, de paix, de sécurité et de bien-être, objectif qui exige la collaboration euro-méditerranéenne. A Essen (D) en décembre 1994, on définit la stratégie de l'UE vis-à-vis de l'Est mais aussi vis-à-vis de la Méditerranée; on confirma l'idée d'un partenariat euro-méditerranéen et on se mit d'accord sur la tenue de la Conférence de Barcelone (en novembre 1995). A Cannes (F) en juin 1995, on réalisa une avancée qualitative importante en donnant une dimension nouvelle et en prenant en compte les aspects de sécurité dans cette région. Et à Madrid (E) en décembre 1995, avec la Déclaration de la première Conférence euro-méditerranéenne des ministres des Affaires étrangères tenue à Barcelone les 27 et 28 novembre 1995, on fixa quelques objectifs plus concrets et on détermina un programme de travail dont la teneur était la suivante:

i) créer vers l'an 2010 un espace euro-méditerranéen de prospérité partagée, intégré par les Etats membres de l'Union européenne ainsi que par les Pays de la Méditerranée méridionale et orientale (PMMO);
ii) conclure des accords individuels d'association économique, sociale et politique avec l'UE;
iii) produire, grâce à la zone de libre-échange, conjuguée au dialogue politique et aux mécanismes de cohésion, la modernisation de l'appareil productif des pays de la région à travers l'encouragement d'actions de coopération régionale entre les autorités locales et avec l'appui de la planification régionale.

La conférence définit en 1996 une Nouvelle Stratégie Méditerranéenne (NSM) appelée Partenariat Euro-Méditerranéen (PEM). Il s'agit d'une politique non

seulement "pour" mais aussi "avec" les PMMO. Dès lors, cela représente un pas en avant, qui va au-delà des simples aides et poursuit un objectif de partenariat et de co-développement. Les principales caractéristiques en sont:

i) les aspects liés à des questions politiques et de sécurité conformément à la charte des Nations unies et à la déclaration universelle des droits de l'homme;
ii) la coopération économique avec une zone de libre-échange pour l'an 2010 en vue de promouvoir la croissance équilibrée dans une zone de prospérité partagée, à l'aide d'accords d'association bilatéraux entre ces pays et l'UE;
iii) une amélioration des conditions de vie des populations, sur la base de la coopération et de l'intégration régionale;
iv) les questions sociales et humaines, en mettant l'accent sur la société civile, sur la compréhension des cultures et les échanges en tous genres, ainsi que sur la protection de l'environnement.

La NSM s'articule en conséquence autour de trois domaines de base pour ce qui concerne l'octroi d'aides:

1) soutien à la transition économique;
2) aides à un meilleur équilibre socio-économique par un renforcement des relations politiques entre les PMMO;
3) assistance à l'intégration régionale en vue de créer une zone de libre-échange.

Jusqu'ici, quelques accords euro-méditerranéens ont été formalisés, avec la Tunisie, le Maroc et Israël; d'autres sont en cours de négociation avec l'Egypte et la Jordanie. Un accord commercial et de coopération a été signé avec l'Autorité palestinienne et des accords avec d'autres pays en sont à un stade avancé de négociation. Avec Chypre, il existe un accord de pré-adhésion à l'UE. Ces accords prévoient le libre accès à l'UE pour des produits manufacturés, l'élimination des obstacles tarifaires pour les importations de l'UE, un meilleur accès de leurs produits agricoles à l'UE, le droit d'établissement réciproque pour les investisseurs, l'harmonisation des normes en matière de concurrence, la promotion de la coopération sur des questions relatives aux migrations, etc.

La deuxième Conférence euro-méditerranéenne des ministres des Affaires étrangères (Malte 15/16 avril 1997) poursuivait trois objectifs:

i) ratifier les résultats obtenus depuis la Conférence de Barcelone – création d'une zone euro-méditerranéenne de libre-échange comme facteur de compétitivité et d'insertion dans le système d'échanges internationaux;
ii) adapter éventuellement le programme initial; et
iii) adopter des mesures complémentaires d'ici la prochaine conférence.

Un certain nombre de réunions se sont tenues qui ont permis de réaliser une avancée sur les aspects régionaux du partenariat politique et de sécurité et du partenariat économique et financier par l'adoption d'actions visant à approfondir l'espace économique euro-méditerranéen et le partenariat social, culturel et humain en vue de développer les ressources humaines et favoriser les échanges.

Toute une série d'autres actions ont été lancées à la lumière des lignes directrices définies par la Conférence de Barcelone (un exemple important à cet égard est le Forum civil euro-méditerranéen impulsé et coordonné par l'Institut Catalan d'Etudes de la Méditerranée (ICEM), Barcelone).

Les programmes communautaires MEDA, approuvés il y a quelques mois (juillet 1997) et destinés aux Etats, régions, municipalités, organisations publiques et opérateurs privés, représentent un important instrument pour la réalisation d'actions de promotion de la stabilité, du libre-échange et de la coopération régionale de la région, tout en tenant compte de la dimension économique et culturelle.

4. En guise de résumé

On pourrait dire que les axes définis par la NSM sont d'une grande importance pour les PMMO. Cependant les réalisations obtenues jusqu'ici, bien qu'ayant eu un effet positif, doivent être poursuivies. Tout le monde reconnaît que l'amélioration de la situation relative de ces pays dépend à la fois de la coopération communautaire et des politiques d'ajustement interne qu'ils appliquent. C'est là un défi que l'UE doit relever avec une volonté de coopération et de service, par l'établissement de réseaux et, surtout, par l'ouverture d'un dialogue permanent avec nos voisins de la Méditerranée.

Le développement économique et social des pays de la Méditerranée méridionale et orientale suppose bien entendu un secteur privé moderne et efficace mais aussi un secteur public moderne, une administration publique à jour et des ressources humaines efficaces et efficientes, qui contribuent à la mise à jour et à la coopération interinstitutionnelle et interrégionale dans ce domaine. A cette fin, plusieurs projets privés ont été lancés, mais la priorité doit aussi aller aux objectifs de formation et de renforcement des capacités, tant dans le secteur privé que dans le secteur public. La création de réseaux avec des institutions et des écoles de formation de fonctionnaires des administrations publiques entre les pays de l'UE et de la Méditerranée méridionale et orientale est un facteur important à ne pas négliger.

Dans ce contexte, le Centre Européen des Régions (CER)-Institut européen d'administration publique, situé à Barcelone, compte apporter une contribution dans le domaine de ses attributions spécifiques dans le cadre de la coopération régionale pour l'intégration dans la macrorégion méditerranéenne.

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A Bird's-Eye View of the Mediterranean Basin through the Centuries

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1. Preliminary observations

What the Mediterranean macro-region was, what it is now, what it may be and what we want it to be; so many questions, so many answers, depending on how the facts are perceived from specific angles.

Far be it from me to write a thesis here which provides a definitive explanation of what is often complex and obscure. I merely intend to skim through the centuries of our history and our common realities. In this way, I wish to return to certain facts which I believe are important to explain to those born in other parts of the world what our common sea was, what it meant in the past and all that we want it to be in the future.

Writers, thinkers, artists, economists, philosophers and politicians have reflected on or written about the many sides of the Mediterranean. Edgar Morin (F) used to say that without the Mediterranean one cannot speak of Europe, Asia or Africa. In the words of Baltasar Porcel, one of the Mediterranean writers familiar with the region, 'The Mediterranean is becoming an area of major significance again'. Elsewhere in his work he mentions that 'the Mediterranean has shaped modern man.' A few days ago, a Marseilles writer said that the Mediterranean is a mosaic of cultures which unites East and West and which is not a border area but much more, even though in its diversity it is the same 'country'. Others say that the Mediterranean basin has its own identity and is unified even in its diversity.

For some time now we have been hearing that Europe, the European Union (EU), has its eye on the Mediterranean, on the countries of the southern and eastern Mediterranean, but in fact they have never been out of its sight and it has always been present in their historical evolution.

The Mediterranean Sea, our sea in the midst of land known since ancient times, was the common framework which united us, not a separating or excluding factor. It has always been a sea of communication, connection, convergence, trade, not a sea of isolation or separation. Still, it sometimes was a source of gaps and marginalization as well. Through the ages, the Mediterranean has been a veritable melting pot which witnessed, and is still witnessing, the merging of the different cultures of the peoples living on its shores. In classical times it was a place of knowledge, trade, civic culture, creation and wealth. Gibraltar, at its western extreme, was its tiny exit opening onto the unknown.

2. A historical overview

Going back to the most distant ages, one can definitely say that the people of the Eastern Mediterranean were already maintaining trade relations with the people of the West, with the Iberian Peninsula. The Phoenicians or the Cretans may have been the first ones to sail west, drawn by the Iberian tin which was the object of intensive trade in the south of the peninsula. It seems certain that the Egyptians, Myceneaens and Cretans also ventured as far as the peninsula in search of metal. And as of 1000 B.C., Iberia became fully part of Mediterranean trade, as proven by various archaeological documents and relics.

The Phoenicians, the Greeks and the Carthaginians took up Mediterranean trade primarily for economic reasons. Trade resulted in a growing population on the shores of the Mediterranean and, thanks to migration, this led to the establishment '*emporia*' ('staple towns': trading posts on faraway shores), as well as settlements (representations of the 'mother city') and finally '*clerukias*' (strategic posts to control access to important trading routes).

All around the Mediterranean, people traded but also fought for mostly economic reasons. Such conflicts raged for several centuries and only subsided after Hispania became part of the Roman Empire. The Phoenician population which used to live on the easternmost shores of the Mediterranean – now the Lebanon – consisted mainly of traders and had a keen sense of business. The classical Greeks headed for the west, reaching the south of Italy (Nova Grecia) and even Hispania. They founded settlements there, established populations, '*emporia*' and created a wealthy area thanks to trade. The most important aspect was that Greek colonization laid the necessary foundations for the emergence of a Greek community feeling, the basic element of which was the development of trade.

The Carthaginians were a people of adventurers but also of traders that did honour to their Phoenician origins and succeeded them in Northern Africa and Southern Spain, where they established settlements. In this period sea transport was booming.

The year 750 B.C. marked the foundation of Rome. The Punic Wars later led to trade blockades. After the Second Punic War, which took place in Hispania, the Romans expelled the Carthaginians and entered Spain which they annexed to the Roman Empire. The peace under Augustus stimulated trade and Rome became the centre of all communication. As a result of Rome's expansion, the Mediterranean became a genuine inland sea, *Mare Nostrum*, surrounded by the Empire's territories (Gaul, Hispania, Lusitania, Mauritania, Thrace, Grecia, Dacia, etc.). As of the year 450 A.D., the Vandals, a people from Central Europe, settled in Hispania and their ships dominated the western Mediterranean.

From the Maghreb we come, between the 8th and 15th century, to other cultures, the Berbers and the Arabs, to name but two, which had a great influence on our habits, customs and language. Their influence on trade was also considerable during this period.

In medieval times, Barcelona (which was reconquered by Charlemagne and formed part of the Carolingian Empire, called *Marca Hispanica*) was a trading town, one of the major ports of contact between the Christian and Muslim world in the western Mediterranean. As of the 11th century, Arab trade in the Mediterranean disappeared following the Spanish reconquest and the crusades. From that time onwards, trade and economy developed significantly. One can say that here lie the origins of capitalism. The first companies were set up in various European cities and some of the most important banking centres were established in the Mediterranean.

Catalan-Aragonese trade in the late middle ages developed in the 13th, 14th and 15th centuries in the Mediterranean area. However, rivalry between the Genoese, Venetians and

Catalans-Aragonese often led to confrontations.

In Spain in the late middle ages the '*alfondigos*' were created (extraterritoriality concessions which the sovereign Muslims granted to traders in order to create trade areas) and from these the Sea Consulate originated, a professional corporation of seafarers to protect their interests. This important commercial practice became widespread around the Mediterranean. As a result, trade in the Mediterranean flourished (bills of exchange, trading firms, companies).

In short, one can say that this period was marked by religious, economic, political and military conflicts between the Christian emperors and the Ottoman Empire.

As we know, the Renaissance marked a return to classical values and the Mediterranean again became the centre of these values from which the modern states have drawn their inspiration.

Let us, for now, leave the more recent historical events for what they are. However, it should be pointed out that while in the past the Mediterranean has been an area of expedition and conquest, of trade and development and spreading of cultures, its current destiny is to be a cradle of universal values: harmony, fraternity, culture, economic progress and social justice.

3. The European Union and the Mediterranean

Morocco and Tunisia gained independence around the time the Treaty of Rome was signed (1957), while Algeria became independent in 1962. In this context, the European Economic Community and the countries of this region concluded a number of bilateral trade agreements for limited periods of time. At a certain point in the second half of the sixties, there were even plans for developing a larger regional strategy by creating a free trade area.

In the period 1972-1990, when the Europe of Nine became the Europe of Twelve, the southern and eastern neighbours in the Mediterranean renegotiated the conditions in the agreements and the region's economic and social development was envisaged in what was called the Global Mediterranean Policy (GMP), which relied on two basic instruments:

i) tariff preferences (exemptions for certain, mainly agricultural, exports) and
ii) technical and financial cooperation agreements (aid for industry and for training and research projects).

