Institut Européen
d'Administration Publique

European Institute
of Public Administration

EIPASCOPE

Contents

No. 1999/1

The Reform of the EU Structural Funds: 10 Questions on the Magnitude and Direction of Reforms*

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Introduction

As part of the Agenda 2000 package, the EU Structural Funds are currently going through a reform process in order to increase their effectiveness and to prepare the ground for the gradual integration of prospective new Member States into the EU's structural policy. At the Cardiff European Council of June 1998, a political deadline was set to conclude the reforms by March 1999. Due to the complexity of the issue and the multiple actors involved, it is extremely difficult to predict the outcome of these negotiations. Nevertheless, by addressing 10 questions the reforms raise, this article aims to sketch the likely implications for the implementation of the Structural Funds in the next programming period, 2000-2006.

EU Structural Funds: Principles and Objectives

Since the 1980s, the European Union (EU) has become increasingly concerned about its internal economic and social cohesion. Parallel to the deepening and widening process of European integration, the EU's cohesion policy and its main instruments, the EU Structural Funds,[2] have been gradually strengthened. The successive multi-annual financing agreements of 1988 and 1992 allowed substantial increases in the budgetary resources for structural operations.[3] At the Brussels' European Council of February 1988, a political agreement was reached on doubling the budget of the Structural Funds in real terms between 1987 and 1993. Subsequently, Member States agreed at the Edinburgh European Council in December 1992 that the budget for structural operations would be further increased, in particular for the cohesion countries (Greece, Ireland, Portugal and Spain).

These budget increases were linked to a series of major reforms of the Structural Funds that were undertaken in 1988. The legal basis for these reforms had already been inserted in the Single European Act of 1986 (cf. Art. 130d EC Treaty) and the reforms were subsequently introduced through a number of EC regulations adopted by the Council in June and December 1988. In the course of 1993, these regulations were modified, although at that time this did not involve any fundamental changes comparable to those made in 1988. Therefore, the 1993 regulations, governing the EU Structural Funds, are generally considered to be merely a consolidation of the 1988 reforms.[4] Indeed, the main principles introduced at that time continue to govern the Structural Funds today and the forthcoming Agenda 2000 reforms will reconfirm the importance of these principles.

The first principle that was established in 1988 was the "concentration" principle. This meant that the Structural Funds were to be concentrated on a limited number of priority Objectives. For the programming period 1994-1999, the following seven Objectives were defined:[5]

- **Objective 1**: Promoting the development and structural adjustment of regions whose development is lagging behind (ERDF, ESF, EAGGF-Guidance, FIFG);
- **Objective 2**: Converting the regions, frontier regions or parts of regions (including employment areas and urban communities) seriously affected by industrial decline (ERDF, ESF);
- **Objective 3**: Combating long-term unemployment and facilitating the integration of young people, and persons vulnerable to exclusion from the labour market, into working life (ESF);
- **Objective 4**: Facilitating the adaptation of workers of either sex to industrial changes, including changes in production systems (ESF);
- **Objective 5a**: Promoting rural development by speeding up the adjustment of agricultural structures in the framework of the reform of the Common Agricultural Policy (EAGGF-Guidance, FIFG);
- **Objective 5b**: Promoting rural development by facilitating the development and structural adjustment of rural areas (ERDF, ESF, EAGGF-Guidance);
- **Objective 6**: Promoting the development and structural adjustment of regions with an extremely low population density (ERDF, ESF, EAGGF-Guidance, FIFG).

Moreover, Structural Fund support had to become part of the multi-annual integrated programmes (the "programming" principle). In this regard, it was aimed at ensuring better coordination of the various measures. The programme-approach had far-reaching implications for the management of the Structural Funds both at European and Member State level. The programming cycle consists of various stages. Initially, Member States have to submit their development plans to the European Commission. On the basis of these plans, the Commission conducts negotiations with the Member States that

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

result in the adoption of a Community Support Framework for the respective countries and regions. Subsequently, these framework agreements are translated into several, more detailed, operational programmes. Since the 1993 regulations entered into force, Member States have also had the opportunity to negotiate so-called Single Programming Documents, which essentially constitute a merger of the provisions in the Community Support Framework and those in the respective operational programmes. Hence, the underlying idea for this modification was to shorten the programming procedure.

Closely related to the programming principle, the 1988 reforms also established the "partnership" principle requiring close cooperation between the European, national and sub-national authorities and bodies involved in the entire policy process. Though the partnership principle has been implemented in various ways in the different Member States, it has led in general to a number of fundamental changes. One of the most obvious consequences was that regional and local authorities, as well as economic and social partners and various interest groups, etc., have become more closely involved in the design and implementation of the Structural Funds programmes, and that they have increasingly established direct links with the European Commission for these purposes.

Finally, the "additionality" and "co-financing" principles were confirmed as key features of the Structural Funds. Hence, the EU Structural Funds cannot, in principle, be used to replace Member States' funds while the States are obliged to provide up to half of the funds (depending on the objective) needed for the programmes and projects that are eligible for structural support.

Structural Funds budget for 1994-1999 and the concentration principle in practice

For the 1994-1999 period, a total budget of EUR 138.2 billion was allocated to the Structural Funds, which represents only a small fraction of the total gross national product (GNP) of all EU Member States (less than 0.50%). The largest part of the total budget was reserved for Objective 1 regions (68%). More than 84% is allocated to the four regional objectives (1, 2, 5b and 6).

In absolute terms, Spain is the biggest recipient of Structural Funds (23% of the total budget) and just over half of the budget is allocated to just three Member States (Spain, Italy and Germany). The share of the four cohesion countries (Spain, Portugal, Ireland and Greece) amounts to 47% of the budget. When expressing the Structural Fund transfers in per capita terms, these four countries are the biggest beneficiaries.

In total, at present almost 51% of the EU population lives in areas which are eligible under one of the Structural Funds' four regional objectives. Objective 1 regions alone represent 26.6% of the EU population, which is a significant increase compared to the previous period (1989-1993), when it was 21.7%. It is generally recognised that the available budget for the Structural Funds has been widely spread over all EU Member States: a situation which was primarily the result of a political compromise that was needed to secure agreement among the Member States. Commission statistics show for instance that about 6.6% of the total EU population lives in regions eligible for Structural Funds, but which do not receive regional state aid under the stricter state aid rules. Obviously, the relatively limited budget and the way the Structural Funds are spread widely limit the effectiveness of the policy. Therefore, one of the main challenges for the next programming period will be to ensure a greater concentration of the Structural Funds and thus a reduction in the population coverage of the funds.

Agenda 2000 reforms negotiated under strict budgetary constraints

The negotiations on the Agenda 2000 package in general and the reform of the EU Structural Funds in particular are marked by at least one very distinctive feature. Contrary to the financial perspectives agreed in 1988 and 1992, there is at present little prospect of any further budgetary increase. Indeed, "budgetary stabilisation" became the buzzword in the negotiations. Therefore, there seems to be general political agreement that the ceiling for the EU's own resources will be maintained at 1.27% of the EU GNP throughout the period 2000-2006. However, maintaining the ceiling would imply that the next enlargement, which is assumed to take place in 2002/2003, should result in a significant redistribution of EU expenditure which at present goes to the current Member States. In particular, Spain has insisted that the own resources ceiling has to be reconsidered when enlargement occurs – in order to avoid the present Member States (in particular the cohesion countries) seeing their receipts significantly reduced following the accession of new Member States.

In the European Commission's proposal for the financial perspective for 2000-2006, the budget for structural operations (heading 2) would amount to almost EUR 286 billion (1999 prices) or around 36% of the total budget (pre- and post-accession). This allocation would limit structural operations to around 0.46% of the enlarged EU GNP.

The EU 15 would receive almost 84% (EUR 239.4 billion) of the overall budget for structural operations: the bulk going to the Structural Funds and in particular to the Objective 1 regions, while a total budget of EUR 46.9 billion would be reserved for the prospective Member States. From 2000 onwards, the applicants would receive EUR 1040 million annually in the form of pre-accession aid under the new Instrument for Structural Policies for Pre-Accession (ISPA).[6] For those countries subsequently acceding to the EU, almost EUR 40 billion would be required for their gradual integration into the structural policy.

It is important to note that the Commission's proposals implicitly included a request to current

Member States to reduce their Structural Fund receipts in order to reserve sufficient resources for the new members. Indeed, if the own resources ceiling were kept at 1.27% of the EU GNP, and the overall EU's financing mechanism essentially maintained, the European Commission claimed in Agenda 2000 that enlargement would be possible due to the expenditure growth margins currently available. However, sticking to the present ceiling would inevitably mean that EU payments to present Member States would have to be reduced in order to finance the enlargement. This point is already very obvious with regard to the heading for structural operations. According to the European Commission, the 0.46% ceiling for heading 2 should be maintained throughout the 2000-2006 period. However, in order to do so, the allocation to present Member States would have to be considerably below this ceiling. In fact, under the Commission's proposal, the structural operations' transfers to the existing 15 Member States would represent, on average, only 0.39% of the enlarged EU GNP over the period 2000-2006. By 2006 this percentage is set to decline to 0.33%. Hence, it is clear that, at least with regard to structural operations, the present Member States were *de facto* being asked to foot the bill for enlargement – which explains the fierce reaction from Spain. Moreover, it is obvious that the reduced Structural Fund transfers would in particular concern some of the current Member States, i.e. the cohesion countries.

The outcome of the negotiations on the new financial perspective will largely influence the future of EU cohesion policy, as it will determine the budgetary boundaries. It is likely that, as with the previous financial perspectives, agreement will first be sought on overall future EU financing, and that subsequently the revised regulations of the Structural Funds will have to be finalised. In any event, the main principles underlying the Structural Funds (concentration, programming, partnership, additionality) will remain at the centre of the policy. However, a new core principle will be added, i.e. the improved effectiveness of Structural Fund measures. Moreover, the proposals of the European Commission envisage a far-reaching decentralisation of the management of the Structural Funds, coupled with a clarification of the respective roles and responsibilities of the actors involved at European, Member State and sub-national level. The legislative proposals of the Commission, adopted on 18 March 1998, and the positions of the Member States are analysed below by addressing 10 questions regarding the likely implications for the implementation of the Structural Fund reforms.

Question 1: Will there be more concentration of the Structural Funds?

Given the fact that it is unlikely that the overall Structural Fund resources will be increased in the next programming period, the Commission proposals essentially call for a greater concentration of the Structural Funds by:

- reducing the number of priority objectives from seven to three;
- reducing the number of Community Initiatives from 13 to three (i.e. INTERREG, LEADER and EQUAL);
- lowering the population coverage of the funds from 51% at present to 35-40% towards the end of the next programming period (2006).

It is envisaged that the new Objective 1 would receive the highest priority, targeting the poorest regions in the Union. Around two thirds of the Structural Funds would be allocated to Objective 1. The eligibility criteria would not be fundamentally modified (those regions at NUTS II level whose gross domestic product (GDP) per capita in the last three years was less than 75% of the EU average). However, some regions will be included in the list for "special reasons" (outermost regions, current Objective 6 regions, etc.). Moreover, the Commission offered phasing-out arrangements for those regions which have surpassed the 75% threshold. These transitional arrangements are fairly generous as they anticipate a gradual phasing-out of Structural Fund support by 31 December 2005 (or in some cases by 31 December 2006) for Objective 1 regions which no longer qualify. According to the most recent available statistics on GDP per capita for 1994-1996, 10 regions would be eligible for transitional support, i.e. Hainaut (B), Cantabria (E), Corsica (F), "Arrondissements" of Avesnes, Douai and Valenciennes (F), Ireland, Molise (I), Flevoland (NL), Lisbon (P), Scottish Highlands and Islands (UK) and Northern Ireland (UK).[7]

In total, it is envisaged that Objective 1 regions will cover approximately 21.9% of the EU population. The Commission aims to have a complete overlap of the territory of these regions with those benefiting from state aid under Art. 92(3)a of the Treaty.[8]

The new Objective 2 would provide support for the economic and social conversion of regions suffering from structural difficulties. It brings together Objectives 2 and 5b of the current programming period, and extends them to other regions (urban areas in difficulties, regions seriously affected by the decline of the fishing industry). It is envisaged that the population covered by Objective 2 should not exceed 18% of the total EU population. Regions currently eligible under Objectives 2 and 5b, which no longer qualify for support in the next period, will continue to receive support on a transitional basis, but this will be phased out by 31 December 2003.

The new Objective 3, combining the current Objectives 3 and 4, would support the adaptation and modernisation of policies and systems relating to education, training and employment. Those areas not covered by Objective 1 or 2 would be eligible for this horizontal objective.

The reduction in the number of priority objectives does not seem to imply a fundamental re-arrangement of them. It merely concerns a regrouping whereby the scope of the present seven is essentially maintained. Moreover, this regrouping leads to a rather heterogeneous

mixture of issues covered by the objectives. For instance, in the case of the new Objective 2, various issues are brought together under one heading (regions suffering from industrial decline, declining rural areas, crisis-hit areas dependent on fishing industry, urban areas in difficulty).

Regarding the planned reduction in the area covered by the funds, it remains to be seen whether the Commission will be very successful. Past experiences have shown that effectively concentrating the funds is apparently rather difficult for various reasons. The proposals already anticipate that certain regions may be eligible for EU support even though they do not strictly comply with the main eligibility criteria. Moreover, the proposed phasing-out arrangements are fairly generous with regard to time. Thus, while the Commission aims to reduce the area coverage to 35-40% of the total EU population towards the end of the next programming period, it may become rather difficult to achieve this target, and it seems likely that the actual area coverage will not constitute a significant reduction compared with the present situation.

Question 2: How will be the Structural Funds be allocated?