However, in view of the situation in the region it was thought best to give the Mediterranean policy a new framework. For 1990 to 1996, the New Mediterranean Policy (NMP) was developed which included five areas of action:

i) strengthening support measures for economic reforms in the southern and eastern Mediterranean countries,
ii) stimulating private investment,
iii) increasing bilateral and community financing of structural adjustments,
iv) opening up the EU market, and
v) strengthening the political and economic dialogue.

The above was an important step at both quantitative and qualitative level, but it must be said, without going into too much detail, that the impact on these countries was unevenly distributed and it is clear that this region has 'stranded'.

On several occasions at the European Councils of the EU, the EU's relations with these countries were the centre of debate. I will only mention a few of these European Summits. In Lisbon (P) in June 1992, a proposal was made to set up an EC-Maghreb partnership. On Corfu (GR) in June 1994, it was recognized that the Mediterranean should be an area of cooperation, guaranteeing security and well-being, an objective which can be based on Euro-Mediterranean cooperation. In Essen (D) in December 1994, the EU's strategy as regards the East as well as the Mediterranean was defined; the Summit confirmed the idea of a Euro-Mediterranean partnership and agreed to hold the Conference of Barcelona (in November 1995). In Cannes (F) in June 1995, an important qualitative step forward was made by adding a new dimension and taking the security aspects of this region into consideration. And in Madrid (E) in December 1995, with the Declaration of the first Euro-Mediterranean Conference of Ministers of Foreign Affairs in Barcelona on 27-28 November 1995, more concrete objectives were set and a work programme was developed:

i) by the year 2010 a Euro-Mediterranean area of shared prosperity should be created, integrated by the EU Member States and the southern and eastern Mediterranean countries;
ii) the formalization of individual economic, social and political association agreements with the EU; and
iii) the free-trade area, in combination with the political dialogue and cohesion mechanisms, should result in the modernization of production in this region through stimulation of regional cooperation between local authorities, with the help of regional planning.

In 1996 the Conference defined a New Mediterranean. Strategy (NMS) called the Euro-Mediterranean Partnership (EMP). This is a policy not only 'for' but also 'with' the southern and eastern Mediterranean countries. This is therefore a step forward, going beyond mere aid and pursuing a partnership and co-development objective. Its main aspects are:

i) aspects related to political and security issues in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights;
ii) economic cooperation in the form of a free-trade area for the year 2010 with a view to furthering balanced growth in an area of shared prosperity on the basis of bilateral association agreements between EU countries;
iii) improving the living conditions of the population on the basis of regional cooperation and integration;
iv) social and human aspects, with the emphasis on civil society, on understanding between cultures and exchanges in all areas, as well as on environmental protection.

Consequently, the NMS is structured around three basic areas where granting of aid is concerned: i) support for the economic transition; ii) support for a better socio-economic balance by strengthening political relations between the southern and eastern countries in the Mediterranean; iii) assistance to regional integration with a view to the establishment of a free-trade area.

So far, a number of Euro-Mediterranean agreements have been formalized, with Tunisia, Morocco and Israel; others are being negotiated with Egypt and Jordan. A trade and cooperation agreement has been signed with the Palestinian Authority and agreements with other countries are in an advanced stage of negotiation. There is a pre-accession agreement between Cyprus and the EU. These agreements aim at free access to the EU for manufactured products, removal of tariff barriers for EU imports, better access to the EU for their agricultural products, the right of establishment for investors, harmonization of standards in the field of competition, subsidies, promotion of cooperation on migration issues, etc.

The second Conference of Ministers of Foreign Affairs of the Mediterranean (Malta, 15-16 April 1997) had three objectives:

i) ratification of the results achieved since the Barcelona Conference – establishing a free-trade Euro-Mediterranean area as a factor of competitiveness and inclusion in the

international trading system;

ii) possible adaptation of the initial programme; and

iii) adoption of complementary measures by the time the next conference takes place.

A number of meetings have taken place as a result of which progress has been made regarding the regional aspects of the political, economic, financial and security partnership through the adoption of actions to enhance the Euro-Mediterranean economic area, and in the social, cultural and human partnership aimed at developing human resources and promoting exchanges.

A whole range of other actions has been launched in the framework of the guidelines defined by the Barcelona Conference (the Euro-Mediterranean Civil Forum instigated and coordinated by the Catalan Institute for Mediterranean Studies (ICEM), Barcelona, is an important example).

The MEDA programmes of the EU, which were approved a few months ago (July 1997) and are targeted at states, regions, municipalities, public institutions and private operators, are important instruments for realizing actions to promote stability, free trade and regional cooperation in the region, while taking into account the economic and cultural dimensions.

4. Summary

One could say that the main lines defined by the NMS are very important to the southern and eastern countries in the Mediterranean. However, although the results achieved so far have had a positive effect, efforts in this field should be continued. Everyone agrees that improvement in the relative situation of these countries depends both on community cooperation and on the internal adjustment policies they conduct. This is a challenge that should be taken up on the part of the EU in a spirit of cooperation and service, by setting up networks and particularly by launching a permanent dialogue with our neighbours in the Mediterranean.

Of course, the economic and social development of the southern and eastern countries in the Mediterranean presupposes a modern and efficient private sector but also a modern public sector and public administration and effective and efficient human resources which contribute to modernization and interinstitutional and interregional cooperation in this field. To this end, various private projects have been launched but priority should also be given to training objectives and strengthening of capacities in both the private and the public sector. The creation of networks between training schools for civil servants of public administrations in the EU Member States and the southern and eastern Mediterranean is an important factor which should not be disregarded.

In this context, the Barcelona-based European Centre of the Regions (ECR)-European Institute of Public Administration intends, by virtue of its specific attributions, to make a contribution in the framework of regional cooperation for integration into the Mediterranean macro-region.

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Présentation du Centre Européen des Régions (CER) aux Consuls généraux à Barcelone des Etats membres de l'Union européenne et des pays candidats, le 30 janvier 1998.
Cette réunion fut présidée par Mme Isabel Corte-Real, Directeur général de l'Institut européen d'administration publique. Prirent la parole à cette occasion le Directeur de la Représentation de la Commission européenne à Barcelone, Miquel Argimón; le Directeur général des relations extérieures du gouvernement catalan, Joaquim Llimona; et le Directeur du CER, Eduardo Sánchez Monjo

Im Flug durch Raum und Zeit – das Mittelmeer im Spiegel der Jahrhunderte

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1. Einige einleitende Bemerkungen

Was die Makroregion Mittelmeer war, ist, sein kann oder welche Rolle wir ihr wünschen sind Fragen, auf die jeder seine persönliche Antwort weiß, entsprechend seiner eigenen Wahrnehmung der Fakten.

Keinesfalls ist es hier mein Ziel, einen Beitrag leisten zu wollen, der ein definitives Licht auf etwas wirft, das sich oft dunkel und undurchschaubar zeigt. Ich möchte nur einen kurzen Gang durch unsere Geschichte und gemeinsamen Gegebenheiten unternehmen. Und ich möchte einige Fakten hervorheben, die ich für wesentlich halte, um unseren Kollegen in anderen Breitengraden einen Eindruck davon zu vermitteln, was das Mare Nostrum war, was es bedeutete und vor allem was es nach unserem Wunsch sein soll.

Schriftsteller, Denker, Künstler, Wirtschaftswissenschaftler, Philosophen und Politiker haben über die vielfältigen Facetten nachgedacht und geschrieben, die der Mittelmeerraum bietet. Edgar Morin (F) äußerte, daß ohne das Mittelmeer weder Europa noch Asien oder Afrika zu verstehen sind. "Das Mittelmeer wird erneut zu einem Raum vorrangiger Bedeutung", meinte Baltasar Porcel, einer der Schriftsteller der Region, der den Mittelmeerraum gut kennt. An einer anderen Stelle in seinem Werk fügt er hinzu, "das Mittelmeer hat den modernen Menschen geschaffen". Und vor kurzem erklärte ein Marseiller Schriftsteller, das Mittelmeer sei ein Mosaik von Kulturen, gleichzeitig östlich und westlich, kein Grenzraum, sondern vielmehr gerade in seiner Diversität ein "Land". Andere sprechen von der eigenen Identität des Mittelmeerraums, die Einheit in Vielfalt verkörpert.

Seit einiger Zeit wird gesagt, daß die Europäischen Union (EU), daß Europa das Augenmerk auf das Mittelmeer richtet, auf die Länder an seinen südlichen und östlichen Küsten, die es jedoch in Wirklichkeit nie verlassen hat, sondern wo es in der historischen Entwicklung stets präsent war.

Das Mittelmeer, das Mare Nostrum, das von den Ländern umgeben wird, die seit der Antike bekannt sind, war der Raum, der uns vereint hat und nicht ein Faktor der Trennung und Abwehr. Schon immer war es ein Meer der Kommunikation, der Verknüpfung, der Konvergenz, des Austausches und nicht der Isolierung oder Trennung, jedoch zuweilen auch der Auseinandersetzungen und Marginalisierung. Das Mittelmeer war über die Jahrhunderte hinweg ein wahrer Schmelztiegel der verschiedenen Kulturen der Völker an seinen Ufern und ist dies auch bis heute geblieben. Im Altertum war es ein Ort der Weisheit, des Austausches, der Zivilkultur, der Schaffung von Reichtum. Gibraltar, an seinem westlichsten Punkt gelegen, war die schmale Ausgangspforte ins Unbekannte.

2. Im Verlauf der Jahrhunderte

Gehen wir einmal im Fluge zu den frühesten Epochen zurück, so läßt sich mit Sicherheit sagen, daß die Völker im östlichen Mittelmeer bereits Handelsbeziehungen zu den Völkern im Westen, mit der iberischen Halbinsel unterhielten. Möglicherweise waren die Phönizier oder Kreter die ersten, die nach Westen segelten, angezogen durch das iberische Zinn, das Gegenstand des aktiven Handels im Süden der Halbinsel war. Sicher ist auch, daß die Ägypter, die Mykener und Kreter ebenfalls auf der Suche nach den dort vorhandenen Metallen zu der Halbinsel gelangten. Um das Jahr 1000 v. C. wurde die iberische Halbinsel dann, wie sich durch Dokumente und archäologische Funde belegen läßt, voll in den Handel im Mittelmeerraum integriert.

Die Tatsache, daß die Phönizier, Griechen und Karthager den Handel im Mittelmeerraum begannen, ist vor allem auf wirtschaftliche Gründe zurückzuführen. Der Handel brachte eine Zunahme der Bevölkerung an den Ufern des Mittelmeers und mit den Wanderungsbewegungen entstanden die "emporia" (Handelsniederlassungen an fernen Küsten), "Kolonien" (Vertretungen der Mutterstadt) und schließlich "Clerukias" (strategische Stellungen, die der Kontrolle des Zugangs zu einem bedeutenden Wasserweg dienten).

Im gesamten Mittelmeerraum trieben die Völker Handel, aber es kam auch – vorrangig aus wirtschaftlichen Motiven – zu Auseinandersetzungen zwischen den Völkern. Dieser Zustand hielt mehrere Jahrhunderte an, und die Konflikte fanden erst mit der Integration Hispaniens in das Römische Reich ein Ende.

Die Phönizier kamen von den Küsten im äußersten Osten des Mittelmeeres – dort, wo heute der Libanon liegt. Es handelte sich überwiegend um ein Volk von Händlern, mit einem stark ausgeprägten Sinn dafür, was der Handel bedeutete.

Die Griechen des klassischen Zeitalters lenkten ihre Schiffe nach Westen und gelangten in den Süden Italiens (Nova Grecia) sowie auch nach Hispanien. Hier gründeten sie Siedlungen, Dörfer und „emporia" und schufen Reichtum durch Handel. Dabei ist von Bedeutung, daß die griechische Kolonialisierung die notwendige Basis für das Entstehen eines hellenischen Gemeinschaftsgefühls mit der Entwicklung des Handels als Grundlage schuf.

Die Karthager waren ein Volk von Abenteurern, jedoch ihrem phönizischen Ursprung getreu auch von Händlern und folgten ihren Vorfahren im Norden Afrikas und Süden Spaniens nach, wo sie Siedlungen anlegten. In dieser Zeit blühte der Seetransport.

Im Jahre 750 v. C. wurde Rom gegründet und die Punischen Kriege zogen Handelsblockaden nach sich. Ab dem 2. Punischen Krieg, der Hispanien zum Schauplatz hatte, vertrieben die Römer die Karthager und breiteten sich in Spanien aus, das in das Römische Reich eingegliedert wurde. Der Frieden des Augustus förderte den Handel, und Rom wurde zum Zentrum aller Verbindungswege. In römischer Zeit wurde das Mittelmeer zu einem wirklichen Binnenmeer, dem Mare Nostrum, das von den Gebieten des Imperiums umgeben wurde (Galia, Hispania, Lusitania, Mauritania, Tracia, Grecia, Dacia usw.). Ab 450 n. C. drangen die Wandalen, ein aus Mitteleuropa kommendes Volk, in Hispanien ein, und ihre Schiffe dominierten das westliche Mittelmeer.

Aus dem Maghreb gelangten – zwischen dem 8. und 15. Jahrhundert – weitere Kulturen, u. a. die Berber und Araber, zu uns, die einen großen Einfluß auf unsere Sitten und Gebräuche sowie auf unsere Sprache hatten. Auch im Hinblick auf den Handel war ihr Einfluß während dieses Zeitraums

wesentlich.

In der mittelalterlichen Welt war Barcelona (das nach der Eroberung durch Karl den Großen unter dem Namen *Marca Hispanica* Teil des Karolingerreiches wurde) eine wichtige Handelsstadt und einer der wichtigsten Verbindungshäfen zwischen der christlichen und islamischen Welt im westlichen Mittelmeer. Mit der Wiedereroberung Spaniens aus der Maurenherrschaft und den Kreuzzügen nahm im 11. Jahrhundert der arabische Handel im Mittelmeerraum seinen Ausklang. Handel und Wirtschaft entwickelten sich von diesem Zeitpunkt an beträchtlich. Es läßt sich sagen, daß hier der Kapitalismus seinen Ursprung nahm. In verschiedenen europäischen Städten wurden die ersten Unternehmungen gegründet und im Mittelmeerraum entstanden einige wichtige Bankplätze.

Der katalanisch-aragonische Handel entstand im Spätmittelalter im Mittelmeerraum im 13., 14. und 15. Jahrhundert. Die Rivalität zwischen Genuesen, Venezianern und Katalanen-Aragoniern gab wiederholt Anlaß zu zahlreichen kämpferischen Auseinandersetzungen.

Im späten Mittelalter entstanden in Spanien die "alfóndigos" (Gewährungen der Extraterritorialität, die islamische Herrscher an Händler zur Errichtung von Handelsgebieten verliehen) und aus diesen entwickelte sich als wichtige merkantile Praxis im gesamten Mittelmeerraum das Consulat de Mar (eine Standesvereinigung von Seefahrern zur Verteidigung ihrer Interessen). Durch diese Einrichtung erfuhr der Handel rund um das Mittelmeer einen erheblich Aufschwung (Wechsel, Handelsgesellschaften, Unternehmungen).

Zusammenfassend läßt sich sagen, daß dieser Zeitraum von religiösen, wirtschaftlichen, politischen und militärischen Konflikten zwischen den christlichen Herrschern und dem Osmanischen Reich gekennzeichnet war.

Bekanntlich bedeutete Renaissance den Blick zurückzuwenden auf die Werte der Antike. Damit wurde das Mittelmeer erneut zum Zentrum dieser Werte, die von den modernen Staaten aufgenommen wurden.

Ich möchte hier nicht auf andere Ereignisse der jüngeren Geschichte zu sprechen kommen. Es sei jedoch gesagt, daß wenn das Mittelmeer in früheren Zeiten ein Raum der Heereszüge und Eroberungen, des Handels und der Geburt und Verbreitung von Kulturen war, seine heutige Bestimmung darin liegt, ein Raum zu sein, in dem universelle Werte wie Eintracht, Brüderlichkeit, Kultur, wirtschaftlicher Fortschritt und soziale Gerechtigkeit herrschen.

3. Die Europäische Union und der Mittelmeerraum

Zur Zeit der Unterzeichnung der Römischen Verträge (1957) erlangten Marokko und Tunesien die Unabhängigkeit, 1962 Algerien. Vor diesem Hintergrund schlossen die Europäische Wirtschaftsgemeinschaft und die Länder des Raumes einige bilaterale Übereinkommen, die wirtschaftlicher Natur und von begrenzter Dauer waren. In der zweiten Hälfte der 60er Jahre wurde sogar über eine breiter angelegte regionale Strategie mit der Schaffung einer Freihandelszone nachgedacht.

Im Zeitraum 1972-1990 – in dem das Europa der 9 zu einem Europa der 12 wurde – verhandelten die Nachbarländer des südlichen und östlichen Mittelmeerraums die in den Abkommen festgelegten Bedingungen neu, und es wurde mit dem sogenannten Mittelmeer-Globalkonzept die wirtschaftliche und soziale Entwicklung ins Auge gefaßt. Dieses Konzept basierte im wesentlichen auf zwei Instrumenten:

i) Zollpräferenzen (Begünstigungen für bestimmte Exportgüter, vor allem Agrarwaren) und
ii) Abkommen zur technischen und finanziellen Zusammenarbeit (Beihilfen an die Industrie, Projekte im Bildungs- und Forschungsbereich).

Die Situation in der Region ließ jedoch ein erneutes Überdenken der Mittelmeerpolitik für angebracht erscheinen. Im Zeitraum 1990 bis 1996 wurde die "neue Mittelmeerpolitik" aufgenommen, die fünf Aktionsbereiche umfaßte:

i) die verstärkte Unterstützung der Maßnahmen zur Wirtschaftsreform in den Ländern des südlichen und östlichen Mittelmeerraums,
ii) die Förderung privater Investitionen,
iii) die Erhöhung der finanziellen bilateralen und gemeinschaftlichen Unterstützung der Strukturanpassung,
iv) die Erleichterung des Zugangs zu den Märkten der EU und
v) die Förderung des politischen und wirtschaftlichen Dialogs.

Diese Maßnahmen sollten einen qualitativ wie quantitativ bedeutenden Schritt darstellen, ohne näher auf Einzelheiten eingehen zu wollen, läßt sich jedoch sagen, daß die Auswirkungen in diesen Ländern unterschiedlich waren und der Stillstand der Region offensichtlich ist.

Die Beziehungen zwischen der EU und ihren Partnerländern im südlichen und östlichen Mittelmeerraum waren auf verschiedenen Gipfeltreffen des Europäischen Rates Thema der Beratungen. Ich möchte hier nur einige dieser Tagungen nennen. Im Juni 1992 in Lissabon (P) wurde der Aufbau einer Partnerschaft mit den Ländern des Maghreb angeregt. In Korfu (GR) verständigte sich der Europäische Rat im Juni 1994 darauf, daß der Mittelmeerraum eine Region der Zusammenarbeit, des Friedens, der Sicherheit und des Wohlstandes sein müsse. Hierzu könne die Partnerschaft Europa-Mittelmeer einen Beitrag leisten. Im Dezember 1994 in Essen (D) wurde die Politik der EU gegenüber den Ländern Mittel- und Osteuropas, aber auch gegenüber den Mittelmeerländern umrissen. Die Errichtung einer Partnerschaft Europa-Mittelmeerraum wurde bestätigt und das Abhalten der Konferenz von Barcelona (November 1995) beschlossen. Im Juni 1995 in Cannes (F) erfolgte ein qualitativ wichtiger Schritt, der eine neue Dimension mit sich brachte und die Sicherheitsaspekte in der Region berücksichtigte. Erst in Madrid (E) im Dezember 1995 wurden jedoch – mit der Abschlußerklärung der ersten Europa-Mittelmeer-Konferenz der Außenminister am 27. und 28. November 1995 in Barcelona – konkretere Zielvorgaben festgelegt und ein Arbeitsprogramm erstellt:

i) bis zum Jahr 2010 soll ein euro-mediterraner Raum miteinander geteilten Wohlstands geschaffen werden, bestehend aus den Mitgliedstaaten der EU und den südlichen und östlichen Anrainerstaaten des Mittelmeers,
ii) vorgesehen wurde die Ausarbeitung individueller Abkommen zur wirtschaftlichen, sozialen und politischen Assoziation mit der EU,
iii) die Freihandelszone sowie der politische Dialog und die Kohäsionsmechanismen sollen – durch eine Förderung von Aktionen der regionalen Zusammenarbeit zwischen lokalen Behörden mit Hilfe der Regionalplanung – eine Modernisierung der Produktion in den Ländern des Raumes herbeiführen.

Die Konferenz definierte 1996 eine neue Strategie für den Mittelmeerraum, die sog. Partnerschaft Europa-Mittelmeer. Dabei handelt es sich nicht nur um eine Politik für die Länder des südlichen und östlichen Mittelmeerraums, sondern um eine Politik gemeinsam mit diesen Ländern. Diese Strategie stellt somit einen Schritt nach vorn dar, über einfache Hilfsmaßnahmen hinaus zu einem Konzept der Partnerschaft und der gemeinsamen Entwicklung. Die wichtigsten Aspekte sind dabei:

i) die Bezugnahme auf politische und Sicherheitsfragen in Übereinstimmung mit der Charta der Vereinten Nationen

und der Allgemeinen Erklärung der Menschenrechte,

ii) die wirtschaftliche Zusammenarbeit in einer mit dem Zieldatum 2010 vorgesehenen Freihandelszone, die die Grundlage für ein ausgeglichenes Wachstum in einem Raum des geteilten Wohlstandes bilden soll, durch bilaterale Assoziationsabkommen zwischen diesen Ländern und der EU,

iii) eine Erhöhung des Lebensstandards der Bevölkerungen, auf der Basis einer regionalen Zusammenarbeit und Integration,

iv) der soziale und menschliche Bereich, in dem der Zivilgesellschaft, dem Verständnis der Kulturen und dem Austausch in jeder Form sowie dem Umweltschutz Rechnung getragen werden soll.

Die neue Strategie für den Mittelmeerraum konzentriert sich in der Folge bei der Gewährung von Hilfen auf drei Schwerpunkte:

i) die Unterstützung des wirtschaftlichen Übergangs,

ii) Hilfen zu einem besseren sozio-ökonomischen Gleichgewicht, wodurch den politischen Beziehungen zwischen den Ländern des südlichen und östlichen Mittelmeerraums eine stärkere Bedeutung verliehen wird,

iii) Hilfen zur regionalen Integration im Hinblick auf die Schaffung einer Freihandelszone.

Bis heute konnten Europa-Mittelmeer-Abkommen mit Tunesien, Marokko und Israel geschlossen werden. Abkommen mit Ägypten und Jordanien sind in Verhandlung. Mit der Palästinensischen Autonomiebehörde konnte ein Handels- und Kooperationsabkommen unterzeichnet werden. Mit Zypern wurde ein Vorbeitrittsvertrag zur EU geschlossen. Diese Abkommen sehen den freien Zugang zur EU von Industrieprodukten vor, die Abschaffung von Zollbarrieren für Importe in die EU, einen erleichterten Zugang der Agrarerzeugnisse zur EU, die Beseitigung von Investitionshindernissen, die Harmonisierung von Industrienormen, Subventionen, die verstärkte Zusammenarbeit in Fragen der Migration usw.

Die zweite Konferenz der Außenminister der EU und ihrer Partnerstaaten im Mittelmeerraum (Malta, 15./16. April 1997) verfolgte drei Ziele:

i) das Ziehen einer Bilanz der seit der Konferenz von Barcelona erzielten Ergebnisse (Schaffung einer Freihandelszone Europa-Mittelmeerraum als Faktor des Wettbewerbs und der Eingliederung in die internationalen Handelssysteme),

ii) eine eventuelle Anpassung des ursprünglichen Programms und

iii) die Verabschiedung zusätzlicher Maßnahmen bis zur nächsten Konferenz.

In verschiedenen Sitzungen konnten Fortschritte im Bereich der regionalen Aspekte der politischen und Sicherheitspartnerschaft erzielt werden, der Wirtschafts- und Finanzpartnerschaft durch Annahme von Aktionen zur Vertiefung des Wirtschaftsraums Europa-Mittelmeer und der Partnerschaft im sozialen, kulturellen und menschlichen Bereich, deren Ziel die Entwicklung menschlicher Ressourcen und die Förderung des Austausches ist.

Zahlreiche weitere Aktionen wurden im Lichte der Leitlinien der Konferenz von Barcelona entwickelt (das Forum der Zivilgesellschaften Europa-Mittelmeer, das vom Institut d'Estudis de la Mediterránea (ICEM) in Barcelona initiiert und koordiniert wurde, ist hierfür ein bedeutendes Beispiel).

Die sogenannten MEDA-Programme der EU, die vor einigen Monaten (Juli 1997) angenommen wurden und sich an die Staaten, Regionen, Gemeinden, öffentlichen Organisationen und privaten Wirtschaftsakteure richten, sind ein wichtiges Instrument zur Stärkung der Stabilität, des freien Handels und der regionalen Zusammenarbeit in dem Raum unter Berücksichtigung der wirtschaftlichen und kulturellen Dimension.

4. Schlußbetrachtung

Die mit der neuen Strategie für den Mittelmeerraum verfolgten Ziele können als wesentlich für die Länder des südlichen und östlichen Mittelmeerraums bezeichnet werden. Die bereits erzielten Ergebnisse, auch wenn sie als positiv einzustufen sind, bedürfen jedoch der Weiterverfolgung. Einigkeit herrscht darüber, daß eine Verbesserung der relativen Situation dieser Länder genauso sehr von der Zusammenarbeit der Gemeinschaft abhängt wie von geeigneten politischen Anpassungsmaßnahmen im Innern durch diese Länder selbst. Dies ist eine Herausforderung, der begegnet werden muß. Seitens der EU mit dem Willen zur Zusammenarbeit und zur Unterstützung, durch die Schaffung von Netzen und vor allem im ständigen Dialog mit unseren Nachbarn im Mittelmeerraum.