The Commission proposed a total budget for structural operations amounting to EUR 286 billion for the period 2000-2006. This includes:

– Structural Funds	EUR 218 billion
– Cohesion Fund	EUR 21 billion
– Pre-accession aid	EUR 7 billion
– Post-accession aid	EUR 40 billion

The budget for Structural Funds would be sub-divided as follows:

– 3 objectives	EUR 205 billion or around 94%
– 3 Community initiatives	EUR 11 billion or at most 5%
– innovative schemes and technical assistance	EUR 2 billion or 1%

The Commission further proposed that "*about*" two thirds of the Structural Funds would be spent on Objective 1 regions (i.e. about EUR 145 billion). During the negotiations in the Council, some Member States have asked for the word "about" to be deleted and for it to be specified that the Objective 1 regions would receive exactly two thirds of the funds. The outcome to this is not yet known. However, looking at the current regulation, it is likely that the new regulation will include a reference (in the annex?) which will stipulate in absolute amounts the precise allocation available for Objective 1.

Initially, the Commission proposed making an indicative breakdown – using transparent and objective criteria – of the allocation per Member State for only 90% of the Structural Fund budget, i.e. ca. EUR 185 billion. The remaining 10% was to be put in the performance reserve. However, subsequent opposition by the Member States during negotiations has forced the Commission to reduce this reserve to 4% of the total budget (see below).

The draft regulation stipulates that for Objective 1 the Commission and for Objective 2 the Commission, together with the Member State concerned, shall draw up the list of eligible regions. However, it is possible that these provisions will be modified during the negotiations. It seems likely that, at least for Objective 1, the Member States will insist that the list of eligible regions is annexed to the regulation.

Question 3: Why have several Member States already started drafting their development plans – anticipating the adoption of the new Structural Fund regulations?

The preparation of the development plans is a crucial phase for Member States. First of all, they have to provide convincing arguments demonstrating the existing structural weaknesses and thereby the need for EU support. Hence, the plans have to contain a detailed diagnosis of the economic and social situation of the region concerned and set out the proposed development strategy to overcome the existing problems. It is clear that the development plan should not just constitute a "shopping list" of projects for which funding is being sought. This would be rejected. It is necessary to define a comprehensive and integrated development strategy, which effectively addresses the specific problems and challenges of the region concerned.

Moreover, the Member States have to describe the management structures and procedures that will be put in place to monitor the implementation of the Structural Funds. In other words, the second basic requirement is to demonstrate that the Member States have the required administrative capacity to manage the funds effectively.

Thus, preparing the development plans is a cumbersome exercise for all Member States. The plans are the eventual outcome of a time-consuming consultation and negotiation process whereby various ministries, sub-national authorities, economic and social partners, interest groups, etc. are all asked to make contributions.

This broad consultation and negotiation process is extremely important for the smooth implementation of the programmes later on. Close involvement of the various partners from the initial phase onwards is likely to increase their commitment to subsequently implementing the development plan effectively.

The regulation specifies that the Member States have to submit their development plans within three months of the adoption of the Structural Fund regulations. This is obviously a rather short period, and therefore most Member States have started their preparations.

Following the submission of the development plans, the Commission will decide on the Community Support Frameworks or Single Programming Documents within six months. The total nine-month period constitutes one of the arguments that most likely swayed the Cardiff

European Council of June 1998 to agree to set March 1999 as the deadline for concluding the negotiations on the overall Agenda 2000 package.[9] Indeed, if the new Structural Funds programmes have to be launched early 2000 it is necessary to complete the negotiations by March 1999, so that the deadlines in the Structural Fund regulations can be observed.

Question 4: What is the status of the Commission guidelines per objective?

A new element in the proposed regulations is that after the adoption of the regulations and before the Member States submit their development plans, the Commission intends to publish a list of Community priorities for each objective in the Official Journal. This proposal has been highly criticised by various Member States for various reasons. First of all, the timing was questioned. Once the regulations have been adopted, the Member States have three months to prepare and submit their development plans. As mentioned above, most Member States and regions concerned therefore started preparations for their plans before the actual adoption of the EC regulations. Thus, in reality there will be very little time to take the Commission guidelines into account. Therefore, at least some Member States asked for these guidelines to be published earlier, in order to avoid any delays in the drafting of plans and the negotiations on the Community Support Frameworks or Single Programming Documents.

Moreover, there was general uncertainty about the precise nature of these "guidelines". Are the guidelines to be followed strictly by the Member States? Or, can the plans significantly deviate from the Commission's guidelines? In other words, are the guidelines to be considered as additional eligibility criteria?

It is worth consulting the guidelines that the Commission published in 1997 for the adjustment of the Structural Funds programmes for the programming period 1994-1999. In response to a question of a member of the European Parliament, the Commission stated that the purpose of those guidelines was "to provide a general policy and priority framework within which to make adjustments to current programmes".[10] Hence, the Commission argued that it was up to the monitoring committees and relevant authorities to decide what adjustments were needed to ensure maximum value for money from the Structural Funds. As regards the forthcoming guidelines for the next programming period, the Commission aims to ensure that its priority themes are known "in sufficient detail to be incorporated adequately in the programming process at national level". It is expected that the Commission will formally adopt and publish its guidelines at the time of, or soon after, the adoption of the Structural Fund regulations (i.e. within a month).

However, on 3 February 1999, the Commission published its draft guidelines for the period 2000-2006, thereby responding to some extent to the criticisms made by the Member States. According to the Commission, the new programmes should concentrate on three main priorities: increasing the competitiveness of regional economies, in order to create sustainable jobs; increasing employment and social cohesion, mainly through the upgrading of human resources; and urban and rural development in the context of a balanced European territory.[11] It is illustrative that, due to the considerable pressure from the Member States, the regulation is now expected to refer to broad, indicative guidelines.

Question 5: What are the implications for Member State administrations of the proposals for further decentralisation of the management structures?

Another important modification in the proposals is the call for significant modifications in the management responsibilities of the Structural Funds. In fact, a substantial decentralisation is envisaged whereby the Member States will become even more responsible for the implementation, but at the same time also accountable to the European Commission. Hence, the role of the Commission will be limited to strategic programming, ensuring respect for Community priorities and verifying the results through monitoring, evaluation and financial control.

This inevitably implies that the Member States and their administrations will have a greater role, but also more responsibilities in the actual day-to-day management of the Structural Funds. Some uncertainties remain regarding the future involvement of the Commission in the monitoring process. What are, for instance, the implications of limiting the role of the Commission in the monitoring committees to only an advisory one?

In any event, the proposed decentralisation implies that, in the development plans, the Member States will have to demonstrate that they possess the necessary administrative capacities to effectively manage the funds. The required administrative structures put in place to manage the Structural Funds vary considerably from one Member State to the other, whereas the structures also differ depending on under which objective a region is receiving EU funds. Thus, administrative capacity is, indeed, a rather vague concept. Due to the absence of any prescribed European model of management structures, administrative capacity is eventually measured by results. It is interesting to note that several Member States have adjusted their administrative structures on the basis of experience gained in managing Structural Funds. In that regard, there is a need for continuous evaluation of the effectiveness of the existing structures and where necessary for adjustments to be made.

Question 6: Will a Member State's record of fund implementation and absorption capacity in the current programming period be taken into consideration when allocating the funds?

The structural operations' budget in the current

financial perspective is politically regarded as not only an expenditure ceiling but also as an expenditure target. In other words, for political reasons, the Member States agreed in 1992 that all measures would have to be taken to ensure that the funds made available were also being spent effectively by the respective Member States.

However, for various reasons, most Member States faced considerable difficulties in actually utilising the funds, at least in the initial phase of the current programming period. The legislation includes provisions on the so-called "automatic carry-over" of unused allocations of Structural Funds to the next budgetary year. It is important to note that for the next programming period, the Commission proposed abandoning this system of "automatic" carry-over. In the new programming period, commitments not used after two years would then be automatically de-committed. Therefore, there would be a greater incentive for the Member States to ensure that funds are effectively spent on schedule.

Under the current proposal, the utilisation rate of the Structural Funds in the current programming period (1994-1999) is formally not considered as a criterion for allocating funds for the next period. However, informally, it seems likely that the record of Member States in utilising the funds will be somehow taken into account. Indeed, a notable under-utilisation of funds may be due to inappropriate administrative structures within the Member State concerned. Although the actual allocation of Structural Funds is essentially the outcome of a sensitive political bargaining process between the Commission and the Member States, it is likely that some of the actors involved will, during these negotiations, closely watch the past implementation record of Member States. In particular, in the current political context, the Member States which are net contributors to the EU budget will ask for convincing evidence that the Structural Funds will be used in a more effective and efficient way. Therefore, it is preferable for Member States to provide sufficient information justifying their administrative capacities to manage Structural Funds and to implement the programmes efficiently. This should be done in the development plans, by presenting a clearly defined division of responsibilities, outlining the programme management structures and the administrative coordination mechanisms put in place, describing the roles and responsibilities of the various partners, outlining the monitoring and evaluation mechanisms, etc.

Question 7: Will the proposals on the performance reserve survive in the negotiations?

As mentioned above, the Commission initially proposed that 10% of Structural Fund resources would not be allocated to the Member States at the start of the programming period. Rather, on the basis of the mid-term evaluations, the Commission would decide before 31 March 2004 on the allocation of the resources in the performance reserve to the most efficient operational programmes or single programming documents. The following criteria would be used:

- quality of programming: is EU assistance achieving the initial targets?;
- administrative capacity: quality of management regarding monitoring and evaluation, project selection, financial control, etc.;
- rate of absorption of the funds;
- leverage effect: are efforts made to ensure a leverage effect (involvement of private capital).

During negotiations, Member States have declared their agreement, in principle, with the underlying motivation for setting up the reserve, i.e. to give incentives to increase the efficient use of the funds. However, there was general opposition to the proposed instrument. In fact, Member States expressed concern that the criteria do not specify how the Commission would precisely decide on the allocation of these reserves. Furthermore, the proposed 10% corresponds to a considerable amount in absolute terms (almost EUR 20 billion), i.e. the allocations for the performance reserve would be almost equal the total budget proposed for the Cohesion Fund. Hence, Member States were extremely reluctant to accept such provisions as they do not stipulate precisely how this significant budget would eventually be distributed among the Member States. Moreover, it is likely that the proposal would be politically very sensitive to implement. As a result, it remains uncertain whether the performance reserve provides a workable tool for enhancing effectiveness as it may prove difficult to apply it in practice.

Indeed, if the resources of the performance reserve are eventually allocated to the best performing programmes on the basis of objective and clearly defined criteria, the proposal seems useful. However, the fear is that the allocation would be done on a national pro-rata basis to "efficient" programmes, with the programmes that have encountered severe problems simply not receiving their share of the remaining 10%. Under this second scenario, the purpose and usefulness of the performance reserve is questionable, as the most efficiently performing programmes would not receive an additional allocation above their proportional share as a reward for their good performance.

Considering the fierce opposition of the Member States during the negotiations, the Commission produced a significantly amended proposal on the performance reserve. Under this scenario, the resources of the performance reserve would be equal to 10% of the commitment appropriations from the last three years of the programming period, 2004-2006 (i.e. around 4.3% of total appropriations). Moreover, the resources of the performance reserve would in fact become part of the overall indicative allocation of each Member State, thus becoming a reserve at Member State level. The resources would subsequently be allocated at mid-term by the Commission, but on the basis of a proposal of the respective Member State taking into account criteria

relating to efficiency, management and financial performance. However, it seems that a compromise solution has eventually been found whereby the resources of the performance reserve will now be fixed at only 4% of the Structural Funds budget.[12]

Question 8: Will the partnership principle be extended?

Regarding the partnership principle, the Commission urged a broadening and deepening of its application. Therefore, all partners concerned should be closely involved in the entire policy cycle. This applies in particular to regional and local authorities, economic and social partners and other relevant organisations, notably bodies dealing with environmental protection and the promotion of equal opportunities for women and men. In this regard, the Commission proposed that the forthcoming development plans of the Member States would incorporate the opinions of these partners. As a consequence, their views would certainly have to be given more weight or importance. Simply ignoring the views expressed by partners would not be a feasible option for Member States.

During the negotiations, the Member States have objected to formally upgrading the role of the partners in the process. The December 1998 Council report on the Structural Fund reforms that was submitted to the Vienna European Council presented a watered down version of the involvement of the various partners in the programming and implementation phase. Though the outcome of the negotiations on this matter is not yet known, it seems likely that the final text will probably include a general reference to the partnership principle, leaving the actual degree of involvement of the different partners up to the respective Member States to work out.

However, from the experiences of several Member States, it seems that the involvement of partners can be extremely valuable. A key feature is that it can contribute to building a broad consensus on the development priorities contained in the development plan and/or the Community Support Framework or Single Programming Document, which will facilitate the subsequent implementation of the programmes.

Question 9: To what extent are Member States encouraged or obliged to attract private funding for Structural Fund programmes?

The overall Structural Funds' budget is – in relative terms – rather limited and there is virtually no scope to increase this budget in the next years. Therefore, in order to increase the impact of the Structural Fund programmes, there has been increasing focus on combining the Structural Funds with various other financial instruments. The latter can come from European sources, such as loans from the European Investment Bank or from Member State sources. Moreover, the Commission encourages public-private partnerships in the financing of large infrastructure projects.

In principle, the Community funds should primarily be used for those projects that would not have been undertaken in the absence of the EU funds. It is in this regard that the Commission proposals for the new programming period envisage that the co-financing rates for the Structural Funds should be somewhat adjusted. In general, the financial contribution of the Structural Funds is limited to 75%, maximum, of the total eligible costs and at least 50% of eligible public expenditure for support in Objective 1 regions. However, for those regions located in Member States that are eligible for Cohesion Fund support, the Community contribution can be 80% of total eligible costs, at most. The EU contribution may rise to a maximum of 85% of the total eligible costs for the outermost regions and the outlying Greek islands.

Regarding measures under Objective 2 and 3 programmes, the Community contribution can be, at most, 50% of total eligible costs and at least 25% of eligible public expenditure.

However, the Commission proposed that the rates of assistance be differentiated, taking into account:

- the gravity of the problems concerned, in particular problems of a regional or social nature;
- the economic and financial capacity of the Member State concerned, and the need to avoid excessive increases in budget expenditure;
- the optimum utilisation of financial resources in financing plans, including the combination of public and private resources, and the use made of appropriate financial instruments.