Zur wirtschaftlichen und sozialen Entwicklung der Länder des südlichen und östlichen Mittelmeerraums bedarf es ohne Frage eines modernen und effizienten privatwirtschaftlichen, aber auch eines modernen öffentlichen Sektors, einer zeitgemäßen öffentlichen Verwaltung und leistungsfähiger und effizienter Humanressourcen, die zur Modernisierung und interinstitutionellen und interregionalen Zusammenarbeit in diesem Raum beitragen. Zu diesem Zweck wurden zahlreiche Privatinitiativen ergriffen, Vorrang sollte jedoch auch den Aufgaben der Aus- und Fortbildung sowohl im privaten wie auch im öffentlichen Bereich eingeräumt werden. Die Schaffung von Netzen zwischen Bildungseinrichtungen für Bedienstete der öffentlichen Verwaltungen in den Ländern der EU und des südlichen und östlichen Mittelmeerraums stellt hier einen wichtigen Faktor dar, der nicht unberücksichtigt bleiben sollte.

Das Europäische Zentrum der Regionen (ECR)-Europäisches Institut für öffentliche Verwaltung in Barcelona möchte innerhalb seines spezifischen Aufgabenkreises im Rahmen der regionalen Zusammenarbeit einen Beitrag zur Integration in der Makroregion Mittelmeer leisten.

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De l'importance de la "bonne forme" européenne aux niveaux régional et local et comment l'acquérir[1]

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Les récents développements et décisions dans l'Union européenne, qui ont débouché notamment sur le Traité d'Amsterdam, ainsi que les questions en suspens, tels que l'introduction de l'euro ou l'intégration d'autres Etats membres dans le cadre de la volonté d'élargissement de l'UE, auront à n'en pas douter des conséquences considérables sur les autorités infranationales dans tous les Etats membres.

L'avenir dira certainement quelles sont les régions qui seront les mieux à même de maîtriser ces modifications constantes et de prendre la "tête du peloton" dans la course à la concurrence entre les différentes régions européennes. La "bonne forme" européenne des collectivités régionales et locales pour pouvoir affronter ces développements sera un élément déterminant dans ce cadre.

Les différents aspects du problème

Les Etats membres sont les hautes parties contractantes de l'UE (article A du TUE); cependant les décisions qui sont prises au niveau européen ne touchent pas seulement directement les processus politiques des Etats membres, mais également leurs structures internes, à savoir les Länder, les régions, les provinces, les Communautés autonomes, les départements, etc., selon les pays.

Dans le domaine administratif, les administrations infranationales sont directement impliquées – dans le processus descendant – dans la transposition et la mise en oeuvre des décisions politiques et, ensuite, des actes juridiques, étant donné qu'en règle générale les administrations des Etats membres (jusqu'au niveau de l'administration communale) sont compétentes pour l'application et l'exécution du droit communautaire. Cette remarque vaut pour tous les pays au sein de l'UE, quelle que soit leur structure interne. Il n'est pas nécessaire à cet égard d'opérer une distinction entre Etats membres à structure fédérale et Etats membres à structure centralisée, puisque lorsqu'on parle de l'exécution du droit et des politiques communautaires, peu importe en fin de compte de savoir quelle est l'origine et quelle est la source constitutionnelle qui est compétente; ce qui compte, est de savoir si les fonctionnaires sont en mesure d'en assurer une transposition correcte dans la pratique.

Les instances compétentes pour la transposition et la mise en oeuvre des politiques et, partant, du droit communautaires, ont en général aussi tout intérêt à exercer une influence sur la phase de leur apparition, c'est-à-dire sur le processus ascendant. La question de savoir si elles sont compétentes dans le cadre du processus décisionnel dépend bien entendu de la structure nationale du pays concerné. Dans certains Etats membres, les échelons régionaux (mais en aucun cas le niveau communal) jouissent à cet égard de possibilités d'influence relativement grandes. En Allemagne, en Autriche et surtout en Belgique, mais aussi en Espagne et en Italie, le niveau régional participe à la formation de la volonté politique européenne. Cette implication se fait en partie par un canal formel (c'est-à-dire, que leur implication est garantie par la Constitution ou, par exemple, par la participation au Conseil de ministres (article 146 CE)), et en partie de manière informelle (c'est-à-dire par le pouvoir normatif de fait, à savoir de par les réalités politiques comme l'influence exercée sur les gouvernements centraux grâce à une représentation majoritaire au sein du parlement national).

Pourquoi la "bonne forme" européenne?

Le Comité des régions (CdR) représente un acteur-clé si l'on veut avoir la forme européenne. Cette enceinte qui, si elle ne dispose pas de pouvoirs décisionnels propres, n'en est pas moins impliquée à titre consultatif dans de nombreux domaines, se compose de représentants des niveaux régional et communal. C'est précisément grâce à l'existence de cette institution que l'on peut affirmer que les connaissances aux niveaux régional et communal des thèmes européens sont très importantes. Si l'on n'utilise pas pleinement les compétences – encore limitées – de cette instance, en raison de l'absence de connaissances du personnel au niveau régional pour préparer comme il se doit les représentants qui siègent au CdR sur les thèmes qui y sont débattus, alors cette influence risque à son tour de fondre, dès lors que plus personne ne prendra au sérieux le Comité des régions. Les positions du CdR risqueraient alors de ne plus être prises suffisamment en compte par les divers organes dans l'élaboration des décisions à cause de leur qualité déficiente. Au cours d'une prochaine étape, presqu'en réaction à cela, le CdR se composerait alors de plus en plus de représentants qui n'auraient pratiquement (plus) aucun poids politique dans leur région ou alors le CdR serait réduit à une "assemblée de fonctionnaires".

La présence de responsables politiques régionaux à Bruxelles, qui agissent de manière compétente (et qui sont soutenus par des collaborateurs compétents et bien préparés) doit être pleinement exploitée, et cela pour un certain nombre de raisons encore. D'un côté, on peut utiliser le CdR pour se faire un nom dans certains domaines politiques (par exemple, par le rôle de rapporteur joué au niveau d'une commission spécialisée). Cela permet d'être au moins impliqué dans le processus de discussion au niveau européen dans un domaine spécialisé bien déterminé et d'exercer une influence politique. On peut espérer que le CdR, à condition de préserver son rôle et de ne pas être réduit au rang d'un organe insignifiant, se développe à l'avenir et gagne même en influence. D'autre part, l'occasion offerte aux responsables politiques représentés au sein du CdR de pouvoir nouer, de par leur présence à Bruxelles, de précieux liens avec les décideurs ou en tout cas avec ceux qui préparent les décideurs (la Commission européenne) ne saurait être gaspillée. Par ailleurs, ils ont ainsi l'opportunité d'entretenir des contacts avec des collègues d'autres Etats membres et d'échanger des informations avec les régions qui partagent les mêmes intérêts, voire le cas échéant former des coalitions, afin de pouvoir exercer ainsi à nouveau une influence dans le même sens sur les gouvernements centraux impliqués comme sur les institutions européennes.

Bien entendu, cette remarque vaut aussi pour la composition, voire les travaux, d'autres instances, organisations, projets ou réseaux de l'UE de dimension régionale ou locale, comme l'ARE (Assemblée des Régions d'Europe), le Conseil consultatif des collectivités régionales et locales, l'Arge Alp (Communauté de travail des Alpes), le RITTS (Infrastructures et stratégies régionales d'innovation

et de transfert technologique), l'IRSI (Initiative régionale sur la société de l'information), etc., mais aussi pour les bureaux de liaison ou les bureaux régionaux établis à Bruxelles, dont le nombre dépasse déjà la centaine.

Que faire à présent?

En ce qui concerne la transposition des politiques communautaires au niveau national, il n'est pas seulement souhaitable, mais il est aussi de l'obligation solidaire de tous les Etats membres – conformément à l'article 5 CE – d'assurer l'exécution efficace du droit communautaire. Par voie de conséquence, il est tout aussi indispensable que les connaissances communautaires soient présentes à chaque niveau des administrations nationales et qu'elles soient appliquées par les fonctionnaires compétents en la matière. Pour être bien préparé pour l'Europe, c'est-à-dire si l'on veut créer une conscience européenne et introduire des connaissances européennes au sein même des administrations, il faut bien évidemment une formation intensive, à l'instar de la formation en droit national dispensée aux fonctionnaires, avant que ceux-ci ne puissent prendre des décisions administratives.

Dès lors, il s'agit d'éviter de devoir recourir à un avocat (qui parfois ne possède pas non plus les connaissances requises du droit communautaire) ou éventuellement d'entamer une action en justice pour faire garantir l'application de droits qui nous reviennent naturellement. Ou encore, il faut éviter – pour donner un exemple concret – qu'un ressortissant espagnol à la recherche d'un emploi en Allemagne, doive tout d'abord expliquer à l'agence de l'emploi locale compétente que l'Espagne fait partie intégrante de l'UE et qu'il doive ensuite veiller personnellement à obtenir la transposition des directives communautaires nécessaires et du droit national correspondant avant de pouvoir être engagé dans le cadre d'un contrat de travail (un cas pareil s'est produit récemment!).

La transparence et les connaissances des structures et des méthodes de travail de l'UE, comme cela a été également souligné dans la décision[3] de la séance du bureau de l'Assemblée des Régions d'Europe tenue en février 1997, sont dès lors une nécessité impérieuse pour toutes les administrations, quel que soit leur niveau. Conformément à une jurisprudence consolidée de la CJCE, les Etats membres sont à présent en principe tenus pour responsables de la non-transposition du droit communautaire (selon la formule: "Nul n'est censé ignorer la loi"). Tout comme l'ensemble du droit national en vigueur, le droit communautaire est aussi d'application dans sa totalité et les agents publics doivent le connaître. Pour cette raison, il faut intensifier la formation portant sur des disciplines relevant du droit et des politiques communautaires pour l'aligner sur la formation en droit national dispensée aux agents publics des niveaux régional et local. Il serait même souhaitable de considérer ces thèmes comme des matières obligatoires dans le programme des études supérieures (par exemple, les sciences juridiques) (ce qui n'est pas encore la règle partout).

Pour ce qui est de la question de l'influence exercée sur le processus de formation de la volonté politique, il faut – comme on l'a dit précédemment – un personnel des niveaux subordonnés aux responsables politiques, qui soit compétent dans les différents domaines matériels de l'UE et en mesure de soutenir l'élaboration des politiques, en étant bien conscient des liens existant entre elles; il doit aussi être capable d'y sensibiliser et, en fin de compte, préparer le niveau politique. A cet effet, des séjours réguliers à Bruxelles, associés à la participation aux sessions des institutions, sont nécessaires afin de pouvoir préparer et reconnaître en toute connaissance de cause les politiques sectorielles et savoir à quel niveau, à quel moment et par quelle voie exercer une influence.

Avoir ou acquérir la "bonne forme" européenne signifie cependant aussi lancer des initiatives supplémentaires propres[4] dans les administrations et les traduire concrètement par la conclusion d'accords de coopération, au niveau transnational et suprarégional, avec des institutions et organisations à la fois publiques et privées; cela suppose aussi l'implication des citoyens dans le processus décisionnel, ce qui requiert bien sûr une certaine flexibilité et une faculté d'adaptation de la part des collectivités régionales et locales, sans mettre cependant en péril la continuité du processus.

Enfin, il est aussi essentiel – en particulier dans les unités administratives plus grandes – qu'il y ait d'abord une unité de travail qui coordonne les affaires européennes de la région concernée et veille à la diffusion des informations auprès de toutes les instances. Les travaux préparatoires pour des instances telles que le CdR et l'ARE se font le plus souvent dans les instances de coordination européennes ou dans les bureaux européens. Une bonne interaction avec leurs représentations régionales respectives à Bruxelles contribuera sans aucun doute au succès des travaux des régions sur des questions européennes, à la fois au niveau interne et externe. Elles ont aussi en général la responsabilité d'assortir la transparence et l'information européennes de paramètres d'objectivité, transparence, efficacité et simplicité vis-à-vis des citoyens.

Conclusions

Au niveau administratif (régional et local), l'Union européenne est le plus souvent encore considérée comme un domaine dont l'importance est semblable à celle d'une "belle-mère", c'est-à-dire en général largement sous-estimée. Affirmer que les administrations doivent d'abord se soumettre à un entraînement intensif pour être prêtes pour l'Europe, c'est admettre déjà en partie que l'on est en retard de quelques décennies sur ce développement; c'est aussi se demander si l'on a déjà envisagé la possibilité que les agents administratifs ne soient plus uniquement imprégnés de droit national. S'il est vrai que toutes les administrations sont naturellement bien préparées au niveau (du droit) national, force est de constater qu'elles ne sont pas toutes aussi bien armées face à l'Europe. Les administrations qui sont prêtes pour l'Europe[5] aux niveaux infranationaux sont celles qui peuvent analyser l'impact des politiques européennes sur leur propre région et qui sont capables d'y réagir pleinement et de manière coordonnée, et qui ne manquent pas d'exprimer leurs préoccupations – le cas échéant en coopération avec d'autres régions (Länder fédéraux, comtés, régions, etc.) – expressément auprès du gouvernement central et des institutions de l'UE.

Ma conclusion sera donc que "si un pays prépare sans réserve son administration pour le cadre national, il doit le faire aussi et d'autant plus par rapport à l'Europe".