In the case of projects generating "substantial revenues", the Commission proposed that the Community contribution should be restricted. The concept of "substantial revenues" has been indicatively defined by the Commission as net receipts equivalent to at least 25% of the total cost of the investment concerned.

In those cases, the contribution would be determined by taking into account the "intrinsic characteristics", including the size of the gross self-financing margin expected. Under the proposals, Structural Fund assistance would be limited:

(a) in cases where investments in infrastructure generate substantial revenue to 40% of the total eligible cost for Objective 1 regions, and to at most 50% in the case of the Objective 1 regions located in Member States benefiting from the Cohesion Fund;
(b) in the case of investment in firms to 35% of the total eligible cost for Objective 1 regions. This may be increased to 45% at most in the case of investments in small and medium-sized enterprises.

Reactions in the Council have shown that so far some Member States favour greater recourse to private financing. Other countries have expressed doubts about the way the multiplier effect on the mobilisation of public and private resources would function. The issue will be further discussed and therefore the outcome remains uncertain at this moment.

In any event, the trend of the reforms in this matter

seems fairly obvious. The Commission was seeking ways to reinforce the leverage of structural assistance by using various forms of assistance. It seems, therefore, that the Member States are strongly encouraged to demonstrate that adequate arrangements are being made in their development plans to ensure "more developed financial engineering".

Question 10: What support will be given to the prospective new Member States for their integration into the Structural Fund programmes?

As of 2000 onwards, an annual budget of EUR 1 billion will be available for measures under the new Instrument for Structural Policies for Pre-Accession (ISPA). For the time being, only the applicant countries of Central and Eastern Europe will be eligible for support from ISPA. The draft ISPA regulation stipulates that the Commission will make an indicative breakdown of the assistance between the beneficiary countries taking into account their population, per capita GDP and surface area.

In its proposals for the EU's pre-accession assistance, the Commission stressed the need to gradually decentralise the management of this assistance to the applicant countries themselves. Hence, a major feature of pre-accession aid is likely to be the opportunity it provides to gradually build up experience in managing such EU programmes as an essential learning exercise in preparation for more substantial Structural Fund programmes later on.

However, this proposed decentralisation is conditional as it is subject to certain minimum criteria and conditions. Indeed, the management of pre-accession assistance will only be conferred to implementing agencies in the applicant countries if these agencies can demonstrate that they have the necessary administrative capacities. In this regard, the Commission will apply the following minimum criteria:

- the implementing agencies should have a well-defined system for managing the funds with full internal rules of procedure, and clearly stated institutional and personal responsibilities;
- there must be a separation of powers so that there is no conflict of interest in procurement and payment;
- adequate personnel must be available which must have suitable auditing skills and experience in implementing EU programmes.

In addition, the Commission will apply certain minimum conditions for decentralising management to agencies in the applicant countries, e.g.:

- the implementing agency must have an effective internal control system;
- there must be a reliable national financial control system over the implementing agency;
- EC procurement rules must be respected.

A major shortcoming of the ISPA assistance is that it will only provide support for projects in the area of environment and transport infrastructure. Hence, the eligible measures are restricted to two sectors only. More importantly, the support will be given to projects, not programmes, the latter constituting the key feature on which Structural Fund support is based.

In any event, the above mentioned minimum criteria and conditions are a very clear indication that the new Member States (like the current ones) will have to demonstrate that they have the necessary administrative capacities to manage EU assistance. Though this is likely to require major and additional changes in the applicant countries, the pressure exerted by the EU might also become a facilitator to undertake these reforms. As such, the preparations for the EU Structural Funds may help to modernise the public administrations in the applicant countries.

Conclusion: When should the reforms of the Structural Funds be called successful?

It will still take a lot of heated political debates before the on-going negotiations on the reform of the Structural Funds are brought to a satisfactory conclusion. The Commission proposals seem to a significant extent to have anticipated possible fierce opposition from the Member States concerning the reforms. In particular the proposed phasing-out arrangements are fairly generous as they allow those disqualifying regions to continue receiving support at least partly and temporarily. Although there are some strong arguments for choosing such a gradual approach, this particular element of the proposals is also a perfect illustration of the various political interests that dominate the negotiations and that will shape the outlook of the final compromise. If the reforms are to become successful, it appears that at least some improvements have to be made in the current proposals:

A. Considering the tight budgetary context, it is even more important that the Structural Funds should be effectively more concentrated on the most important and pressing problems. The funds should be allocated to the Member States on the basis of objective criteria, which have to be strictly applied in practice. There should be a significant reduction in the population coverage as a way of increasing the overall effectiveness of the cohesion policy.
B. Member States should be further encouraged to manage the Structural Funds more effectively. The proposed decentralisation of management responsibilities seems a step in the right direction, though it leaves certain questions unanswered. The performance reserve may not constitute a workable tool for increasing the effectiveness, as it might be politically too difficult to apply.
C. Finally, was Agenda 2000 not supposed to prepare the Union for the enlargement? Indeed, the necessary preparations should be made for the gradual integration of the new Member States into the cohesion policy. The proposed budget for the new members may appear fairly modest for now and in

contradiction with their relatively low-income levels compared with the EU average. However, it may also not be desirable at this stage to give significant budget allocations to the applicant countries (or new Member States) before they have given proof that they have the necessary administrative capacities to manage the funds. Present Member States should, however, already demonstrate that the cohesion objectives of the Treaty will apply equally to the new Member States. Maintaining or even strengthening the economic and social cohesion within the enlarged EU will be a major challenge. It is unclear to what extent the current reforms actually address this matter, as they seem primarily to concern an internal EU-15 discussion on how to divide the Structural Funds' cake.

RÉSUMÉ

Dans le cadre du paquet de mesures prévues par l'Agenda 2000, les fonds structurels de l'UE traversent actuellement un processus de réforme qui vise à en accroître l'efficacité et à préparer la voie à une intégration progressive des futurs Etats membres de l'UE dans la politique structurelle. Les négociations se caractérisent notamment par le fait que les perspectives d'un accroissement budgétaire des fonds sont actuellement pour ainsi dire inexistantes. Dès lors, il convient de négocier les réformes en tenant compte de sévères restrictions budgétaires.

Etant donné les ressources limitées et l'augmentation prévue du nombre de bénéficiaires potentiels des fonds structurels à la suite de l'adhésion des futurs Etats membres, il est essentiel que les réformes actuelles garantissent une plus grande concentration des fonds structurels dans la prochaine période de programmation. A défaut, l'efficacité des fonds restera relativement limitée.

A cet égard, la Commission européenne a proposé de réduire le nombre d'objectifs prioritaires et d'initiatives communautaires. Par ailleurs, la couverture des fonds structurels devrait être réduite progressivement à 35-40% de la population totale de l'Union. Cependant, au cours des négociations au Conseil, la principale pomme de discorde entre les Etats membres portait sur le budget global qui sera affecté aux fonds structurels pour la période 2000-2006, sur la répartition de ces fonds par Etat membre et par objectif, et sur quelques-unes des modifications proposées aux procédures de programmation et de gestion.

Lors du Conseil européen de Cardiff, en juin 1998, le délai politique pour la conclusion des réformes de l'Agenda 2000 fut fixé à mars 1999. Compte tenu de la complexité des questions traitées et la multiplicité des acteurs impliqués, il demeure extrêmement difficile de prédire l'issue des négociations. Néanmoins, en se penchant sur 10 questions soulevées par les réformes des fonds structurels, cet article s'emploie à esquisser les implications probables pour la mise en oeuvre des fonds structurels au cours de la prochaine période de programmation qui va de 2000 à 2006.

NOTES

[1] I would very much like to thank Phedon Nicolaides and Sanoussi Bilal for their useful comments on an earlier version of this paper.

[2] There are four Structural Funds, i.e. the European Regional Development Fund (ERDF); the European Social Fund (ESF); the European Agricultural Guidance and Guarantee Fund, Guidance Section (EAGGF-Guidance); and the Financial Instrument for Fisheries Guidance (FIFG).

[3] In the EU's financial perspective, heading 2 refers to "structural operations", including the EU Structural Funds, the Cohesion Fund, the EEA financing mechanism, etc.

[4] cf. Council Regulation (EEC) No 2081/93 of 20 July 1993 (framework regulation); Council Regulation (EEC) 2082/93 (coordination regulation); Council Regulation (EEC) 2083/93 (ERDF); Council Regulation (EEC) No 2084/93 (ESF); Council Regulation (EEC) No 28085/93 (EAGGF-Guidance); Council Regulation (EEC) No 2080/93 (FIFG). All published in the Official Journal of the European Communities, No L 193 of 31 July 1993.

[5] Objective 6 was added in 1995 according to the relevant provisions in the Acts of Accession of Finland and Sweden.

[6] For the time being, ISPA support would only be available to the 10 applicant Central and Eastern European countries, and not (yet) to Cyprus.

[7] cf. EUROSTAT, *Statistics in Focus – General Statistics*. No. 1/99. The Irish Government announced in November 1998 that the country will in future be sub-divided into two regions. In early February 1999, the government decided to establish two new "group regional authorities" that will amongst other things be responsible for managing the regional programmes in Ireland's next Community Support Framework. It is anticipated that one part of Ireland will remain eligible for Objective 1 support, whereas the other will benefit from the envisaged phasing-out assistance.

[8] Wishlade, Fiona (1999) "Competition Policy, Cohesion and Coherence? Member State Regional Policies and the New Regional Aid Guidelines", in Bilal, Sanoussi, and Phedon Nicolaides (eds.) *Understanding State Aid Policy in the European Community: Perspectives on Rules and Practices*, Chapter 10, published by Kluwer Law International for the European Institute of Public Administration. (forthcoming).

[9] The main reason why the March 1999 deadline was set was to conclude the Agenda 2000 negotiations with the current European Parliament, anticipating the European elections that are to be held in June 1999.

[10] Cf. Official Journal C 323/40 of 21 October 1998.

[11] European Commission, *The Structural Funds and their co-ordination with the cohesion fund. Draft guidance for programmes in the period 2000-2006*, Working paper, 3 February 1999.

[12] Agence Europe, 25 January 1999, p. 7. ❑

Continuité ou changement de la politique européenne de l'Allemagne?*

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La Présidence du Conseil de l'Union européenne est assumée actuellement par l'Allemagne (de janvier à juin 1999). Bien que l'Allemagne soit l'un des Etats membres fondateurs et ait acquis une grande expérience des affaires communautaires, cette présidence est marquée par un certain nombre de circonstances et contraintes très particulières. Premièrement, après 16 années d'un gouvernement de coalition chrétiens-démocrates – libéraux, les ministres qui président le Conseil appartiennent maintenant à un gouvernement de coalition rouge-vert. La dernière présidence allemande sociale-démocrate de l'UE remonte à 1978 lorsque les sociaux-démocrates formaient une coalition avec le parti libéral. Toutefois, non seulement le parti des Verts, dont sont issus les puissants ministres des Affaires étrangères et de l'Environnement, n'a aucune expérience de la gestion d'une présidence de l'UE, mais il n'a jamais été au gouvernement au niveau fédéral et n'a été au pouvoir que dans une poignée de cas au niveau régional (au niveau des *Länder)*.

Deuxièmement, l'Union européenne se trouve à la croisée des chemins. Maintenant que la Conférence intergouvernementale a été menée à bien – bien qu'avec un succès mitigé – et que la prochaine CIG se dessine déjà à l'horizon, la tâche immédiate et essentielle pour l'UE est de faire passer le paquet de mesures de l'Agenda 2000 qui ont de grandes implications tant internes qu'externes par rapport à l'élargissement vers l'Est et aux négociations de l'OMC. Même si certains progrès ont été enregistrés dans les négociations menées pendant la présidence autrichienne (surtout en ce qui concerne les Fonds structurels[1]), la plus grande partie des négociations reste à réaliser pendant la présidence allemande.

Les succès et les échecs de la présidence allemande seront surveillés de près, sur fond de craintes internationales d'une menace pour la politique européenne et étrangère allemande due à la présence des Verts au sein du gouvernement, lorsqu'on sait qu'il y a dix ans, ce parti était en faveur de la dissolution de l'OTAN et accusait la CE de servir les intérêts du marché international des capitaux au détriment des intérêts des citoyens des Etats membres. Même si immédiatement après son élection, en septembre de l'année dernière, le gouvernement allemand s'est empressé de rassurer ses partenaires au sein de l'UE et de l'OTAN en leur garantissant la continuité de la politique européenne et étrangère de l'Allemagne, ses idées politiques par rapport au contrôle de l'UE diffèrent beaucoup plus qu'on ne pourrait le supposer de la politique européenne de la coalition sortante faite de chrétiens-démocrates et de libéraux. Les principales déclarations de l'accord de la coalition rouge-verte au sujet de la politique de l'emploi, de la politique sociale, de la politique de l'environnement, et des droits fondamentaux, ainsi que sur l'élargissement vers l'Est et sur la réforme institutionnelle de l'UE, indiquent que:[2]

- L'Union monétaire n'est pas considérée comme la conclusion réussie de la politique d'intégration, mais plutôt comme un point de départ pour d'autres initiatives en vue d'une conception transfrontalière et supranationale des conditions sociales en Europe.
- L'élargissement de l'Union n'est pas seulement regardé comme un défi moral et économique, mais aussi comme un enjeu socio-politique, et l'on formule l'espoir qu'un accent plus marqué sera mis sur les droits fondamentaux et que l'intégration européenne deviendra plus démocratique.
- Le point de référence central pour les réformes institutionnelles et procédurales du système politique de l'UE et de ses Etats membres ne sera pas le principe de subsidiarité, mais la capacité de l'UE à agir et à forger les événements du 21ème siècle.