NOTES

1. Ce thème a été traité de manière approfondie dans le cadre de mon exposé et d'une discussion à la faveur de la première session du groupe de travail ad hoc "collectivités territoriales" de l'Assemblée des Régions d'Europe (ARE) le 3 novembre 1997 à Brème (D).
2. Je tiens tout particulièrement à remercier Dr Gereon Thiele, du Land de la Saxe-Anhalt, pour ses commentaires et idées qui ont largement contribué à la rédaction de cet article.
3. Document: Décision, point à l'ordre du jour : VI A 3, session du Bureau de l'ARE, Bruxelles, le 14 février 1997.
4. Morass M. (1994) "*Regionale Interessen auf dem Weg in die Europäische Union: Strukturelle Entwicklung und Perspektiven der Interessenvermittlung österreichischer und deutscher Landesakteure im Rahmen der Europäische Integration*", Schriftenreihe des Instituts für Föderalismusforschung, Vienne.
5. Burtscher W. (1996) (représentant des Länder autrichiens auprès de l'UE), "*Landesinterne Strukturen betreffend integrationspolitische Aktivitäten*", in Staudigl F./Fischler R. (éds) "Die Teilnahme der Bundesländer am europäischen Integrationsprozeß", Vienne, Braunmüller, 1996. ❑

The significance of *Eurofitness* for regional and local administrations and how it can be achieved[1]

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The most recent developments and decisions in the European Union, formalized *inter alia* by the Treaty of Amsterdam, as well as forthcoming events such as the introduction of the euro or the accession of new Member States in the context of EU enlargement, will undoubtedly have repercussions on the subnational entities of each and every Member State.

Time will clearly tell which regions can best grasp the nettle of these constant changes and stand in *pole position* in the contest to secure their locational advantage in Europe. One of the criteria regional and local authorities need to fulfil in order to face up to such developments can be referred to as *Eurofitness*.

What to consider

The contracting parties of the European Union (Art. A TEU) are the individual Member States, yet decisions taken at EU level do not just affect the political workings of the Member States at central level but also have implications for their subnational levels, that is the *Länder*, regions, provinces, *comunidades autónomas*, *départements*, etc.

Administrations at subnational level are directly affected by the so-called *top-down* way of transposing and implementing political decisions and subsequent legal acts, as Member State administrations (including the local level) are generally responsible for the application and implementation of EU-law. This applies to all forms of state structure within the EU. It is thus in this context not necessary to draw a distinction between those Member States with a federal structure and those with centralized government as when it comes to implementing EU law and policies the origins and constitutional basis of the competences is ultimately of no consequence; what matters is purely whether the relevant officials are able to successfully implement the legislation.

Those responsible for implementing and enforcing EU-policy and law generally have an interest in exercising some form of *bottom-up* influence over the genesis of these policies. Whether the administration will be granted a say in the *decision-making process* naturally depends on the national state structure. Certain Member States grant extensive competences to the regional (yet never the local) level, thus giving them the chance to participate in the decision-making process. In Germany, Austria, Spain, Italy, and above all Belgium, the regional level is able to bring some influence to bear in the process of political decision-making on European affairs. This influence is partly of a formal nature (guaranteed by the Constitution or for example through participation at ministerial level in the Council as stipulated by Art. 146 of the EC Treaty) and partly on an informal basis (through political realities such as influence on central governments through majorities gained in the national parliament).

Why *Eurofitness*?

A key player in the concept of *Eurofitness* is the Committee of the Regions (CoR). This committee, comprising representatives from regional and local level, does not enjoy any decision-making competences of its own yet has an advisory role in many areas. It serves to communicate the fact that knowledge of European issues at regional and local level is of prime importance. If the already minimal competences of this committee are not put to maximum use, particularly because the regional level lacks the sufficient background knowledge and human resources to suitably brief its CoR representatives in the issues to be dealt with, then any influence the committee may have threatens to be reduced further as it will ultimately fail to receive any serious recognition. The implied risk here is that the consequently sub-standard opinions issued by the CoR would be afforded scant attention in the decision-making process. By way of repercussion, the CoR would then be peopled by representatives having less than optimal influence in their regions or indeed it could be reduced to a mere 'talking shop' for officials.

There are other reasons why the presence of competent politicians from the regional level in Brussels, working with and supported by equally competent and well-briefed colleagues, should be seen as an opportunity. For one thing the CoR can be used as a platform to make a name for oneself in certain political circles, for example through assuming the function of rapporteur in one of the expert committees. In this way regional representatives at least have the opportunity to participate in European-level discussions in the area in question and to bring some political influence to bear. If the CoR is able to retain its standing and avoid sinking into insignificance, it is to be hoped that it can develop further in the future and attain a greater degree of influence. Furthermore, one should not gloss over the fact that that those politicians seconded to the CoR have, through being present in Brussels, the chance to forge valuable contacts with the decision-makers or at least those who prepare the work of the decision-makers (i.e. the European Commission). They are in addition able to network with colleagues from other Member States and exchange detailed information with regions having comparable areas of interest, possibly with a view to forming coalitions which can influence the appropriate central governments and consequently the European institutions themselves.

The same obviously goes for the composition and work of other committees, organizations, EU projects or networks with a European dimension such as the AER (Assembly of European Regions), the Congress of Regional and Local Authorities, the ARGE ALP (Alpine Region Partnership), RITTS (Regional Innovation and Technology Transfer Strategies and Infrastructure), RISI (Regional Information Society Initiative) etc., as well as for the now well over 100 regional offices in Brussels.

What now?

With respect to the transposition of EU-policies at national level, it is not only desirable but rather, owing to the national obligation of every Member State to correctly apply Community law according to the provisions of Article 5 TEC, absolutely essential that *all* levels of national administration maintain and develop a knowledge of the Community and that this is applied by those officials responsible. Naturally, administrations cannot become *Eurofit* overnight, and indeed this process of acquiring a knowledge and an awareness of 'Europe', necessarily requires rigorous training akin to that which officials receive in national law before they are allowed take administrative decisions.

It should not be the case that, in order to be granted one's self-evident and existing rights, one first has to call upon the services of a lawyer who may himself be unversed in Community law, and possibly end up having to go to court. To cite a more concrete example, it should not be the case, as happened recently, that a Spanish national seeking work in Germany should firstly have to explain to the employment office that Spain does in fact belong to the EU and consequently himself have to procure the necessary EU directives and the corresponding national legislation on its implementation before being considered for employment.

As stressed in the Decision[3] presented at the executive meeting of the Assembly of European Regions in 1997, it is paramount that EU working practices and structures are transparent and that administrations on all levels be aware of them. According to the case-law of the ECJ, the Member States are as a general rule legally liable for the non-implementation of Community law (following the principle 'ignorance is NOT bliss'). Just as the complete body of national law is valid so is that of Community law and officials should be familiar with it. This is why training in Community politics and law must play a much more prominent role in the training of public servants at regional and local level than it has up till now, just as national law does. The ideal would be to make such training a compulsory part of relevant university courses (e.g. law), this not yet being the case everywhere.

As regards the question of influencing political opinion, as already mentioned, 'behind the scenes' officials are required who are proficient in the substantive areas of the EU and, with their knowledge of policy-shaping, in the position to follow up background information and alert and prepare the political level. Regular visits to Brussels, as well as participation in the meetings of the institutions are here necessary in order to sensibly prepare and assess policies and to know the who, where, when and what as regards influencing the proceedings.

To become or to remain *Eurofit* also implies forming and presenting additional own-initiatives within administrations[4] in terms of entering into a spirit of cooperation both on a transborder and interregional level as well as with public and private institutions and organizations, and associating the citizen in the decision-making process, all of which naturally demands a certain flexibility and adaptability on the part of regional and local authorities so as not to upset continuity.

One final point should be borne in mind. Particularly in the case of the larger administrations, it is essential to firstly establish a unit which can coordinate European political matters and make sure that all other departments are kept up-to-date with information. Preparatory work for committees such as the AER and the CoR are also generally both to be found at the so-called EU-coordination points or bureaus. Good interaction with the relevant regional representation in Brussels can pave the way for the success of the regions in the context of work on the EU agenda, whether external or internal. Such representations are furthermore generally responsible for ensuring EU openness and the provision of information based along the lines of objectivity, transparency, efficiency and clarity with regard to the citizen.

Conclusion

At the level of (regional and local) administration it is still frequently the case that the European Union is treated very much as a second-class issue, the importance attributed to it often being underestimated. Stating that administrations firstly have to become *Eurofit* goes one step towards admitting that these administrations have been lagging behind progress for decades and also begs the question as to whether it has ever occurred to these administrations **not** to make their personnel any 'fitter' when it comes to national law. It goes without saying that all administrations are well versed in national (legal) affairs but they are not able to cope with the European side of things to the same extent. The only *Eurofit* administrations[5] at subnational level are those which are able to assess the implications of EU legislation for their individual regions, to react to this in thorough and coordinated fashion and to clearly represent their demands to central government as well as the EU Institutions, potentially in conjunction with other regions (*Bundesländer*, counties, *regioni* etc.). In a nutshell, whoever does everything to make his administration 'fit' for national affairs must do even more to make it fit for Europe.

NOTES

1. The topic was dealt with at greater length in the context of my presentation and the subsequent discussion on the occasion of the first meeting of the Ad-hoc working group meeting 'local and regional authorities' of the Assembly of European Regions (AER), held on 3 November 1997 in Bremen (D).
2. I would particularly like to thank Dr. Gereon Thiele, *Land* Sachsen-Anhalt, for his comments and ideas which helped me considerably in the writing of this article.
3. Unterlage: *Zur Beschlussfassung, Tagesordnungspunkt: VI A 3, Vorstandssitzung der VRE*, Brüssel: 14 Februar 1997
4. Morass M. (1994), *Regionale Interessen auf dem Weg in die Europäische Union: Strukturelle Entwicklung und Perspektiven der Interessenvermittlung österreichischer und deutscher Landesakteure im Rahmen der Europäischen Integration,* Schriftenreihe des Instituts für Föderalismus-forschung, Wien
5. Burtscher W. (1996) (EU representative for the Austrian *Länder*), 'Landesinterne Strukturen betreffend integrations-politische Aktivitäten', in: Staudigl F./Fischler R. (eds.), *Die Teilnahme der Bundesländer am europäischen Integrationsprozeß*, Wien: Braunmüller, 1996. ❑

Die Bedeutung von *Eurofitness* auf regionaler und lokaler Ebene und Wege zur ihrer Erreichung[1]

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Die jüngsten Entwicklungen und Entscheidungen der Europäischen Union, die unter anderem mit dem Vertrag von Amsterdam formalisiert wurden, sowie die anstehenden Themen, wie die Einführung des Euro oder die Neuaufnahme von weiteren Mitgliedstaaten im Zuge des Erweiterungsstrebens der EU, werden natürlich auch erhebliche Konsequenzen für die subnationalen Einheiten eines jeden Mitgliedstaates haben.

Es wird sich sicherlich zeigen, welche Regionen diesen ständigen Veränderungen am besten Herr werden und sich in die *pole postions* im europäischen Wettbewerb der Standorte bringen können. Ein wesentlicher Bestandteil dafür wird die Europafähigkeit, oder moderner formuliert die *Eurofitness,* der regionalen und lokalen Gebietskörperschaften sein, um diesen Entwicklungen zu entsprechen.

Was berücksichtigen?

Die EU-Vertragspartner sind die einzelnen Mitgliedsstaaten (Art. A EUV), jedoch greifen Entscheidungen, die auf EU-Ebene getroffen werden, nicht nur unmittelbar in die politischen Abläufe der Mitgliedstaaten, sondern auch in ihre Untergliederungen ein, das sind die Länder, Regionen, Provincies, Comunidades Autónomas, Departments usw.

Im administrativen Bereich, bei der Durchführung und Implementation von politischen Entscheidungen und folglich von Rechtsakten, im Zuge des *top-down* Weges, sind die Verwaltungen der unterstaatlichen Ebenen unmittelbar betroffen, da in der Regel die Verwaltungen der Mitgliedsstaaten (bis hin zur Kommunalverwaltung) zuständig sind für die Anwendung und Durchführung von EU-Recht. Diese Feststellung gilt für jede Art von Staatsorganisation innerhalb der EU. Eine Unterscheidung in föderal strukturierte oder zentralistisch regierte Mitgliedstaaten ist in diesem Zusammenhang eigentlich nicht erforderlich, da es, wenn man von der Durchführung von EU-Recht und -Politiken spricht, letztlich egal ist, welchen Ursprung und welche verfassungsrechtliche Grundlage die Zuständigkeit hat, sondern lediglich darauf, ob die Bediensteten in der Lage sind, die Vorgaben richtig umzusetzen.

Wer zur Umsetzung und Durchführung von EU-Politiken und folglich von EU-Recht zuständig ist, ist in der Regel auch daran interessiert, Einfluß auf deren Entstehung, den *bottom-up* Weg, zu nehmen. Ob im Rahmen des *decision-making process* eine Kompetenz besteht, ist natürlich eine Frage der jeweiligen nationalen Struktur. In einigen Mitgliedstaaten bestehen hierfür recht weitgehende Einflußmöglichkeiten für die regionale (in keinem Fall jedoch für die kommunale) Ebene. In Deutschland, Österreich und vor allem in Belgien, aber auch in Spanien und Italien, ist die regionale Ebene zum Teil formell (d.h. verfassungsrechtlich garantiert oder z.B. durch die Beteiligung im Ministerrat (Art. 146 EG-Vertrag)), zum Teil informell (d.h. durch die normative Kraft des Faktischen, also durch politische Realitäten wie Einfluß auf die Zentralregierungen durch Mehrheitsbeschaffungen im nationalen Parlament) an der europäischen politischen Willensbildung beteiligt.