Dans l'ensemble, le nouveau gouvernement attache plus d'importance aux dimensions sociale et politique de l'intégration européenne que le gouvernement précédent. La lutte contre le chômage est la politique qui bénéficie de la principale priorité.[3] Dans ce contexte, le gouvernement allemand a non seulement appelé de ses voeux un pacte européen pour l'emploi, qui aurait la même importance que le pacte de stabilité, mais s'est aussi prononcé en faveur de politiques d'accompagnement qui devraient contribuer à la création d'emplois. Ces politiques d'accompagnement impliquent une coordination des politiques économique, financière et fiscale. Ici, l'accord de coalition réclame des actes contraignants afin de lutter contre le dumping social, fiscal et environnemental.

En tant que nouveau venu dans la coalition, le parti des Verts a notamment suivi une approche différente par rapport à un certain nombre de domaines de coopération, tels que la justice et les affaires intérieures.

Ceci ressort notamment de l'accord de coalition qui réclame une coopération plus étroite pour la politique d'asile et d'immigration et pour l'adoption d'une Charte

* A summary in English of this article can be found at the end.

communautaire des droits fondamentaux. Cet accord demande aussi l'introduction d'une écotaxe qui devrait être utilisée (en partie) en tant que ressources propres de l'UE. En outre, les Verts insistent fortement sur la nécessité d'autres réformes institutionnelles et procédurales. A cet égard, le parti soutient l'initiative de la Belgique, de la France et de l'Italie qui veulent entreprendre des réformes fondamentales avant de procéder au prochain élargissement.[4]

Pour ce qui est de la présidence allemande du Conseil de l'UE, l'accord de coalition stipule que la conclusion réussie du paquet de mesures prévues dans l'Agenda 2000 est l'une de ses tâches les plus importantes; il s'agit notamment de la réforme de la Politique agricole commune (PAC), de l'adoption du cadre financier pour la prochaine période de programmation, fort probablement de 2000 – 2006, et de l'accord sur la réforme des fonds structurels. Par rapport à ce train de mesures, on peut constater des similarités mais aussi certaines différences sensibles entre l'actuel gouvernement et le gouvernement qui l'a précédé. Par ailleurs, on ne note pas de différence fondamentale par rapport à la demande d'un partage plus équitable des charges financières au regard de la contribution à l'UE. En outre, le gouvernement Schröder a aussi soutenu l'idée de la "constance des dépenses en termes réels" et de limiter le revenu de l'UE (ses ressources propres) à 1,27% du PNP de l'UE.[5] Il exige aussi que les Etats membres qui participent à la troisième phase de l'UEM ne soient plus éligibles au titre de l'aide du fonds de cohésion (même si sur ce point le gouvernement Schröder adopte une approche moins rigide que le gouvernement Kohl). Le gouvernement Schröder réclame aussi que l'on supprime les facilités accordées à la Grande-Bretagne qui contribuent à déséquilibrer la position de contributeur net de l'Allemagne.[6] La principale différence par rapport à l'ancien gouvernement en ce qui concerne les négociations sur l'Agenda 2000 porte sur la politique communautaire la plus coûteuse, à savoir la PAC. Si l'ancien gouvernement n'était aucunement incliné à suivre les propositions de la Commission en faveur d'une réforme de la PAC, le nouveau gouvernement s'est dit prêt à suivre la ligne des propositions de la Commission qui prônent une modification significative, passant d'un système de soutien des prix à un système d'aides directes versées aux agriculteurs. Toutefois – et sur ce point le nouveau gouvernement a emboîté le pas aux arguments de l'ancien gouvernement – la réforme de la PAC ne doit en aucun cas accroître le fardeau financier qui pèse déjà sur le Etats membres. Bien qu'il soit encore difficile à l'heure actuelle de dire si l'on pourra réaliser l'objectif de l'Allemagne qui est de conclure les négociations sur l'Agenda 2000 pour la fin mars,[7] lors d'un sommet spécial qui se tiendra à Berlin, les chances d'atteindre ce but semblent s'être améliorées avec l'arrivée au pouvoir d'un nouveau gouvernement. L'accent se déplaçant plus vers un équilibre des contributions nettes "excessives" des Etats membres que sur une réduction absolue des paiements à l'UE, les négociations se concentrent sur le cofinancement national de la PAC, le futur niveau des ressources et des dépenses nationales.

Le programme de la présidence, présenté par le chancelier Gerhard Schröder fin 1998, reflète ces nouvelles priorités de la politique européenne.[8]

(1) Lutte contre le chômage au niveau européen.
(2) Coopération plus étroite pour lutter contre la criminalité transfrontière et dans les domaines de la politique d'immigration et des réfugiés.
(3) Améliorer l'efficacité de la Politique étrangère et de sécurité commune.
(4) Conclure avec succès les négociations sur l'Agenda 2000.

Les autres priorités concernent "la lutte contre la concurrence fiscale déloyale ou dommageable"[9] et "la nouvelle réglementation relative aux restrictions verticales à la concurrence qui permettra de regrouper dans un seul règlement relatif à l'exemption de groupe toutes les branches concernées"[10]. En dehors de ces objectifs, le programme de la Présidence comprend aussi un certain nombre d'autres priorités qui reflètent également les priorités particulières du nouveau partenaire de la coalition – le parti des Verts – à savoir l'élaboration d'une charte des droits et devoirs fondamentaux des citoyens, l'harmonisation de la taxation de l'énergie et l'alimentation en électricité produite à partir de sources d'énergie renouvelables.

Environ six semaines après le début de son mandat, la présidence allemande a déjà dû essuyer quelques revers, dont l'un dans le domaine très sensible du chômage qui est pourtant une grande priorité pour le gouvernement. L'Allemagne a dû retirer de ses ambitieux plans le projet d'un pacte européen pour l'emploi.[11] Les objectifs quantifiés pour la création d'emplois réclamés au Sommet de Vienne et dans le programme de la présidence ont été abandonnés, car ils n'étaient plus réalistes à la suite de la vague de problèmes causés en Allemagne par le *Bündnis für Arbeit* (Alliance pour l'emploi).[12] En revanche, la Présidence allemande s'emploie actuellement à définir un plan d'action destiné à réduire le taux de chômage des jeunes dans toute l'Union européenne.

Par ailleurs, la Présidence allemande ne semble pas avoir engrangé de résultats probants pour ce qui est des sources d'énergie renouvelables. Au tout dernier moment, la Commission a décidé de ne pas proposer une directive en la matière.[13] Même si l'on peut affirmer sans risque que cette directive n'aurait pas vu le jour au cours de la présidence allemande, elle aurait tout de même permis de donner forme aux négociations sur la question.

La question de l'élargissement est étroitement rattachée à la conclusion réussie des réformes prônées par l'Agenda 2000. Le nouveau gouvernement est aussi un fervent partisan de l'élargissement de l'UE vers l'Est. Lors d'une réunion avec le Premier ministre tchèque, Milos Zeman, le ministre allemand des Affaires

étrangères, Joschka Fischer, a dit sa crainte de voir l'Europe plonger dans une "crise politique profonde" en cas de retard dans l'élargissement de l'UE.[14] Néanmoins, contrairement au gouvernement précédent, l'actuel gouvernement suit une approche plus prudente vis-à-vis de l'élargissement.[15] Il n'est pas disposé à proposer des dates pour la réalisation de l'élargissement ni à procéder à cet élargissement tant que l'UE ne se sera pas préparée pour franchir cette étape, c'est-à-dire, tant qu'elle n'aura pas consolidé sa situation financière. L'élargissement vers l'Est ne sera possible qu'après le déploiement réussi des grands projets de réforme de l'Agenda 2000 qui sont actuellement en cours de discussion. Comme l'ont souligné à plusieurs reprises des membres éminents du nouveau gouvernement, l'accord sur le financement de l'UE est rattaché à l'élargissement vers l'Est, dans la mesure où l'on ne peut procéder comme prévu à l'élargissement en l'absence de cet accord.[16]

Indépendamment de sa présidence, le gouvernement actuel semble aussi suivre une approche différente face au processus d'intégration européenne dans son ensemble, avec des incidences à plus long terme. Comme l'a souligné le ministre des Affaires étrangères dans son discours devant le Parlement européen, la présidence allemande est déterminée à tenir une Conférence intergouvernementale avant le prochain élargissement.[17] "La principale question ici est la disponibilité de l'Union à accepter des décisions à la majorité dans le plus grand nombre possible de domaines. Fischer propose de limiter les décisions à l'unanimité dans l'UE à plus long terme aux questions qui revêtent une importance fondamentale, comme les amendements au traité."[18] Par voie de conséquence, le principe de subsidiarité n'est pas aussi important pour la coalition rouge-verte. Le programme de la présidence souhaite une application "cohérente et effective" du Protocole sur la subsidiarité.[19] Comme l'a affirmé Gerhard Schröder, la véritable subsidiarité se manifeste dans sa proximité des citoyens.[20] Le fait que le nouveau gouvernement suggère de nouvelles initiatives pour l'harmonisation de la politique fiscale, environnementale et sociale ainsi que de la justice et des affaires intérieures au niveau européen, est la preuve de sa volonté de partager la responsabilité de la conduite des affaires européennes avec les institutions de l'UE. Pour cette raison, on peut parler d'un virement de cap non négligeable dans la politique européenne de l'Allemagne.

SUMMARY

After 16 years of Chancellor Kohl's governance, the elections in September last year brought about a new government: the social democrats, who last ran the EU/ EC presidency in 1978, in coalition with the Green party, who have never been in government before at federal level. In Chancellor Kohl European integration found a vehement supporter. Whether Gerhard Schröder and his foreign minister, Joschka Fischer, are equally concerned with the European integration process is yet to be seen. Immediately after the elections, the new government was very eager to assure its partners in EU and Nato of its determination for continuity in German foreign and European policy. However, in view of European policy the coalition agreement and the presidency programme reveal some major changes which could impact on European integration in the very near future.

NOTES

1 Commission européenne; Rapport au Conseil européen de Vienne, le 8 décembre 1998, 13621/98, Addendum 2.
2 Maurer, Andreas, "Deutsche Europapolitik – Chancen und Optionen der neuen Bundesregierung", in: perspektiven ds, No 1/99.
3 Accord de coalition entre le parti social-démocrate allemand et l'Alliance 90/ les Verts, Bonn, le 20 octobre 1998, point XI.2.
4 Statz, Albert/ Sterzing, Christian; Grüne Perspektiven auf die deutsche Ratspräsidentschaft, in: integration, 22. Jg. 1/99, pp. 26 et suiv.
5 "Bonn drückt bei Reformen aufs Tempo", Frankfurter Rundschau 8.12.1998.
6 "Bonn dringt auf EU-Beschäftigungspakt", Süddeutsche Zeitung, 12./13.12.1998.
7 Discours de Joschka Fischer, ministre allemand des Affaires étrangères, Strasbourg, 12.1.1999. "Commission européenne – Programme de la Présidence allemande", European Voice, 14-20 janvier 1999.
8 Discours du chancelier allemand Gerhard Schröder, le 10 décembre 1998.
9 Programme de la Présidence allemande, point II.B.I.4.
10 Ibid, point II.B.I.5.d.
11 Programme de la Présidence allemande, point II.A.I.
12 "Germany Scales Back Jobs Plan", European Voice, 11-17 février 1999.
13 "Renewable Decision Embarrasses Presidency", European Voice, 11-17 février 1999.
14 RFE/RL Newsline, Vol. 2, No. 4, Part II, 7.1.1999.
15 "M. Schröder veut "dépoussiérer" la relation franco-allemande", Le Monde, 2.10.1998.
16 Communication à la presse du chancelier allemand Gerhard Schröder, Bonn, 3.1.1999. Communication à la presse du chancelier allemand Gerhard Schröder, Bonn, 11.1.1999. Communication à la presse du ministre allemand des Affaires étrangères, Joschka Fischer, Strasbourg, 12.1.1999. Discours du ministre allemand des Finances, Oskar Lafontaine, pour la réunion du Conseil ECOFIN le 18.1.1999 à Bruxelles.
17 Communication à la presse du ministre allemand des Affaires étrangères, Joschka Fischer, Paris, 20.1.1999.
18 Communication à la presse du ministre allemand des Affaires étrangères, Joschka Fischer, Strasbourg 12.1.1999.
19 Programme de la Présidence allemande, point II.A.I.
20 Chancelier fédéral Gerhard Schröder, déclaration du gouvernement du 10.12.1998, Deutscher Bundestag, Plenarprotokoll 14/14, page 820. ❑

Myth and Reality in EU Programme Management*

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Introduction

Critiques and attempted reforms of EU programme management are based on the unremarkable assumption that there is something wrong and it needs to be put right. Writing in 1992, Sutherland speculated on whether the EC's increased legal competences were matched by its managerial capacities, and concluded that "given the pace of recent changes there is an *a priori* case for suggesting that the EC has a management deficit".[2] Its substance was a shortage of relevant management skills in the Commission and in the coordinating mechanisms beyond.

The lack of management capability has also been regularly documented in the annual reports of the European Court of Auditors (ECA), which have been highly critical of the Commission's own financial management and its seeming inability to make much impression on poor management in the Member States. Others have pointed to a loss of capability, directly attributable to the adverse impact of subsidiarity on the Commission's powers which has leached away at the direct implementation and control functions of the Commission in favour of the Member States (e.g. Kok[3] and ECA annual reports, 1987 and 1989). It is argued that direct beneficiaries have acquired responsibilities previously in the hands of the Commission for managing their own performance and checking whether they are spending EU receipts in accordance with the criteria laid down in the regulations.

It was Metcalfe[4] who first coined the term "management deficit" and posed the question of whether the Commission in particular could "manage Europe". Characterising the Commission as a centralising bureaucracy which nevertheless did not have exclusive responsibility for managing EU policies, he focussed attention on the need to establish performance indicators, to improve coordination, information systems and strategic management capabilities, and most importantly, to create administrative networks in the Member States. In this case, the solutions invited are those which concentrate on network creation and the improvement of managerial skills in the main.

But this model of the management deficit is not the only show in town. There are other managerialist approaches (such as the Commission's SEM 2000 and MAP 2000 programmes) which have their own priorities, and there are agenda which are driven by different motors altogether: the legal framework (e.g. the need for European criminal code with EU powers to match), the policy environment (reform of the CAP, the structural funds etc.), economic reform (the single market and EMU), structural reform of the institutions (the democratic deficit, accountability etc.), and "renationalisation" of EU policies (subsidiarity). Thus the debate about the quality of EU programme management is one in which many problems are identified, much diagnosis is made and many solutions suggested. There are nevertheless some common assumptions, not all of which are compatible one with another:

(1) Fraud and corruption are widespread
(2) Management capabilities in the Commission are generally poor
(3) Bad policy design is responsible for uncontrolled budgetary growth
(4) Management capabilities in the Member States are generally poor and Member States don't take the management of EU funds sufficiently seriously
(5) There is too much interference by Brussels in member state supervision
(6) The Commission lacks the necessary legal powers to manage effectively
(7) There is a lack of cooperation and coordination between Member States and the Commission
(8) Management resources have not kept pace with budgetary growth

Be they perceptive, polemical or simply idiotic, the problem is that none of these assertions have any foundation in systematic empirical investigation. Indeed, some of them are inherently unfalsifiable, yet are still important influences on the evolution of the practice of programme management. On the substance, there is little consensus and only limited knowledge.

We only need extemporise on the basic questions to illustrate this: what is it that needs fixing – is it financial management practices, project management skills, evaluation capacities, structural/ institutional design, legislative impediments, network deficiencies, personnel policy, policy making instruments, or a combination of all or some of these?; how much does it need fixing – is it simply a question of more resources, a few new regulations, more training and a new "culture", or is it a wholesale change to everything?; for how long has programme management needed to be fixed – the last 5 years, 10 years, 20 years?; are the (undefined) problems about the same, becoming more severe or ameliorating, and if so, by how much?; who or what is responsible– is it the Treaties, the Council of Ministers, the Commission, the Member States, organised crime, the Parliament, people in general, original sin?; at which level or levels of

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

implementation are the difficulties most severe – local, national, supranational?; what are the most effective strategies for improvement – legislation, staff development, partnership, centralisation, decentralisation, automation, revolution?

Yet the substance of our knowledge is potentially rich. There is a wealth of information available (admittedly partial, inconsistent and varied) on EU programme management performance in evaluation reports, ECA reports, Commission reports, national audit reports etc. but it is underutilised, unsystematised, discounted and ignored. There are many snapshots but no movie; indeed, there is not even a coherent screenplay. In practice, mythology rules, and stories about cases of fraud and mismanagement tend to be more influential than the rich humus which is available for serious investigation and study. The recent spat between the Commission and the Parliament over "whistle blowing" by a Commission official on alleged fraud and cronyism is only the most recent example of this phenomenon.

The need for a systematic approach

There is no reason for this state of affairs to continue. By asking a few simple preliminary questions questions (see above), devising a research design, defining a few concepts and applying some standard investigative techniques, we can construct both a profile of EU programme management and a strategy for improving it.

a) Conceptual framework

Terms such as "implementation" and "management" not to mention "programme management", need some precise formulation. In one sense, it is easier to specify what is excluded rather than included. We are not concerned with the implementation and interpretation of EU directives by Member States in programme areas outside the major spending areas. Nor are we concerned with decision making at the level of "high politics" within the Council of Ministers system, including decisions on overall budget size. The allocation of resources within the overall budget and the budget making process are of no interest either, as the first is essentially a matter of high policy, while the latter is a constitutional process which must take place for budgetary approval purposes. The annual budgetary discharge decisions taken by the European Parliament are of interest as a commentary on the state of programme management and as an input on the conduct of programme management in the future. Discharge decisions are prescriptive. They can be seen as pieces of management consultancy on which the recipients are obliged to act.

What actions and behaviours constitute "programme management", and who is responsible for it? In earlier work, we adumbrated a cyclical model of the EU management and control process which can serve as a useful starting point, although it is not entirely sufficient for our current purposes. The model isolated generic functions in the post-allocation (budget making) phase. These include *authorisation, administration, audit,* and *review and evaluation*, the first three of which are essentially non-judgmental (positive) in nature, while review and evaluation are normative activities. While it is difficult to talk about a single management process in the context of a multi-level, multi-agency system like the EU, these basic functions can be identified within the different levels of management which in theory link together.

The *authorisation function* involves the process of approval for competent bodies to access funds allocated from within the budget programme headings. This constitutes a fairly restricted range of activities. First, there is the Commission's role in transferring funds to Member State agencies and other direct beneficaries (such as research institutes, third country delegations, contractors and consultants). Thus it will include the drawing up of contracts and agreements, where the regulations require them, for transfer to take place. Within the current framework, final authorisation is in the hands of the Financial Controller (DG 20) rather than individual DGs. In programme areas where there are particularly attenuated chains of management (such as in the ESF, ERDF, EDF or EAGGF Guarantee), authorisation would include the transfer of funds by national and local programme managers to projects/direct beneficiaries. The longer and more complex the chain, the more bodies will be involved in fund transfer. This tends to vary considerably between Member States depending on the degree of political and administrative decentralisation and deconcentration.

The *administration function* defines itself here as a much wider concept because it includes all those activities associated with actually running programmes and projects, and delivering objectives. It encompasses the content of operational management as it is commonly understood. – i.e. some local planning functions, which could be very significant where large projects are involved (this applies especially in the cases of the ESF, ERDF and EDF), the setting and monitoring of goals and targets, deploying and coordinating resources, problem solving, the collection and maintenance of records and information, the establishment and operation of systems, and reporting to line managers. Thus, it goes beyond "routine" processing functions and does imply some organisational development.

It will be readily apparent that these management functions devolve at many levels and at many stages within the implementation process. For example, once the five yearly policy decisions are made on the structural funds, planning and the setting of goals and targets initially takes place between Member State bodies and the Commission (DG16 mainly, but also includes DG5 and DG6). This process will be further iterated at member state level between centralised managing bodies (ministries, regional governments, agencies etc.), Programme Management Committees and local project managers. The same comments apply to all the other "routine" management functions identified.

To summarise, it is by nature a continuous, and in some aspects, an innovative and judgmental process; in this context, the soubriquet "administration" is too opaque and reactive. We prefer to use the term "operational management" to differentiate from our earlier usage, within which the specific managerial competences we

have referred to can be identified in the data.

Audit is more precise in meaning, although the term has come to have a much wider currency in recent years. The growth of effectiveness audit has inevitably led auditors to the consideration of policy goals. In our earlier model, audit activities which fell into the positive quadrant essentially referred to technical, legal and regularity audit. Anything involving judgments about objectives, impacts, outcomes etc. fell into the *review and evaluation* category in the normative quadrant. This included effectiveness/VFM/comprehensive auditing as well as outright programme evaluation. This remains an important distinction for the present study as these functions are quite discrete and require different competences; however, the presence or absence of audit outputs of all descriptions is a major indicator of management quality in this study.

Defining management quality is an industry in itself, an important metaphor because much of the work in this field is commercial and diagnostic in nature. Prescriptive systems such as Total Quality Management (TQM) and BS5750/IS9000 are essentially tools for organisations trying to achieve certain management standards. We do not start out with any definition of management quality, nor can such a definition be established in any absolute sense by our methodology. It is not prescriptive, nor does it aim to compare EU programme management with that of any other organisation. It is analytical, seeking to measure changes based on the accumulation of evidence which has been identified and classified within a predetermined framework.

The evidence can only show whether programme management is improving or deteriorating, and in what ways it is doing so. Thus, the concept of management quality is used here in a purely relativistic sense, although the findings point strongly towards certain repetitive patterns, and the likelihood or otherwise of different types of management reform succeeding.

b) Performance indicators

To return to our earlier metaphor – can we make a movie out of the snapshots? If so, which ones should be used and how, and if not what else might be needed? Having defined the objects of study, the next step is to try and identify relevant performance indicators of management quality. Once this is done, methods have to be devised to collect and measure relevant data. There is a caveat: While performance indicators can be useful management and accountability tools when carefully designed, and deployed parsimoniously, they can equally be pressed into service by organisations for smokescreen and propaganda purposes.

Performance indicators as propaganda do not arise as an issue here, as there is no standard "official" set of performance indicators for the measurement of EU programme management. On the other hand, there has been considerable effort (particularly with regard to the ERDF and the EDF), to devise evaluative frameworks to measure programme impacts (perhaps in some measure because of the perceived partiality of Member State/ beneficiary -sponsored evaluations), but there is no single methodology as yet. Perhaps there never will be given the variegated, context-specific nature of individual programmes and projects. It is the *activity* and *quality* of impact assessment which is of interest rather than the impacts themselves.

In this context, we propose a set of performance measures based on the four functions of programme management – authorisation, operational management, audit, and review and evaluation – outlined earlier. The fundamental approach is to build up a quantified portfolio of evidence on the quality of key management activities. Based on our earlier definitions, we have identified *eight performance dimensions* which together constitute the sum of programme management performance as a whole. The indicators are:

i) levels of budget utilisation by programme. Over- or undershooting budgetary allocations can be seen as an indicator of poor management *ceteris paribus*. There is an assumption in the annual reports of the ECA that the closer actual spending is to the initial allocation, the better.

ii) the maintenance of programme and project schedules, and evidence of delays. This indicator is particularly important in the areas of structural actions, the EDF and other co-operation aid, and research and development projects, although some "dips" in performance are inevitable at the start of a new programme cycle. The key issue is whether there is an overall change between one cycle and another holding all other factors constant.

iii) the quality and coverage of management information and information systems. The provision of adequate management information for managers and auditors can be judged from the extent of paper and electronic records and routine paperwork within the member state agencies and at the Commission. Comprehensive and comprehensible accounts are an essential part of any management information system, an issue frequently remarked upon by the ECA.

iv) the level of controlling, checking and audit activity. Evidence of poor control could include both a lack of regular control activity and the existence of poorly designed or ineffective controls.

v) the level of irregularity in procedures and payments. Instances of irregularities in procedures show a lack of consistency and legitimacy in procedure design or a failure of the management system to enforce procedures. Irregular payments are a sub-set of this indicator.

vi) evidence of inter-agency coordination. The presence or absence of cooperation is an indicator of the efficacy of programme management. Examples could include the sharing of information, the harmonisation of systems, joint controls and audits etc.

vii) the degree of planning and targetting. Absence of planning goals and specific target setting means failure in impact assessment and evaluation is also likely.

viii) the degree of impact assessment and programme evaluation. Evidence of these activities confirms the existence of the feedback loop which runs through

routine controls, checks and auditing into the next round of decision making and programme (or project) adjustment. Relevant to all levels.

As in the case of management quality, we do not claim to make any absolute definitions of these indicators; they are heuristic devices simply to record evidence relating to performance standards over time.

c) Sources of evidence

Ideally, sources of evidence should be regular, comprehensive, predictable and independent. Practically speaking, there is only a small number of sources which satisfy these criteria. At the member state level, there is undoubtedly a huge amount of information residing in institutions such as national and local audit agencies, and in consultancy reports for ministries, ministry evaluations and so on, but the collection and systematisation of it would present huge logistical problems. Moreover, with the exception of the audit body reports, much of this material would fail the independence tests. Even in the case of national audit outputs, it has to be recognised that they too are designed to fulfill national rather than EU reporting objectives.

In the specific sectors at the European level, there are for example the annual reports produced by the Commission on the management of the structural funds and on the agricultural situation. At a more general level, there are the Commission's annual reports on the implementation of Community law published since 1984, and the UCLAF's Annual Report on the Fight Against Fraud in the Community which has been produced since 1991. The former are important documents but are legal rather than managerial in nature. There is useful material in the UCLAF annual reports on the specifics of fraud and measures taken to combat it, but the time series is short, and the reports are not designed to be comprehensive appraisals of programme management. As in the case of the externally commissioned evaluations, a major additional problem with all these sources is that they emanate from the Commission, and are thus part of the system we are trying to assess rather than tools to assess it.

One organisation which does pass the independence test is the ECA. The first annual report of the Court specifically referred to its independent status, and, significantly, that it was "clearly laid down in the Treaties that the responsibility of the Court is not limited to the examination of the legality and regularity of the accounts which it audits... it extends to also making an assessment of the financial management... (i.e.) the soundness of the operations actually carried out... and whether the means employed to do so were the best in the sense of being the most economical and efficient" (ECA, 1978.). Thus, we have an expectation that ECA outputs would include many of the areas of management performance we are interested in.

The most obvious sources of performance data are the annual reports of the ECA and the replies of the institutions (the Commission in particular), which have now built up into an archive covering 20 years. The reports are regular and the ECA is independent of the management of the programmes it audits. The reports are not without their problems as source materials however. For example, in the context of the Court's responsibility to ensure *"la bonne gestion financière"* (which includes effectiveness), the reports do not only comment on issues of operational management. Quite frequently, they stray directly into policy issues and make judgments about the wisdom or otherwise of different measures.

d) Quantifying the evidence

The next issue is how to analyse the information contained in the annual reports. The general approach is to use content analysis to identify statements which relate to the eight quality indicators elaborated earlier. This provides a disciplined means of analysing and quantifying discourse. Statements relating to the quality indicators are extracted, quantified and grouped into the categories of *"improvements"*, *"new problems and deterioration"*, *"recurrent problems"* and *"actions required"* for each programme area over time This matrix is intended to focus on the endemic weaknesses in the system and to see whether the situation is improving or deteriorating.

In the case of the Commission replies, the category of *"actions required"* is replaced by a category of *"specific disagreements with the Court"*. The reasoning here is based on the observation that the Court describes and prescribes (for both the Commission and the Member States), while the Commission responds and occasionally disagrees. The analysis does not specifically identify where the Commission simply agrees with the Court or elaborates at length on a problem which the Court has identified, as discourse of this kind constitutes the overwhelming content of Commission replies.

e) Intervening variables

The raw data must be modified to take account of intervening variables which affect the amount and quality of ECA judgments. These include growth in budget size adjusted for inflation, the enlargement of the EU from 9 to 15 members, changes in the numbers of officials and auditors, and changes in their productivity.