Warum *Eurofitness*?

Ein wesentlicher Punkt für die *Eurofitness* ist der **Ausschuß der Regionen** (AdR). In dieses Gremium, das zwar keine eigenen Entscheidungsbefugnisse hat, sich aber in vielen Bereichen beratend beteiligt, werden Vertreter der regionalen und kommunalen Ebene entsandt. Gerade anhand dieser Einrichtung kann daher dargestellt werden, daß die Kenntnisse auf regionaler und kommunaler Ebene zu europäischen Themen sehr wichtig sind. Wenn nämlich die – noch geringen – Befugnisse dieses Gremiums nicht ausgeschöpft werden, weil auf regionaler Ebene der personelle *background* fehlt, um die Vertreter, die im AdR sitzen, vernünftig auf die Themen, die dort behandelt werden, vorzubereiten, dann droht auch dieser Einfluß wieder zu schrumpfen, weil das Gremium AdR am Ende von niemandem mehr ernst genommen wird. Es bestünde die Gefahr, daß die Stellungnahmen des AdR von den Organen mangels Qualität nicht mehr hinreichend bei der Entscheidungsfindung in Betracht gezogen werden. In einem nächsten Schritt, quasi als Rückwirkung, würden in den AdR zunehmend Leute entsandt werden, die in den jeweiligen Regionen kein allzu großes politisches Gewicht (mehr) haben oder es würde gar ganz zu einem 'Beamtengremium' reduziert werden.

Die Präsenz von regionalen Politikern in Brüssel, die in kompetenter Weise auftreten (und von kompetenten und vorbereiteten Mitarbeitern begleitet und unterstützt werden) sollte aber auch noch aus anderen Gründen als eine Chance begriffen werden. Zum einen kann der AdR dazu genutzt werden, sich einen Namen in bestimmten Politikbereichen zu schaffen (beispielsweise durch die Übernahme einer Berichterstattung in einer Fachkommission). Auf diese Weise ist man zumindest am Diskussionsprozeß auf europäischer Ebene in dem jeweiligen Sachbereich beteiligt und kann – politisch – Einfluß nehmen. Es ist zu hoffen, daß der AdR, wenn er sich bewährt und nicht zur Bedeutungslosigkeit schrumpft, künftig noch weiter entwickelt und stärkeren Einfluß gewinnen wird. Zum anderen ist die Chance nicht zu verkennen, daß die in den AdR entsandten Politiker durch ihre Präsenz auch wertvolle Kontakte in Brüssel zu den Entscheidungsträgern oder jedenfalls zu den Vorbereitern der Entscheidungsträger (= Europäische Kommission) knüpfen können. Ferner haben sie die Chance, Kontakte zu Kollegen aus anderen Mitgliedstaaten zu pflegen und mit den Regionen, die ähnliche Interessenlagen haben, einen intensiven Informationsaustausch zu pflegen, gegebenfalls Koalitionen zu bilden, um auf diese Weise wiederum in gleicher Richtung Einfluß auf die jeweiligen Zentralregierungen und damit auf die europäischen Institutionen zu nehmen.

Natürlich gilt auch dasselbe für die Besetzung von bzw. der Arbeit in anderen Gremien, Organisationen, EU-Projekten oder Netzwerken mit regionaler und/oder lokaler Dimension, wie die VRE (Versammlung der Regionen Europas), der Beirat der regionalen und lokalen Gebietskörperschaften, die ARGE ALP (Arbeitsgemeinschaft der Alpenregionen), RITTS (Regional Innovation and Technology Transfer Strategies and Infrastructure), RISI (Regional Information Society

Initiative) etc., aber auch für die bereits weit über 100 in Brüssel geschaffenen Verbindungs- bzw. Regionalbüros.

Was nun tun?

Hinsichtlich der Umsetzung von EU-Politiken auf nationaler Ebene ist es nicht nur wünschenswert, sondern aus der gesamtstaatlichen Verpflichtung eines jeden Mitgliedstaates gemäß Artikel 5 EG-Vertrag, das Gemeinschaftsrecht effektiv anzuwenden, resultierend unabdingbar, daß auf *jeder* Ebene der nationalen Verwaltungen das Gemeinschaftswissen vorhanden sein muß und von den dafür zuständigen Bediensteten angewandt wird. Die Erreichung der *Eurofitness*, also das Schaffen eines Europabewußtseins und von Europakenntnissen innerhalb der Verwaltungen, erfordert naturgemäß eine intensive Schulung, ebenso wie die Bediensteten ja auch im nationalen Recht geschult werden, bevor sie Verwaltungsentscheidungen treffen.

Es soll nicht sein, daß man, um selbstverständlich zustehende Rechte gewährt zu bekommen, erst einmal einen Rechtsanwalt (der gegebenenfalls selbst keine Kenntnisse des Gemeinschaftsrechts hat) vorschickt und eventuell gar einen Rechtsstreit führen muß. Oder – um ein konkreteres Beispiel zu nehmen – daß ein spanischer Staatsangehöriger, der in Deutschland Arbeit sucht, dem zuständigen Arbeitsamt zunächst einmal erklären muß, daß Spanien überhaupt zur EU gehört und anschließend sich selber kümmern muß, um die notwendigen EG-Richtlinien und das korrespondierende nationale Recht zu deren Umsetzung zu beschaffen, bevor er in die Arbeitsvermittlung aufgenommen wird (so geschehen vor kurzem).

Die Transparenz und die Kenntnisse über die Strukturen und Arbeitsweisen der EU, wie in der Vorlage zur Beschlußfassung[3] der Vorstandssitzung der Versammlung der Regionen Europas im Februar 1997 ebenfalls hervorgehoben, ist daher für die Verwaltungen aller Ebenen eine unabdingbare Notwendigkeit. Nach inzwischen gefestigter Rechtsprechung des EuGH haften die Mitgliedstaaten prinzipiell für die nicht Umsetzung des Gemeinschaftsrecht (nach dem Motto: *'Dummheit schützt vor Strafe nicht'*). Genau wie das gesamte jeweils geltende nationale Recht gilt das gesamte Gemeinschaftsrecht und sollte den Bediensteten geläufig sein. Aus diesem Grund muß die Ausbildung in gemeinschaftspolitischen und -rechtlichen Disziplinen viel stärker als bisher genauso wie das nationale Recht Gegenstand einer jeden Ausbildung von öffentlichen Bediensteten der regionalen and lokalen Ebene werden. Noch wünschenswerter wäre es, sie bereits im Hochschulstudium (zBsp. der Rechtswissenschaften) als Pflichtgegenstände zu berücksichtigen (so noch nicht überall geschehen).

Für die Frage der Einflußnahme auf den politischen Willensbildungsprozeß bedarf es – wie schon erwähnt – eines Personals der den Politikern nachgereihten Ebenen, das in den einzelnen materiellen Bereichen der EU kompetent und in der Lage ist, Zusammenhänge erkennend das Entstehen von Politiken zu begleiten und die politische Ebene dafür zu sensibilisieren und letztlich vorzubereiten. Regelmäßige Aufenthalte in Brüssel, verbunden mit der Teilnahme an Sitzungen der Institutionen, sind hierfür notwendig, um Sachpolitiken sinnvoll vorbereiten und erkennen zu können, und um zu wissen, wo, wann und wie man Einfluß nehmen kann.

Eurofit zu sein bzw. zu werden, bedeutet aber auch zusätzlich Eigeninitiativen[4] in den Verwaltungen zu entwickeln und zu zeigen, im Sinne von Kooperationen schließen, grenzüberschreitend und überregional, mit öffentlichen wie mit privaten Institutionen und Organisationen, den Bürger in den Entscheidungsprozeß miteinbeziehen, was sicherlich eine gewisse Flexibilität und Anpassungsfähigkeit von den regionalen und lokalen Gebietsköperschaften erfordert, ohne dabei der Kontinuität zu widersprechen.

Schließlich ist es noch wichtig, auf folgendes zu achten: Wesentlich ist, insbesondere in größeren Verwaltungseinheiten, zunächst eine Arbeitseinheit zu haben, die die europapolitischen Angelegenheiten der jeweiligen Region koordiniert und dafür sorgt, daß alle Stellen mit Informationen versorgt sind. An den sogenannten EU-Koordinationsstellen oder EU-Büros laufen zumeist auch die Vorbereitungsarbeiten für Gremien wie den AdR und die VRE zusammen. Ein gutes Zusammenspiel mit ihren jeweiligen Regionalvertretungen in Brüssel kann eine erfolgreiche Arbeit der Region in EU-Agenden, intern wie extern, herbeiführen. Sie tragen auch meistens die Verantwortung dafür, die EU-Öffentlichkeitsarbeit und Europainformation mit den Parametern Objektivität, Transparenz, Effizienz und Einfachheit, gerade gegenüber dem Bürger, auszustatten.

Fazit

Die Europäische Union ist auf der (regionalen und lokalen) Verwaltungsebene vielfach noch ein eher *stiefmütterlich* behandelter Bereich, dessen Bedeutung, die ihm bereits zukommt, vielfach völlig unterschätzt wird. Spricht man schließlich davon, daß die Verwaltungen erst noch *eurofit* gemacht werden müssen, gesteht man damit zum einen bereits ein, daß man über Jahrzehnte einer Entwicklung hinterherhinkt, und zum anderen müßte man sich dann eigentlich auch die Frage gefallen lassen, ob man einmal daran gedacht hat, die Verwaltungsbediensteten auch **nicht** mehr nationalrechtsfit zu machen. National(rechts)fähig sind selbstverständlich alle Verwaltungen ohne Wenn und Aber, aber nicht in diesem Maße europafähig. *Eurofite* Verwaltungen[5] in den subnationalen Ebenen sind nämlich nur solche, die die Auswirkungen von EU-Vorhaben auf ihre jeweilige Region analysieren können, darauf umgehend und in koordinierter Weise reagieren sowie ihre Anliegen, gegebenenfalls in Zusammenwirken mit anderen Regionen (Bundesländer, Counties, Regioni etc.), gegenüber der zentralen Regierung sowie den Institutionen der EU nachdrücklich vertreten. Abzuschließen ist daher mit dem Motto: *'Wer seine Verwaltung uneingeschränkt "fit" für den nationalen Rahmen macht, muß dies konsequenterweise auch hinsichtlich Europa tun!'*.

NOTES

1. *Das Thema wurde im Rahmen meines Vortrages mit anschließender Diskussion anläßlich der ersten Sitzung der Ad-hoc-Arbeitsgruppe* 'Lokale Gebietskörperschaften' *der Versammlung der Regionen Europas (VRE) am 3. November 1997 in Bremen (D) ausführlicher behandelt.*
2. Mein besonderer Dank gilt Herrn Dr. Gereon Thiele, Land Sachsen-Anhalt, für die begleitenden Kommentare und Gedanken, die zur Fertigstellung des Artikels erheblich beigetragen haben.
3. Unterlage: Zur Beschlussfassung , Tagesordnungspunkt: VI A 3, Vorstandssitzung der VRE, Brüssel: 14. Februar 1997
4. *Morass M. (1994),* 'Regionale Interessen auf dem Weg in die Europäische Union: Strukturelle Entwicklung und Perspektiven der Interessenvermittlung österreichischer und deutscher Landesakteure im Rahmen der Europäischen Integration', *Schriftenreihe des Instituts für Föderalismusforschung, Wien*
5. *Burtscher W. (1996) (österreichischer Ländervertreter bei der EU),* 'Landesinterne Strukturen betreffend integrationspolitische Aktivitäten' *IN: Staudigl F./Fischler R. (Hrsg.)* 'Die Teilnahme der Bundesländer am europäischen Integrationsprozeß', Wien: Braunmüller, 1996. ❑

ANNOUNCEMENTS / *ANNONCES*

European Forum *Forum européen* Europäisches Forum

The EURO: The Face of Things to Come for the Regions / *L'EURO: une nouvelle réalité pour les régions* / Dem EURO ins Gesicht gesehen – ein Ausblick aus der Perspektive der Regionen

Barcelona, 23-24 April 1998

Economic and Monetary Union (EMU) and its *'offshoot'*, the Euro, are entering a decisive phase and 1998 may well prove to be a touchstone year for the future of European integration. It is the year that will see confirmation of which countries are to join the final stage of EMU. This decision will have major consequences for all actors at regional and local level.

L'Union économique et monétaire (UEM) et son principal "symbole", l'euro, entrent à présent dans une phase décisive et 1998 pourrait bien être l'année de vérité pour l'avenir de l'intégration européenne. En effet, c'est cette année que seront désignés les pays qui participeront à la phase finale de l'UEM et cette décision aura des conséquences considérables pour tous les acteurs impliqués aux niveau régional et local.