The enlargement issue is directly related to budget size. In numbers of members, the EU has grown by two thirds, but in population terms it has increased by roughly 35% (from about 270 million to 370 million). On this measure, we would expect a growth in real spending of about a third *ceteris paribus* over the 20 year period. In fact, both nominal and real spending have grown at a far greater rate, with the overall figures showing a huge nominal increase of around 700% (8 fold increase), and a real increase (adjusted for inflation) in the order of 200% (3 fold increase). While some of the largest increases do take place in the year following the accession of new Member States (1982 (Greece), 1986 (Spain and Portugal), and 1996 (Austria, Sweden and Finland)), there are some very large increases in other years too (1978, 1988, and 1991 for example). It is notable that the real figures fluctuate quite sharply, with decreases in some years followed by huge increases in others (all figures from ECA annual reports, 1978-97).

To assess overall numbers of managers would mean trying to quantify both at the level of the Commission and the member state implementing bodies, in the latter case separating out those involved exclusively in EU programme management from national programmes. While this may be easier to do in some areas (for example in EAGGF guarantee), than others where programmes are jointly funded and based on limited life projects (the structural funds most notably), it is always very difficult. On the other hand, figures for the numbers and types of Commission employees are available, and these individuals only work on EU programmes. In the absence of other data, changes in total employment in the Commission can be used as a single controlling surrogate variable for changes in management resources as a whole.

Between 1977 and 1997, the total number of posts in the Commission increased from 8,250 to 16,789, a rise of 104% . In crude terms, this represents a just over doubling in the size of the Commission compared to a three fold increase in the size of the budget. Unlike changes in the budget figures, the rate of change is relatively even with the exception of one or two years. Thus there is no direct correlation between the rate of increase in the budget and the rate of increase in the size of the Commission, although increases in staffing do tend to be higher in those years when budget growth is greater. However, this is not always the case (1991 for example). If the figures are broken down further into the changes in A class (Assistant Administrator and above) officials only, a slightly different picture emerges. Here, the numbers rose from 2,165 posts in 1977 to 5,416 posts in 1997, an increase of 150% (2.5 times) over the period. While this does still not match the rate of budget growth, it is a significantly greater increment than the change in overall numbers.

As for changes in the productivity of those officials, statistics at the level of detail we would prefer are not available, but there are figures which differentiate between the manufacturing and service sectors of the European economy. Productivity figures for the services sector within the EU as a whole for the period 1975-94 show an annual average rise of 1.2% in the value added per person employed (European Commission, 1997, 17, Table 2). Extrapolating this rate until 1997, this would amount to a cumulative increase in output of 28.5% between 1977 and 1997. If this increment is added to changes in the absolute numbers of total Commission and Commission grade A employees, we get an adjusted increase of 162% (over 2.5 times) for the former and 221% (over 3 times) for the latter over the period. On this measure, the quantum of management resources in the Commission at least kept pace with the growth in the real budget. The extensive IT revolution in progress in the Commission since 1993 underscores the case for such an adjustment.

The level of audit output may also vary because of input factors. The number of ECA employees, including those incorporated from the pre-existing Audit Board and ECSC Audit Board rose from 164 to 505, an increase of 208% in the period 1977-97. On the basis of the budget figures we have analysed, it would appear that even without adjustment, ECA resources kept pace with budget growth. As in the case of the Commission, some further finessing may be desirable in order to differentiate between those involved in audit and audit administration only and other staff. In this case, the number of staff in the former category amounted to 106 in 1977 and 293 in 1997, an increase of 175% over the period and below the rate of increase for the Court as a whole. If the figures are further adjusted to take into account service sector productivity gains, then the total number of ECA employees shows a rise of 296% (almost 4 times), and audit and audit administration staff a rise of 253% (over 3.5 times). This evidence suggest that ECA resources have kept comfortably ahead of both budget growth and management resources in the Commission (all staffing data from the Official Journal, L series 1978-97).

In the course of this preliminary analysis, we have already challenged one of the commonly held assumptions about EU programme management just by looking at some of the existing data. At a very cursory glance, the performance indicator measures are sure to provide a few more surprises. Hopefully, someone will take notice before embarking on yet another improvement initiative.

RÉSUMÉ

La qualité de la gestion de programme de l'Union européenne fait souvent l'objet d'une intense spéculation dans les médias et parmi les parties intéressées. Or, l'on ne dispose que de peu d'indices empiriques et systématiques pour éclairer le débat. Cet article suggère une approche méthodologique reposant sur les concepts de gestion de la performance et de mesure de la qualité, et utilisant des indices quantitatifs. Après avoir posé le cadre analytique et identifié les différentes sources d'indices possibles, nous examinons un certain nombre de variables indépendantes essentielles qui influent sur l'analyse des données.

NOTES

1 Professor Roger Levy has written extensively on the problems of financial control and accountability of EU programmes. To further EIPA's priority of developing expertise in the area of financial management, he was appointed as a visiting professor in EU Financial Management during 1997-98. In order to develop a better understanding, he has devised a new conceptual and empirical framework for measuring the quality of EU programme management over the last 20 years. In this article, he sets out the fundamentals of this approach.

2 Sutherland, P. (1992) "Progress to European Union; A Challenge for the Public Services", *EIPASCOPE* 1992/3 pp. 1-7.

3 Kok, C. (1989), "The Court of Auditors of the European Communities: The Other European Court in Luxembourg", *Common Market Law* Review, 26 pp. 345-67.

4 Metcalfe, L. (1992) "After 1992: Can the Commission Manage Europe?", *Australian Journal of Public Administration*, 51, 1, pp. 117-30. ❑

The Need for an Internal Market Ombudsman*

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Foreword

This article arises from private conversations with industry and other sources[1] over the past 5 or so years about their general impressions of the workings of the European Union (EU) Internal Market. Those discussions concerned primarily the development and cementing of the *level playing field* in the manufacture, sale and use of products subject to EU New Approach directives intended to abolish technical barriers to trade. Those directives are made under Article 100A of the Treaty of Rome and provide a framework for the manufacture and supply of such products. Whilst the directives themselves are considered generally to be working well, making the *level playing field* a clearer reality is proving more troublesome. There are many possible reasons for this. One of the most likely is that serious attention is only just starting to be paid to the need for concerted action by the current 15 EU member States to ensure that measures are in place and working properly to check that directives are being fairly and evenly implemented and administered across the EU. However, who or what checks the enforcers to ensure that they understand directives' requirements properly and place no unnecessary burdens on those affected by them? Government officials in the Member States have policy responsibility for ensuring that directives are implemented and administered faithfully. But disputes concerning a product's right to bear the CE marking or alleged barriers to trade in such products, for example, are more likely to be referred to lawyers …… and ultimately the Courts, ending with the European Court of Justice. This is a lengthy and expensive process. Business is calling increasingly for measures to avoid such experiences; to provide faster remedies, and to weed out only the most contentious cases for consideration by the Courts. An Internal Market Ombudsman (IMO) possibly provides one remedy. Such a facility is not without precedent and could hold one of the keys to Making the Internal Market Work!

Further dedicated research is required to crystallise the issues and to assist informed debate. If papers such as this start that ball rolling, they will have achieved much.

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

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Introduction

Fifty years ago the visionaries responsible for the Treaty of Rome enshrined in its text the framework for the establishment of the Common Market: an area without geographical frontiers where the citizens of Europe would be able to move, work and trade freely without undue restrictions. Such an aim was more evolutionary than revolutionary – although listening to critics as the process has progressed might encourage one to believe the latter rather than the truth of the former.

How the Market has developed

No doubt anxious to avoid being hoist by their own petard, the drafters of the Treaty of Rome took care to be as least prescriptive as possible and to offer maximum flexibility so that their basic wishes could be achieved within a reasonable timescale. The Treaty, which was signed in Rome in 1958, does not define "the Market". Rather, the sense of what the Founding Fathers desired to achieve can be found early on from reading about the Treaty's aim to create an ever closer union among the peoples of Europe to preserve peace and to facilitate easier (i.e. less restrictive) trading practices. Whilst Article 2 effectively establishes "a common market and an economic and monetary union", Article 3 starts to put flesh on those bones by requiring the elimination of customs duties and quantitative restrictions "and of all other measures having equivalent effect.". It goes on, inter alia, to require the abolition of obstacles to the free movement of goods, persons, services and capital. Most significantly for this paper, Article 7 states "The common market shall be progressively established during a transitional period of 12 years."

Of course, translating those ambitious words into reality has not been an easy process. There is no blueprint for introducing and managing the massive changes they required either to the order of things generally or the structures and procedures on which they rely. Much has depended upon mutual respect and co-operation – openness and transparency in today's jargon. In times of particular difficulty, major political leaders have set examples and given public leads. Mitterrand and Kohl were particularly notable in recent years for having staked so much personally to speed the development of economic and monetary union. But Thatcher too made an important mark by championing caution and reaffirming national sovereignty. Such "opposites" might be thought to be counterproductive. In reality they provide the necessary checks to ensure a proper balance is maintained without losing sight of the overall long-term objectives. The arguments they foster (and cause !)

encourage considered debate in the light of which opinions can be weighed and conscious decisions made. Media interest and speculation might increase tensions. But greater public awareness and understanding, coupled with more detailed specialist analysis, must improve the end result. The converse would be ill-thought out policies; hardly considered; adopted on the nod and implemented without any particular thought or care. In short, chaos at best …… anarchy at worst!

Clearly, Europe's political leaders over the last four decades were determined not to be blown off course. In 1968 the Acceleration Decision introduced the common customs tariff and required the elimination of all customs duties on trade between member States 18 months ahead of schedule. This assisted the Common Market's becoming operational by 1970 (as required in the Treaty). But entrenched national practices and human reluctance to change slowed the process, hindering the development of necessary harmonisation. Many non-tariff barriers therefore remained – and in some instances have still not totally disappeared even today, although the increasing involvement of the European Court of Justice (ECJ) is helping to clarify and confirm the supremacy of European over national law.

In addition, the European Commission (sometimes referred to as the Civil Service of European Commissioners and Parliamentarians) has also been gaining experience and growing in confidence. Some critics complain about "Brussels" (however they define that term) imposing its will on the rest of Europe. Their basic discontent lies in "Brussels" being unelected, unaccountable and largely anonymous. As with every argument, these are not wholly without some foundation – certainly in so far as Commission officials are concerned. But, in the Commission's defence, it has to be said that its achievements in these uncharted waters outweigh the criticisms made against it. Each member State is represented, at all levels, in the Commission. So "Brussels" is not such an alien enterprise. That said, actually dealing with and working in such a culturally and linguistically diverse organisation is bound to hold difficulties. But sharing a common identity – being first and foremost European – provides the Commission's staff with its greatest strength. From that basis they work together to promote and encourage true integration and harmonisation throughout Europe. The example they set spreads to the member States, first at official level and then filtering down through commerce and industry to the men and women in the street. Naturally, national preferences still continue to make themselves felt. But, as time passes and we gain more experience of the practical benefits of integration (without necessarily losing individual identity), more of the original aims are materialised.

A New Approach

In its early years the Commission had necessarily to adopt a proactive rôle; to suggest ideas and to be provocative in order to spur interest and encourage support. They were also very much in a chicken and egg situation. Policies had to be developed to implement the requirements in the Treaty. But who should start those policies, national governments or the Commission? The stark reality is that in most instances, policies developed through a partnership (informal or otherwise) between the two. Having heard national politicians and officials views, the Commission usually developed a policy document for consideration with interested partners. From discussions on those early (often crude) policy issues a vehicle had to be found, when sufficient agreement had been reached, to implement them and to provide necessary checks to ensure that the vehicle kept on course. Numerous directives were then proposed by the Commission (at the behest of the Member States, who, in turn, had often been prompted by relevant interest groups and lobbyists) and negotiated with officials from relevant government departments in the Member States prior to formal adoption by the Council of Ministers. As knowledge of and interest in the Market has grown, so too has the work and power of the Commission. Such has been the extent of this in recent years that the European Parliament too has had to grow to protect the interests of all EU citizens and check that the Commission plays its proper role.

When EEC (now EU) directives were developing, the Commission worked hard with the Member States to encourage clear understanding and to promote awareness. The degree of success achieved depended largely on the amount of work invested and the interest (i.e. commitment) of the people involved – at all levels: official; legal; technical; commercial and so on. The earlier (Old Approach) directives were highly prescriptive and often attached annexes listing the sole standards in conformity with which manufacturers had to make their products. Naturally, this gave rise to discontent. Faster technological advances were not made at the same (slower) pace of standards development. This and purchasers increasingly sophisticated demands, led manufacturers to argue that the Commission was thwarting business and progress. An important result from these comments was that the Commission together with the European standardisation bodies and others developed a new type of directive. The so-called New Approach introduced in the mid-1980s provided a more flexible régime for compliance with the directive's requirements. They were not at all prescriptive and offered those subject to their requirements the option of either manufacturing goods in accordance with the directive's essential health and safety requirements (ESR), or with the relevant Harmonised European Standard(s) which carry with them a presumption of conformity with the ESRs. Again, Commission officials worked with those in the member States to ensure the timely and smooth implementation of these directives.

A level playing field?

Given such lengthy and detailed negotiation (including consultation with interested parties outside of government), one might be forgiven for thinking that the *level playing field* was assured as a result of the

adoption of the various directives designed to create a common régime for the manufacture and marking of products for sale and use within EU markets. Perhaps it should have been. But to many in business, it has long seemed a far distant goal.

What does the term "level playing field" actually mean? To understand the concept, one has to take a step back and consider what gave rise to it. In this context, we are considering EU directives which contain equal (horizontal) requirements for the manufacture, conformity testing and marking of goods subject to those relevant directives for their sale and or use in one or more of the current 15 EU member States markets. This is achieved primarily as a result of technical harmonisation processes, principally the development and adoption of harmonised European standards to support particular directives. However, as indicated above, in the event that no such standards are available or should manufacturers feel able to demonstrate compliance by other preferred means, the directives also provide the option of compliance with general *essential safety requirements.* Whichever compliance route is chosen, it (and the choice) is available equally to all those subject to the requirements of relevant directives and offering their goods for sale or use on the Community market. Thus transparency and equality should be ensured, resulting in uniform requirements to reduce the costs on business and so encourage greater and fairer competition.