Die Wirtschafts- und Währungsunion (WWU) und ihr "Anhängsel", der *EURO*, gehen in die entscheidende Phase. Das Jahr 1998 kann zum historischen Prüfstein für die Zukunft der europäischen Integration werden. In diesem Jahr werden die Kandidaten für die letzte Stufe der WWU bestimmt, eine Entscheidung, die weitreichende Konsequenzen für alle Akteure auf regionaler und lokaler Ebene haben wird.

The **European Forum** in Barcelona (E) will grant those persons whose work will involve the Euro (i.e. in local and regional government, banks, regional based firms etc.) the opportunity to meet with political experts, representatives from the European institutions, academics and practitioners in order to discuss the implications of the introduction of the single currency for the regions and their interregional and transnational cooperation. Issues such as *'The Euro and 'third country' currencies'*, *'Ensuring the stability of the Euro once it is introduced'* and *'Shaping regional cross-border cooperation in the EMU'* will be examined from a specifically **regional** perspective.

*Le **Forum européen** qui se tiendra à Barcelone (E) donnera l'occasion à tous ceux dont les activités seront influencées par l'euro (à savoir les administrations régionales et locales, les banques, les entreprises au niveau régional, etc.) de rencontrer des experts politiques, des représentants des institutions communautaires, des académiques et des praticiens, afin de se livrer ensemble à une discussion sur les implications que l'introduction de la monnaie unique aura pour les régions et pour leur coopération à la fois interrégionale et transnationale. Ce forum permettra aussi d'examiner sous une perspective plus spécifiquement **régionale** des thèmes tels que "L'euro et les monnaies des pays tiers"; "Comment assurer la stabilité de l'euro après son introduction"; et "L'établissement d'une coopération régionale transfrontalière dans l'UEM".*

Das **Europäische Forum** in Barcelona (E) soll TeilnehmerInnen, die mit der Umsetzung der neuen Währung in ihrer Arbeit konfrontiert werden, die Möglichkeit bieten, gemeinsam mit Experten aus der Politik, aus den europäischen Institutionen, der Wissenschaft und Praxis über die Effekte zu diskutieren, die eine Einführung des EURO für die Regionen und für ihre interregionale und transnationale Zusammenarbeit impliziert. Dabei werden Themen wie *"Der EURO und andere Währungen"*, *"Die Sicherung der Stabilität des EURO nach seiner Einführung"* oder etwa *"Die Gestaltung der regionalen grenzüberschreitenden Zusammenarbeit in der WWU"* aus der **regionalen** Perspektive beleuchtet.

Further information on the programme and practical organization can be found at the EIPA-ECR website (http://www.eipa.nl) or by contacting:

Pour tout renseignement complémentaire sur le programme et les aspects pratiques de l'organisation, vous pouvez consulter le site Internet du CER-IEAP (http://www.eipa.nl) ou contacter:

Weitere Auskünfte über das Programm und die praktische Organisation können der EIPA-ECR Website (http://www.eipa.nl) entnommen werden oder sind unter der folgenden Adresse erhältlich:

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Interregional Conference on Eurotraining for Regional and Local Authorities / *Conférence interrégionale sur l'euroformation des administrations régionales et locales*

Barcelona

5-6 June 1998 / *les 5-6 juin 1998*

First phase of the Eurotraining Project for Regional and Local Authorities / *Première phase du Projet d'euroformation des administrations régionales et locales*

The Interregional Conference on 'Eurotraining for Regional and Local Authorities of the EU and the Applicant Countries' will be held in Barcelona on 5 and 6 June 1998.

This Conference is organised by the European Centre for the Regions (ECR), Barcelona (E), in collaboration with the European Institute of Public Administration (EIPA), Maastricht (NL) and the College of Europe, Bruges (B), and receives financial support of the Committee of the Regions and of DG XVI and DG XXII of the European Commission.

The aim of the Conference is to **identify training needs** among those in charge of subnational administrations so as to strengthen their professional skills and to increase efficiency and effectiveness as regards those issues with a Community dimension which affect regional and local authorities.

This is therefore a **unique event** with a strong Community dimension insofar as it is targeted at the same time at representatives from the Community institutions, the regions and cities of the 15 EU Member States and those countries which have applied to join the EU in the next wave of accession. It may therefore be said that the Conference is of **great added value**.

Fore more information and registration forms, please contact:

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La Conférence interrégionale sur "l'Euroformation des administrations régionales et locales" de l'UE et des pays candidats à l'adhésion aura lieu les 5 et 6 juin 1998 à Barcelone.

Cette Conférence est organisée par le Centre Européen des Régions (CER), Barcelone (E), en collaboration avec l'Institut Européen d'Administration Publique (IEAP), Maastricht (NL) et le Collège d'Europe, Bruges (B), et bénéficie du soutien financier du Comité des Régions et de la DG XVI et DG XXII de la Commission européenne.

Le but de la Conférence est ***d'identifier les besoins*** *de formation chez les responsables des administrations infranationales en vue de renforcer leurs aptitudes professionnelles et d'augmenter l'efficience et l'efficacité par rapport aux questions de dimension communautaire qui touchent les régions et les villes.*

Il s'agit dès lors d'un ***événement unique*** *à forte dimension communautaire dans la mesure où il s'adresse en même temps aux représentants des institutions communautaires, des régions et des villes des 15 pays membres de l'UE et des pays de la prochaine vague d'adhésion. Aussi peut-on dire que la Conférence présente une* ***importante valeur ajoutée.***

Si vous souhaitez obtenir de plus amples informations ou recevoir un formulaire d'inscription, veuillez contacter:

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Seminar

Managing European Environmental Policy – The Role of Public Officials in the Policy Process of the European Community

Maastricht, 27-29 April 1998

European Integration is still associated with the loss of sovereignty of the Member States, the centralization of tasks and competences in 'Brussels', bureaucratization, long and complicated decision-making processes and over-regulation through thousands of (unnecessary) regulations and directives which the Member States have to implement and apply.

The role of the national (and regional) administrations within the decision-making process has received very little attention either from the scientific or the public sector. This seminar aims to explore the role and importance of Member State administrations in the policy process at three different stages of that process:

– the preparatory phase in the European Commission;
– the decision-making phase within the Council;
– the implementation phase in the 'comitology committees'.

The seminar is designed for civil servants from the Member States who are involved in the policy process in the Community. The purpose is to help them to understand the EC policy process and the role they themselves play in shaping the outcome of policy decisions. Participants will firstly be informed about the decision-making process, both in theory (Treaty on European Union and Treaty of Amsterdam) and in practice. They will then be given an introduction to the policy cycle and the role which committees play in the various stages of the policy process – policy design, policy decision-making, policy implementation and application. A simulation exercise and a case study will deepen their understanding of what role they play, how the different players interact and how their decisions will affect policy.

Furthermore, the seminar will leave enough time to evaluate the role of implementation committees in the EC policy process within the field of environmental policy. After a brief historical overview of the development of implementation committees since the 1960s, the background to the Comitology Decision of July 1987 and its legal basis in Art. 145 will be presented. The different rules for the three major types of committees – advisory committee (procedure I), management committee (procedure II) and regulatory committee (procedure III) – established through the Council Comitology Decision will be elaborated with regard to the environmental sector.

The session will conclude with an assessment of the role national officials play in the policy process within the environmental sector.

For more information, please contact
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Website: http://www.eipa.nl

Seminar / *Séminaire*

European Negotiations / *Négociations européennes*

Maastricht
15-19 June, 5-9 October and 23-27 November 1998/
du 15 au 19 juin, du 5 au 9 octobre et du 23 au 27 novembre 1998

This seminar practises the strategies and tactics relevant to European negotiation situations and examines ways in which to promote their efficient conduct. It is intended for civil servants from Member States and Community institutions and is of a highly practical and interactive nature. While providing a theoretical framework, the seminar is above all designed to help participants improve their negotiations skills. An added value is the multinational composition of the group which provides participants with a rare opportunity to explore and develop together the vast potential inherent in the unique process of European negotiations.

Ce séminaire met en pratique les stratégies et tactiques pertinentes pour des situations de négociation européenne et examine les moyens d'en accroître l'efficacité. La nature de ce séminaire destiné aux fonctionnaires des Etats membres de l'UE et des institutions communautaires est fortement pratique et interactive. Parallèlement à cet objectif qui vise à fournir un cadre théorique, le séminaire est avant tout conçu pour aider les participants à améliorer leurs aptitudes de négociation. La composition multinationale du groupe est une valeur ajoutée et offre aux participants une occasion unique d'explorer ensemble le vaste potentiel inhérent au processus de négociations européennes.

For more information and application forms, please contact:
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European Workshop

EC Policy on State Aid: Rules, Procedures, Results, Evolution

Maastricht, 25-26 June 1998

Community policy on state aid has developed over a period of more than thirty years and there now exists a considerable body of law in the form of Commission decisions and Court rulings that has interpreted the general Treaty provisions in great detail. However, EC policy on state aid is still in a state of flux. More importantly, and despite the Commission's numerous communications on the various aspects and forms of state aid, public understanding of this policy is still incomplete. There are at least three factors which have contributed to this state of affairs.

Firstly, governments have been finding new and ingenious ways of assisting their industries and hence the criteria used to identify aid have become more subjective. Secondly, the Treaty allows certain exceptions to the general ban on state aid. The question arises as to how to reconcile such exceptions with, on the one hand, the need to maintain free competition and, on the other, the need to promote certain economic activities and encourage the development of structurally backward areas of the Union. Thirdly, the Commission has, by necessity, been operating in a kind of "political/legal vacuum" by developing guidelines on the application of state aid rules without there being any prior, explicit mandate from the Council. It is now time to streamline these guidelines and focus the activities of the Commission on the most serious incidents of state aid.

For these reasons, there is a need to (a) improve public understanding of current state aid rules and procedures; (b) undertake a critical analysis of the effectiveness of state aid rules; and (c) stimulate discussion on likely and/or necessary developments in the Community framework for controlling state aid. The European Institute of Public Administration is organising a Workshop for national, regional and local officials, as well as managers from public enterprises in order to deal with these three objectives. The Workshop will (a) examine both economic theory on the role and aim of public assistance and the current practice of controlling such assistance; (b) look at the issue of state aid from an economic, legal and administrative perspective; (c) offer detailed information on current practice through case studies and presentations of experiences in different countries; (d) consider likely future developments in the Community framework; and (e) bring together Community and national officials and representatives from industry in order for them to exchange views and debate the issues involved.

For more information and registration forms, please contact:
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Website: http://www.eipa.nl

Seminar

Who's Afraid of European Documentation?

Maastricht, 17-19 June 1998

The European Institute of Public Administration is organizing its fifth seminar on European Documentation at its premises in Maastricht on 17-19 June 1998.

The aim of this seminar is to provide those working continually or occasionally in the field of European affairs, both inside and outside Community institutions, with the ability to trace and use European documents, by offering them a complete survey of the main European documents (off and on-line) and methods of gaining access to them.

The seminar, which will be conducted in English, is open to all persons working in or with European affairs, Community officials, legal experts, information specialists from the Member States of the EU or from applicant Member States.

EIPA would like to invite you to attend this seminar (see registration form attached). The participation fee for this seminar is NLG 1,300 (including documentation, 3 lunches, 1 dinner and beverages). Upon receipt of the registration form, we shall send out to you a confirmation letter along with all practical details (such as EIPA's arrangements for hotel accommodation at reduced prices). You will also receive a detailed and updated programme.

To obtain more information, please contact:
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Séminaire *Seminar* Seminar

Comités et comitologie dans le processus politique de la Communauté européenne

Committees and Comitology in the Political Process of the European Community

Ausschüsse und Komitologie im politischen Prozeß der Europäischen Gemeinschaft

Maastricht, 22-24 September 1998

Les comités jouent un rôle essentiel dans les différentes phases du processus politique de la Communauté européenne dans la mesure où ils participent à l'élaboration, la décision et la mise en oeuvre des politiques communautaires. Plus précisément, les comités experts ou consultatifs assistent la Commission dans le processus législatif; les groupes de travail ou comités du Conseil préparent les décisions des ministres; et, dans le processus de mise en oeuvre, les comités désignés sous le nom de "comitologie" contrôlent la mise en oeuvre du droit communautaire.

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

Ausschüsse spielen in verschiedenen Phasen des politischen Prozesses in der Europäischen Gemeinschaft eine wichtige Rolle. Sie sind an der Erarbeitung, Entscheidung und Umsetzung von EG-Politik beteiligt: Beratende Ausschüsse oder sogenannte Expertenausschüsse helfen der Kommission bei der Ausarbeitung von Rechtsakten, Arbeitsgruppen oder Ausschüsse des Rates bereiten Ministerentscheidungen vor, sogenannte „Komitologie"-Ausschüsse überwachen die Umsetzung von EG-Recht.

Ce séminaire vise à aider les fonctionnaires des Etats membres et des institutions communautaires à mieux comprendre le rôle exercé par ces comités dans le processus décisionnel d'un point de vue à la fois théorique et pratique. La première partie du séminaire sera consacrée à une typologie des comités – sur la base de leur fonction dans le processus décisionnel – et sera suivie d'exercices de simulation et d'études de cas des différents types de comités en vue d'illustrer le rôle qu'ils jouent dans le processus d'élaboration de politiques ainsi que leur mode de fonctionnement.

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

Das Seminar richtet sich an Bedienstete der Mitgliedstaaten und Gemeinschaftsinstitutionen, die ein besseres Verständnis der Bedeutung und Funktion erlangen möchten, die diese Ausschüsse im politischen Prozeß sowohl aus theoretischer als auch aus praktischer Sicht spielen. Im ersten Teil des Seminars wird eine Einteilung der Ausschüsse, basierend auf ihrer Funktion im Entscheidungsprozeß, entwickelt. Im Anschluß daran verdeutlichen Simulationen und Fallstudien zu den verschiedenen Ausschußtypen die Arbeitsweise und die Rolle, die diese im politischen Prozeß spielen.

Cette approche alliant discussions théoriques et apprentissage interactif donnera aux participants l'occasion d'améliorer leurs connaissances théoriques et pratiques du travail des comités sous tous les angles du processus d'élaboration et de mise en oeuvre des politiques communautaires.

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

Die Verbindung von theoretischer Diskussion und interaktivem Lernen gibt den Teilnehmern die Möglichkeit, ihr theoretisches und praktisches Wissen über Ausschüsse in allen Bereichen der Rechtsetzung und Umsetzung von EG-Politiken zu erweitern.

Les langues de travail du séminaire seront le français, l'anglais et l'allemand.

Seminar working languages: English, French and German.

Arbeitssprachen des Seminars sind Englisch, Französisch und Deutsch.

Si vous souhaitez obtenir de plus amples informations ou recevoir un formulaire d'inscription, veuillez contacter:

For more information and registration forms please contact:

Weitere Informationen und Anmeldeformulare erhalten Sie bei:

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EUROMANAGERS LEADERSHIP

Enhancing European Public Management in the EU Member States

The ***EUROMANAGERS LEADERSHIP*** Programme aims to enable high-level civil servants from the EU Member States to **enhance their role as European managers**.

This aim lies within the framework of two major developments: on the one hand the effective management of the administrations of the Member States; and on the other hand the complexity of European issues which are increasingly involving the EU Member States.

The fact that European policies are being pursued in an increasing number of areas makes it necessary to provide the ***EUROMANAGERS*** with the general skills required to become attuned to the European context and to act within the Community framework.

A PROGRAMME OF FOUR MODULES

The ***EUROMANAGERS LEADERSHIP*** Programme offers participants the opportunity to improve their skills in four areas:

* to develop a vision and a good understanding of European politics (Module 1);
* to deal with techniques and strategies related to the development of European policies (Module 2);
* to deal with European funds and budgets (Module 3);
* to deal with European information and communication (Module 4).

The ***EUROMANAGERS LEADERSHIP*** Programme will alternate theory and practice in an original way using three preferred training methods:

* assignments serving as a basis for discussions on the themes of the lectures;
* lectures that take into account the information provided by the participants and their professional concerns;
* a final report containing policy and management recommendations intended for the institutions of the European Union.

The ***EUROMANAGERS LEADERSHIP*** Programme consists of four modules to be run in four different cities of the European Union over a period of 8 months from April to November 1998.

Each module will last for three days and tackle one of the four training objectives of the programme:

Module 1: 27-29 April 1998, Maastricht at **EIPA –** European Institute of Public Administration
Module 2: 22-24 June 1998, Vienna at **VAB –** *Verwaltungsakademie des Bundes (Federal Academy of Public Administration)*
Module 3: 21-23 September 1998, Dublin at **IPA –** *Institute of Public Administration*
Module 4: 23-25 November 1998, Oeiras at **INA –** *Instituto Nacional de Administração*

GENERAL INFORMATION

Fee

The fee is ECU 2,500 to cover four seminars, documentation, site visits, lunches, one evening meal per seminar and one cultural event in each city visited. It does not include hotel and accommodation costs or travel expenses.

Hotel costs are likely to amount to between ECU 100 and 150 per night.

Registration

Application forms should be sent to EIPA (attn. Ms Eveline Hermens) before 15 March 1998. Applications will be dealt with on a 'first come first served' basis and the organisers will seek to achieve a balanced number of participants from each of the Member States of the European Union in order to ensure the mutual exchange of various experiences and cultures.

For more information please contact:
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EUROMANAGERS LEADERSHIP

Renforcer la gestion publique européenne dans les Etats membres de l'Union européenne

Le programme ***EUROMANAGERS LEADERSHIP*** vise à apporter aux hauts fonctionnaires des Etats membres de l'Union européenne une **valeur ajoutée dans leur rôle de manager européen**.

Ce but s'inscrit dans deux évolutions majeures: le développement d'une gestion efficace des administrations des Etats membres d'une part; un contexte européen complexe impliquant de plus en plus les administrations des Etats de l'Union d'autre part.

Face à l'enjeu actuel du développement des politiques européennes conduites dans des domaines de plus en plus nombreux, il convient d'apporter aux ***EUROMANAGERS*** les aptitudes générales nécessaires pour se situer dans le contexte européen et agir dans le cadre communautaire.

UN PROGRAMME EN 4 MODULES

Le programme ***EUROMANAGERS LEADERSHIP*** offre aux participants l'opportunité d'accroître leurs capacités à:

* développer une vision et une bonne compréhension de la politique européenne (module 1) ;
* appréhender les techniques et stratégies propres au développement des politiques européennes (module 2) ;
* appréhender le système des fonds et du budget de l'UE (module 3) ;
* se familiariser avec l'information et la communication européennes (module 4).

Le dispositif du programme ***EUROMANAGERS LEADERSHIP*** organise une alternance originale entre la pratique et la théorie par le recours à trois modalités formatives privilégiées:

* des travaux préparatoires qui servent de base à des discussions sur les thèmes d'intervention
* des exposés construits en lien avec les informations fournies par les participants et leurs soucis professionnels
* un rapport final de recommandations en termes à la fois politiques et de gestion destiné aux institutions de l'Union européenne.

Le programme ***EUROMANAGERS LEADERSHIP*** est composé de 4 modules répartis sur 8 mois d'avril à novembre 1998, organisés dans 4 villes différentes de l'Union européenne.

Chaque module se déroule sur 3 jours et se consacre à l'un des quatre objectifs de formation du programme.

Module 1: 27-29 avril 1998, Maastricht à l' **IEAP –** Institut Européen d'Administration Publique
Module 2: 22-24 juin 1998, Vienne à la **VAB –** *Verwaltungsakademie des Bundes*
Module 3: 21-23 septembre 1998, Dublin à l'**IPA** – *Institute of Public Administration*
Module 4: 23-25 novembre 1998, Oeiras à l'**INA –** *Instituto Nacional de Administração*

INFORMATION GENERALE

Prix

Le prix est de ECU 2.500 et couvre les 4 séminaires, la documentation, les visites sur le terrain, les déjeuners, un dîner par séminaire et un événement culturel dans chaque ville visitée. Il ne comprend pas les autres frais d'hôtel ou de subsistance, ni le coût des voyages.

Les frais d'hôtel peuvent être estimés à ECU 100 à 150 par nuit.

Inscription

Les formulaires d'inscription doivent parvenir à l'IEAP (à l'attention de Mlle Eveline Hermens) avant le 15 mars 1998. La priorité sera accordée aux premiers inscrits et un équilibre entre les Etats membres de l'Union européenne sera recherché afin de renforcer la fertilisation croisée entre expériences et cultures diversifiées.

Pour de plus amples informations, veuillez vous adresser à:
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Website: http://www.eipa.nl

Institutional News

* General

– In accordance with the cooperation agreement between the Republic of Hungary and EIPA, (formalizing the associated membership of Hungary with EIPA), which was signed in Budapest on 11 December 1997 (see EIPASCOPE 1997/3), a Hungarian representative will be participating in EIPA's forthcoming Scientific Council meeting (Ascot, 24-25 March 1998) – awaiting the official nomination by EIPA's Board of Governors (to take place at its meeting of 18-19 June 1998).

In the Quirinale Palace in Rome: the Director General, Mrs Corte Real, presents EIPA's activities to the President of the Republic of Italy, Oscar Luigi Scalfaro (second from left). The President received the participants in the EuroManagers Seminar on Environmental Policy on 19 November 1997 in Rome

EIPA Staff News

* Newcomers at EIPA

– **Dr Simon Duke** (UK) joined EIPA Maastricht on 1 January 1998 as Assiociate Professor.

Recent and Forthcoming EIPA Publications

Recent

Openness and Transparency in the European Union
Veerle Deckmyn and Ian Thomson (eds)
EIPA 1997, 169 pages: **NLG 60**
(Only available in English)

Europäische Umweltpolitik und nationale Verwaltungen: Rolle und Aufgaben nationaler Verwaltungen im Entscheidungsprozeß
Christoph Demmke (Hrsg.)
EIPA 1997, 285 Seiten: **NLG 65**
(Eine frühere Fassung dieser Veröffentlichung ist in englischer Sprache erhältlich)

Schengen, Judicial Cooperation and Policy Coordination
Monica den Boer (ed.)
EIPA 1997, 274 pages: **NLG 65**
(Mixed texts in English and French)

Agenda 2000: An Appraisal of the Commission's Blueprint for Enlargement
Current European Issues Series
Marie Soveroski (ed.)
EIPA 1997, 142 pages: **NLG 40**
(Only available in English)

Tax Harmonization: The Case of the Economic Agreement between Spain and the Basque Country
Carlos Lámbarri/Aad van Mourik (eds)
EIPA 1997, approx. 250 pages: **NLG 65**
Financed by the Banco Bilbao Vizcaya Foundation, Bilbao (E)
(Only available in English)

Managing European Environmental Policy: The Role of the Member States in the Policy Process
Christoph Demmke (ed.)
EIPA 1997, 255 pages: **NLG 65**
(An adapted version is available in German)

Free Trade Agreements and Customs Unions: Experiences, Challenges and Constraints
Madeleine O. Hosli and Arild Saether (eds)
Co-published by Tacis services DG IA, European Commission, Brussels and the European Institute of Public Administration, Maastricht, the Netherlands
Tacis/EIPA 1997, 316 pages: **NLG 25** (to cover postage and packing)
(Only available in English)

Managing Universal Service Obligations in Public Utilities in the European Union
(Compilation of papers)
EIPA 1997, 131 pages: **NLG 25**
(Only available in English)

Réflexion stratégique sur les mécanismes de participation des Régions à l'Union européenne dans la perspective de la CIG de 1996
(Actes de la 1ère Conférence des Régions de l'UE)
Sous la direction de Eduardo Sánchez Monjo
IEAP 1997, 306 pages: NLG 65
(les textes sont publiés dans la langue originale mais aussi en traduction française, anglaise et allemande)

Undercover Policing and Accountability from an International Perspective
Monica den Boer (ed.)
EIPA 1997, 218 pages: **NLG 65**
(Only available in English)

A Guide to the Enlargement of the European Union: Determinants, Process, Timing, Negotiations
(Revised Edition)
Current European Issues Series
Phedon Nicolaides/Sylvia Raja Boean
EIPA 1997, 53 pages: **NLG 17.50**
(Only available in English)

The Implementation of Schengen: First the Widening, Now the Deepening
Monica den Boer (ed.)
EIPA 1997, 173 pages: **NLG 65**
(Mixed texts in English and French)

Shaping European Law and Policy:
The Role of Committees and Comitology in the Political Process
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EIPA 1996, 204 pages: **NLG 43**
In collaboration with the European Centre for Public Affairs

The European Union's Common Foreign and Security Policy:
The Challenges of the Future
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EIPA 1996, 149 pages: **NLG 65**
(Disponible également en français)

Civil Services in the Europe of Fifteen: Current Situation and Prospects
Astrid Auer, Christoph Demmke and Robert Polet
Preface by Professor Dr. Siedentopf, Professor at the Hochschule für Verwaltungswissenschaften, Speyer
EIPA 1996, 240 pages: **NLG 65**
(Disponible également en français et allemand)

Guide to Official Information of the European Union
Revised Edition of 'Guide to European Information'
Veerle Deckmyn
EIPA 1996, 58 pages: **NLG 30**
(Disponible également en français)

Les pouvoirs des Länder, cantons, régions et communautés autonomes en matière d'action extérieure et communautaire: Cadre législatif
Edité par le Secrétariat général de l'action extérieure du Gouvernement basque
IEAP 1996, 305 pages: **NLG 65**
(Only available in French)

De Schengen à Maastricht: voie royale et course d'obstacles
Sous la direction d'Alexis Pauly
IEAP 1996, 285 pages, **NLG 65**
(Mixed texts in English and French)

Forthcoming

Taming the Third Pillar. Improving the Management of Justice and Home Affairs Cooperation in the EU
Current European Issues Series
Monica den Boer
EIPA 1998, approx. 25 pages: **NLG 15**
(Only available in English)

Coping with Flexibility and Legitimacy after Amsterdam
Current European Issues Series
Monica den Boer/Alain Guggenbühl/Sophie Vanhoonacker (eds)
EIPA 1998, approx. 200 pages: **NLG 65**
(Mixed texts in English and French)

All prices are subject to change without notice.
A complete list of EIPA's publications is available on request from the Publications Department.

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