The Commission's 1985 White Paper on the Completion of the Internal Market set out the legislative programme and timetable for the removal of remaining barriers to trade by 1992 i.e. the preparation for the real opening of the Internal Market (as the Common Market had come to be known). Arguably, the main reason for this initiative was to commit Member States to relinquish measures (i.e. tariff barriers) which had been introduced to protect national interests and hinder competition from other countries. Such measures may have been (and probably were) entirely justifiable given the special circumstances which gave rise to them originally. But the world had changed. In post-war Europe, a new spirit of unity and mutual recognition was growing. Earlier justifications for national protectionist measures were fast redundant. In their wisdom, the political leaders and the Commission saw the danger of relying only on human goodwill to achieve their aims – they saw the need for disciplines to be introduced to ensure that their objectives were met …… properly and on time. The White Paper provided just such a discipline. It provided for innovation on a massive scale. Never before had so many countries joined voluntarily to create a political, legal and economic environment for the mutual acceptance and recognition of each others products. Negotiations on the development of New Approach directives therefore accelerated so that they were formally adopted in good time for the Member States to transpose their requirements into their own national laws AND to provide sufficient transitional arrangements while those affected by them adapted their manufacturing and other processes to the changed requirements before those directives entered fully into force and their requirements became obligatory on those subject to them.

This gave lawyers and administrators heavy workloads to meet deadlines for transposition of directives into national laws. (Failure would surely result in infraction proceedings being taken against the Member State(s) concerned by the Commission under Article 169 of the Rome Treaty. Something which Member States prefer to avoid if at all possible.) It also set manufacturers the task of understanding the "new" legislation and making their goods in total compliance with it in order to benefit from the new trade opportunities available in Europe.

No administrator or lawyer could (or should) encourage the breaking of the law. But, experience shows that it is unrealistic to assume that everything will work properly the first time when there has been no previous experience of or dress rehearsal for the changes brought about by the creation of the Internal Market. Seeing sometimes differing national approaches and significant differences between the different language versions of the directives entering into force, some counseled against early compliance – preferring instead to wait for the necessary clarifications and uniformity to be obtained. Sometimes the directives' scopes were called into question. For example when does a toy stop being a toy and instead merit classification as a machine? Equally, questions arose (and still arise) about the categorization of a product under the directive. The Personal Protective Equipment (PPE) Directive (89/686/EEC, as amended) is a case in point. That text of that directive names only two categories of PPE within its scope. But, on reading the conformity assessment procedures, it becomes clear that there is an unnamed third category which also has to be tested by a properly approved and appointed organisation before the manufacturer may properly affix the CE marking to the goods in question. Who decides whether the manufacturer and/or the Test House have understood and complied with the relevant directive properly when the wording of the directive is not entirely clear? And to whom do fellow manufacturers turn when apparently identical products are treated differently, yet each is freely available on the Market?

Clarity and Certainty

Made aware by Governments and others that they are legally responsible for complying properly with the requirements of relevant directives (including the CE marking), manufacturers and their representative organisations started to seek guidance on how to comply with directives ("the new European legislation") affecting their businesses and products. Some Governments felt perhaps even more vulnerable than the manufacturers at whom their legislation was directed, knowing that, in the event of dispute, the manufacturer would claim he had only done what the Government had told him! Naturally, no Government wished to risk

embarrassment and even less to be subject to Court proceedings. Other Governments genuinely wished to help their industries, but lacked sufficient resources to do anything much more than to introduce the transposing legislation. Often, they also suffered both from very limited resources and were dealing with a more sceptical public. The British Government felt a duty not only to implement the directives properly but also to encourage correct compliance. The many and varied imperfections of the former increased the need for the latter. It seemed that as the numbers of those working with the new legislation grew, so too did the number of questions (and possible solutions) about that legislation. Suddenly, one found numerous "experts" – but on what was their expertise founded? As ever, some were better (and more reliable) than others. For example, those who had long been associated with an industry sector and the development of particular directives affecting it could be more safely relied upon than perhaps some of the more recent newcomers. Those involved in the technical standardisation process had particularly valuable knowledge, yet it is only comparatively recently that some of the national (and European!) standardisation bodies have entered the business of providing guidance and advice on matters of interpretation and compliance. Apart from a few Governments, it was largely the Test Houses who took this lead initially. And cynics have argued that they only did so because it cemented their business and gave them a free hand to require tests which perhaps the directive(s) did not strictly require. Perhaps there may be some truth in that. But, if the Test Houses misunderstood directives, they risked losing their reputation and thus their business. Apart from perhaps an odd few who saw the chance of making a fast buck, most adopted a more realistic and responsible approach to their work. Not only did they work with the Commission and government officials to make sense of the often strange language used in directives, they also collaborated with each other to develop common test methods or to agree a common understanding of test methods specified in relevant harmonised European standards. By these means, in addition to the others mentioned previously in this article, manufacturers' faith started to grow in the directives to which they were subject and the single Market whose base they formed.

Despite all those efforts, significant problems still arose. And the more questions that were asked, the more potentially correct answers there appeared to be – and the more experts appeared to provide those answers! The main difficulty lay in the fact that only the texts of the relevant directive(s) and its(their) implementing legislation was authoritative in law. Any guidance issued by government officials (e.g. the UK Department of Trade and Industry's "Product Standards" booklets), standards-makers or testing authorities was therefore purely informal and subject to change in the light of experience. (And considerable care was taken to remind readers of the fact lest they should forget it!)

It has to be said that many initial fears were found to be groundless as experience increased of working with directives and many manufacturers found that the new requirements placed on them were shared by their compatriots and counterparts across the EU. This did not happen immediately, but when it did, it eased Ministerial and official concerns enormously. Instead of every conceivable question being referred to the Government concerned or to the Commission for clarification and guidance, only those involving significant policy issues were referred to those higher authorities for consideration. After due reflection, the Commission might issue guidance. Or, more likely, it would refer the matter to the official Working Group established under directives to consider matters of interpretation and policy. Each Member State is represented on such Groups and outside experts are brought in for specialist comment and advice as circumstances demand. Ultimately, the Group votes on the proposed solution(s) and thereafter those affected by that decision are expected to work according to the interpretation it offered. In many cases that was the end of the matter. But what if a manufacturer disagreed with the decision reached? What bound him to comply with it? Legally, nothing – although, of course, the background and prevalent practice would no doubt be taken into consideration. Supposing he decided to fly in the face of convention. What sanction(s) might be imposed to bring him back into line? There are many informal possibilities (peer pressure, etc.) but the ultimate sanction lay in the hands of those responsible for ensuring that the national laws implementing directives were being properly observed and obeyed i.e. the enforcement authorities.

Unfortunately, laymen anxious for clarification of the law were often disappointed when the enforcement authorities were unable to provide the answers sought. There are many reasons for this. Firstly, most politicians advised against the heavy hand of enforcement when directives were only just settling into place. They knew that public opinion was greatly divided on most questions affecting "Europe" and they did not wish to rock the boat. Many enforcement authorities therefore found themselves in difficult positions. They had to ensure that laws were properly enforced if they were not to be ignored or fall into disrepute. But how could they enforce laws when they themselves were perhaps not expert in the matters at issue and definitive interpretations or advice were a comparative rarity. (The issue of enforcement authorities limited resources also needs to be taken into account, but that merits separate consideration elsewhere.) Soon one found that "rebellious" manufacturers and enforcement agencies found themselves to be most unexpected bedfellows in the quest for clarification and certainty. But where was it to be found?

The need for an IMO

Given the lack of any legal authority to change a directive, other than an amending directive or similar instrument, and given the general desire to avoid further (constantly changing) legislation, calls started to grow

for measures to be introduced to provide the necessary clarification WITHOUT the expense or delay involved in instituting legal proceedings for complaint and restitution. Normally, the only recourse complainants have against alleged offenders is through the Courts. No doubt, in the clearer cut cases, that course would be taken. But the issues involved here are, by definition, not clear. They are complicated by a lack of experience, although this is now improving fast as compliance grows. Furthermore, the Commission has found that not all Member States implement and administer directives in exactly the same way – although of course they should and usually do. Differences are due to three main reasons: different legal systems established in the Member States; differing texts in the various language versions of the directives addressed to the Member states and limited resources. (There are also other reasons such as the "gold-plating" of directives when transposing them into national laws, but these are usually more easily identifiable and their correction is thus perhaps more straightforward. "Gold-plating" means including in transposing legislation requirements not contained in the directive being transposed into national law. This defeats the object of harmonization; re-establishes inequality and could give rise to new barriers to trade – all contrary to the aims of the Internal Market.)

If formal legal proceedings are to be avoided, what else can be done to obtain the clarification and certainty being sought for the benefit of all of the parties involved? Suitable cases might be sent to an Internal Market Ombudsman (IMO) to provide impartial guidance on the interpretation and application of relevant directives.

What is the Ombudsman? Doesn't the EU have one already?

As with many puzzles, the answer to the second question is both yes and no – and both are equally correct, in context.

The normal dictionary definition of an Ombudsman is "an official investigator of complaints against government bodies or employees". Dictionaries often credit the Swedes with this institution. However, Danish colleagues claim that the Ombudsman was originally theirs – but readily adopted by the Swedes as their own! Whatever the history, the office has proved its worth many times in supporting and protecting individual's rights against the State.

The Treaty of Maastricht (Article 138e) states that "The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role". Thus the EU does indeed have an Ombudsman. Furthermore, the European Ombudsman is required by the EC Treaty to publish annual reports – and does so.

Cases involving the alleged non-implementation or wrongful application of EU directives transposed into national law may be suitable for reference to the Ombudsman. But these are normally sorted out between the Commission and the member State concerned.

Cases concerning the need for impartial guidance on directives requirements would seem inappropriate for reference to the European Ombudsman. A new, different office is therefore needed – that of an Ombudsman specifically for the Internal Market.

Arguments for an IMO

Manifestly, the single major factor in favour of the creation of the office of an IMO is that, in the absence of much EU case law currently in this area, it would speed the process for obtaining clarifications and interpretations of directives' requirements by lifting this growing workload from the Commission and officials in the member States (who are often reluctant to express definitive views). In this sense, the IMO effectively becomes a mediator, facilitator and arbiter all rolled into one. The IMO's Opinions would be both considered and impartial. They should be sent to the Commission and the member States governments simultaneously, thereby assisting uniformity and the development of the *level playing field*. Depending upon the issues concerned and the circumstances involved, this "fast track" service could cut industry's, the Commission's , governments' and enforcement agents' uncertainties – saving all both time and money. Lengthy and costly legal proceedings could be avoided, leaving only truly deserving cases for the attention of the Courts and ultimately the European Court of Justice (ECJ).

However, the benefits do not end there as those Courts would no doubt draw upon the IMO's previous investigations and Opinions when considering cases, thereby again speeding the process.

Finally, at a time when "Brussels" is criticised for creeping bureaucracy and increased centralisation, the IMO could usefully play a rôle in helping the Internal Market to succeed. A rôle which some in the Commission foster because of a lack of other suitable alternatives.

Arguments against an IMO

Probably, the single biggest factor against the creation of an IMO is that it might introduce a new layer of bureaucracy. This goes against the current trends for deregulation and simplification. Admittedly, these are normally concerned with the legislative act itself. But they could be argued to apply equally to the legislative process and so the point has to be considered. In the final analysis, popular support for and the comparison of benefits against costs would have to be weighed before any decision were to be made.

However, what is there to say that an IMO would be any better able to fill the knowledge chasm than Commission or government officials – especially when the IMO would no doubt need to call on their specialist knowledge of the history and development of directives! Rather than speed and assist the clarification process, might the IMO's involvement only serve to further

delay and complicate the process? Might it not simply replace the existing machinery with something virtually identical in terms of lack of technical expertise and bureaucratic delay? Might the intended "fast track" therefore prove unrealistic? If so, this could add to the delay in bringing deserving cases before the Courts.

Cost Benefits

Of course, any of the above scenarios can be no more than speculation until further research is undertaken and actual experience has been gained of their working in practice. The Commission and Member States governments are equally cautious about introducing any new policies or developments until they gauge sufficient consideration has been given to all the possibilities and the chosen course emerges as that likely to bring the most benefits at the cheapest costs. It may therefore be some time before the case for (or against) an IMO receives wider debate. But it is certainly a possibility which is meeting with growing support both from the business world and in some political quarters – including among some Members of the European Parliament.

Other implications also need to be considered. In the first place, is it right to mix legal issues with administrative and technical practice and guidance? Some might argue that any clarification of the present situation would be a welcome advance. But, depending upon the precise rôle and powers of the IMO, it may be that the IMO's Opinions are no more binding than the informal guidance currently issued by the Commission or the member States' governments. If so, that would seriously curb the benefits and do nothing to resolve the current administrative impasse. More worryingly, what if the IMO's findings fail to gain popular support. At best the public would ignore them. At worst, the Courts might overrule them – losing totally whatever credibility the IMO might deserve or merit in future. And what of the businesses and enforcement authorities who saw the IMO as their saviour? They would surely become even more disillusioned and sceptical; which feelings would spread as all bad news does, calling the Internal Market itself into question because hopes of easier (less burdens), increased business were dashed. This scenario assumes that the IMO lacks legal weight and might be influenced by popular opinion. Of course, if laws are popular they are more likely to be respected and obeyed. But, the IMO should be impartial and judge each issue on its merits, relating back directly to the directive(s) in question.

Finally, to more practical issues: how would the IMO be established; funded; staffed and run? These questions would need to be considered fully when the principle of the creation of an IMO is itself formally agreed. But, recent initiatives by the Commission and the Member States may be helpful here. For example, keen to improve the enforcement of EU legislation (for which read directives), the Commission has concentrated on transparency, co-operation and access to justice. A first priority had to be identifying relevant contact points for particular directives. (These are now largely available on the Commission's Europa Website.)

The aforementioned themes were also central to the Commission's 1994 Framework for Enforcement Co-operation, which developed its calls for increased Administrative Co-operation (and was reinforced by a Council Resolution in mid 1996). The same themes also featured prominently in the 1997 Single Market Action Plan and were priorities in the UK and Austrian EU Presidencies last year – and will likely continue to do so under future Presidencies.

The advantages of an IMO

Whether or not the above Administrative Co-operation efforts succeed, an IMO may still be needed to help resolve persistent significant issues. In its simplest, cheapest and most easily manageable form, the IMO might comprise a single person, perhaps with a small supporting staff based in a single office in Brussels. Given the amount of cases likely to be referred to the IMO, how could such an office be expected to cope? The financial advantages would soon be lost in the disrepute into which the office would surely fall. The IMO and his/her staff would rapidly become demoralised and the quality of their Opinions made questionable simply as a result of being unable to give issues due consideration.

At the other end of the spectrum, perhaps the above should comprise the core, co-ordinating office, linking with the Commission and the member States at Ministerial level to provide policy steer and practical guidance on procedures to be followed etc.? To make the IMO more easily within the reach of ordinary people, the office should ideally have branches in each of the member States (possibly as an extension of the EU Information Centres). This would improve accessibility and facilitate a better understanding of the issues in question because they are being considered in the mother tongue against familiar backgrounds. Those sub-offices might well be able to resolve certain issues themselves, perhaps by correcting misunderstandings or redirecting enquiries to the proper channels. The matters remaining would then represent the cases for consideration at a higher, European level e.g. by the IMO.

Of course, such a network multiplies the costs and could turn creeping bureaucracy into sprinting bureaucracy. To whom would the IMO and the supporting staff be answerable? How would their work be organised on a uniform basis and how would they be managed? Some officials argue such considerations kill the proposal even before it has properly developed. In reply, they might consider the benefits to outweigh the costs. The sure answer can only be given in the light of experience. But, the perceived need of such a service ought not to be dismissed lightly.

A more acceptable solution might be a combination of the above whereby the IMO's central office liaises directly with Administrative Co-operation contact points in each of the Member States, calling joint meetings (with external experts, if necessary) to consider issues

on which directives Standing Committees cannot agree or in which they have no role. Most, if not all, Member States are also understood to have Single Market Compliance Units (SMCU) to which EU trade barrier and related difficulties may be referred for consideration and investigation at the EU level. Such Units and officials may also prove helpful to an IMO.

With regard to cost, experience shows that the public will pay for a good service or product providing it is properly marketed and meets (or surpasses) expectations. Considering legal services have to be bought, why should the services of an IMO not have to be paid for by those using them? But, were that to be the case, other possibilities come to mind. For example, as mentioned above, in most member States, government offices exist to consider questions relating to compliance with directives, possible new barriers to trade and so on. With a little imagination, what is to prevent those offices from forming the nucleus of the IMO's sub-office in that country? The benefits here would be that the staff already exist; they are trained in their fields of responsibility and their costs are met by the home authority. By furthering the administrative co-operation which the Commission increasingly encourages, it could be that these staff have at their fingertips the solution to many current problems. However, turning that key requires political will and commitment. Official support for such proposals may be luke warm, but the case for an IMO deserves to be considered on its merits. The day may well be not so far off when the same sceptical officials will be required by their political masters to do what is currently unthinkable – or administratively undesirable.

RÉSUMÉ

Cet article traite de la façon dont le public perçoit le fonctionnement du marché intérieur de l'UE en matière de libre circulation des biens couverts par les directives prises en vertu de l'article 100 A du Traité de Rome et visant à abolir les entraves techniques aux échanges.

Dans la phase préparatoire pour le lancement du marché intérieur le 1er janvier 1993, de nombreuses directives dites de "nouvelle approche" furent négociées avec la Commission européenne et adoptées formellement par tous les Etats membres. L'objectif de ces directives était (et est encore) d'encourager l'émergence d'une situation comparable dans les secteurs couverts, notamment les jouets, les équipements techniques, etc.

Selon les rapports de la Commission européenne, la plupart de ces directives ont été à présent transposées correctement dans la législation nationale des Etats membres. Toutefois, le respect de la "nouvelle" législation est souvent irrégulier. La formulation de certaines directives est floue et le sens (y compris la portée et les exigences) diffère parfois dans les différentes versions linguistiques. Dès lors, les directives sont mises en oeuvre et appliquées de manière différente dans la législation nationale des Etats membres.

Les difficultés qui en résultent, ajoutées à la résistance naturelle au changement, ont ralenti le rythme de la mise en conformité des produits (y compris le label européen) par les fabricants vis-à-vis des directives concernées. Par ailleurs, cela a sérieusement retardé l'émergence d'une situation comparable, en dépit de documents d'orientation et d'autres aides fournis par la Commission et les autorités nationales compétentes.

Pour pouvoir atteindre plus rapidement le degré de clarté et de certitude recherché, sans devoir recourir à des procédures juridiques longues et coûteuses, de nombreuses voix s'élèvent pour réclamer l'institution d'un Médiateur du marché intérieur (MMI), qu'il s'agit de ne pas confondre avec le médiateur européen. Ce médiateur du marché intérieur devrait examiner les cas qui lui sont soumis pour donner une orientation impartiale sur l'interprétation et l'application des directives concernées. Une telle orientation pourrait contribuer au processus d'harmonisation européenne, accélérer la conformité accrue par rapport à ces directives, éviter d'inutiles actions en justice et permettre d'identifier les questions litigieuses qui méritent d'être portées devant les juridictions compétentes.

Dans ce sens, le MMI devient un médiateur, un facilitateur et un arbitre. En dehors de son rôle premier, qui consiste à donner une interprétation impartiale pour aider à la fois l'industrie et le processus juridique, le MMI pourrait aider "Bruxelles" en détournant les critiques grandissantes au sujet de la "bureaucratie rampante" et de la centralisation accrue. Quel que soit le résultat final, la question de la nécessité d'un MMI doit être considérée à sa juste valeur. Il s'agit de le faire assez rapidement si l'on veut éviter de saper la confiance du public dans le marché intérieur et de compromettre l'apparition d'une situation comparable dans l'ensemble de l'UE. Cependant, il ne faut pas oublier que seuls les textes des directives et leur législation d'exécution font foi en la matière.

NOTE

[1] The author especially thanks Giandomenico Majone, Visiting Distinguished Professor, Graduate School of Public and International Affairs, University of Pittsburgh, for his interest in and support for this paper, which builds on themes in his own work concerning "The Agency Model" in which he observes that Agencies are increasingly used to perform the executive tasks of government. That background may prove useful when considering issues concerning an IMO. ❑

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

Institut Européen d'Administration Publique
European Institute of Public Administration

Please note that there has been a change to the format of the Newsletter of the Regions of the European Union. As from this edition, the Newsletter of the Regions will no longer be sent at the same time as our bulletin EIPASCOPE, but separately at a later date.

We hope to be able to send you the first edition of the new version of the Newsletter of the Regions in late April or early May this year.

Chers lecteurs,

Par la présente nous tenons à vous informer d'un changement intervenu dans la parution du Bulletin des régions de l'Union européenne. A partir de cette année et de ce numéro, le Bulletin des régions ne vous sera plus envoyé en même temps que notre Lettre d'information EIPASCOPE, mais fera l'objet d'un envoi séparé à une date ultérieure, ce qui veut dire que sa parution ne coïncidera plus avec celle d'EIPASCOPE.

Nous espérons être en mesure de vous envoyer le premier numéro du Bulletin des régions nouvelle version fin avril, début mai de cette année.

Liebe Leserinnen und Leser,

wir möchten Sie hiermit über eine Änderung im Erscheinen des Bulletins der Regionen der Europäischen Union informieren. Ab diesem Jahr und dieser Ausgabe wird Ihnen das Bulletin der Regionen nicht mehr gleichzeitig mit unserer Informationsschrift EIPASCOPE, sondern getrennt zu einem späteren Zeitpunkt zugestellt werden. Das Erscheinungsdatum fällt also nicht mehr mit dem des EIPASCOPE zusammen.

Wir hoffen, Ihnen die erste Ausgabe des Bulletins der Regionen in seiner neuen Form Ende April/ Anfang Mai dieses Jahres zusenden zu können.

ANNOUNCEMENTS / *ANNONCES*

Workshop on

State Aid Policy and Practice in the European Community

21-22 June 1999
and repeated on
14-15 October 1999

The European Institute of Public Administration announces a new series of workshops on State Aid Policy and Practice in the European Community. The first two-day Workshop will take place the 21-22 June and will be repeated on 14-15 October 1999 in Maastricht, the Netherlands.

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

The purpose of the Workshops is to examine in depth the interpretation and application of the Treaty rules and of the frameworks, guidelines and notices that have been developed over the years by the Commission. Actual Commission decisions are analysed in detail so that participants obtain a better understanding of the factors that shape those decisions.

An innovative feature of the Workshops is that participants are also presented with extensive and updated statistical assessment of state aid policy. This assessment is the result of the continuous research and monitoring of state aid cases undertaken within the EC Policies Unit of the European Institute of Public Administration. Participants will be offered free copies of the Institute's latest publication on state aid.

The Workshops are based on interactive learning methods. Each subject is introduced by an expert lecturer and participants are then given case studies so that they become familiar with the particular issues that have played a significant role in different sectors and state aid schemes.

The target audience of the Workshops is middle and senior officials at all levels of government and local authorities, officials of public enterprises, academics, representatives of business and trade associations and other practitioners.

The European Institute of Public Administration, which is the organiser and host of the Workshops, has extensive experience and a well-established track record in this kind of educational activities. Last year it organised more than 300 conferences, seminars, workshops and round-table discussions, spanning the whole range of EU institutions, the legal system and decision-making procedures and policies. The Workshops also represent a continuation of the research and seminar activity of the Institute in the area of competition policy.

The working language for the workshops will be English.

A registration form can be found enclosed with this edition of EIPASCOPE.

For further information, please contact:
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EIPA website: http://www.eipa.nl

Seminar

Committees and Comitology in the Political Process of the European Community

Maastricht, 21-23 September 1999

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

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

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

The working languages of the seminar will be English, French and German, provided that there are enough participants requiring each language.

For more information and registration forms please contact:
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Seminar / *Séminaire*

European Negotiations / *Négociations européennes*

Maastricht

7-11 June, 11-15 October and 22-26 November, 1999 /
du 7 au 11 juin, du 11 au 15 octobre et du 22 au 26 novembre 1999

This is a practical seminar which aims to explore and define the strategies and tactics inherent in European bilateral and multilateral negotiations, and to develop ways to promote their efficient conduct. It is intended for civil servants from Member States and Community institutions and designed to involve full participation. While providing a theoretical framework, the seminar aims above all to help participants improve their negotiation capabilities and therefore places emphasis on practical skills development. Moreover, the multinational composition of the group should offer participants an ideal opportunity to discover together the special dynamics of the negotiation process in general and of European Union negotiations in particular.

Ce séminaire, à caractère pratique, vise à explorer et à définir les stratégies et tactiques inhérentes aux négociations européennes, qu'elles soient bilatérales ou multinationales, et à montrer comment les mener avec plus d'efficacité. Il est destiné aux fonctionnaires des Etats membres et des institutions communautaires et est fortement participatif. S'il fournit un cadre théorique, ce séminaire est avant tout conçu pour aider les participants à perfectionner leurs talents de négociateurs, et met donc l'accent sur le développement des aptitudes pratiques. En outre, la composition multinationale du groupe devrait offrir aux participants une occasion unique de découvrir ensemble la dynamique particulière du processus de négociation en général, et notamment des négociations européennes.

Working languages: English and French (with interpretation)

Langues de travail: anglais et français (l'interprétation simultanée étant assurée)

For more information and application forms, please contact:
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The Dublin Convention on Asylum
La Convention de Dublin sur l'asile
Das Dubliner Übereinkommen über Asyl

Seminar partially financed by the European Commission in the framework of the Odysseus Programme

Séminaire partiellement financé par la Commission européenne dans le cadre du Programme Odysseus

Ein teilweise von der Europäischen Kommission im Rahmen des Odysseus-Programms finanziertes Seminar

Maastricht (NL), 15-16 April 1999

The aim of the programme is to improve knowledge and understanding of the Dublin Convention on asylum and its supporting measures. It will involve discussion of the practical problems of implementation and an attempt will be made to identify common approaches to tackling those problems. Moreover, the seminar aims to highlight the structures, operational procedures and practices adopted by the participants' administrations when applying the Dublin Convention. Finally, it also offers an opportunity for participants to establish contacts with officials working in counterpart administrations in other Member States.

The seminar is only open to officials of the European Union Member States who are charged with the application of the Dublin Convention.

The working languages of the seminar are English, French and German.

L'objectif du programme est de permettre aux participants d'élargir leurs connaissances et d'acquérir une meilleure compréhension de la Convention de Dublin sur l'asile ainsi que des mesures d'accompagnement. Les discussions porteront sur les problèmes pratiques de mise en œuvre et tenteront d'identifier des approches communes en vue de traiter ces difficultés. Le séminaire vise en outre à brosser un tableau des structures, procédures opérationnelles et pratiques qui sont adoptées par les administrations des participants lors de l'application de la Convention de Dublin. Enfin, les participants pourront également établir des contacts avec leurs homologues des administrations des autres Etats membres.

Ce séminaire est réservé aux fonctionnaires des Etats membres de l'Union européenne qui sont chargés de l'application de la Convention de Dublin.

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

Das Programm zielt auf eine verbesserte Kenntnis und ein besseres Verständnis des Dubliner Übereinkommens über Asyl und seiner unterstützenden Maßnahmen ab. Neben einer Diskussion der praktischen Durchführungsprobleme soll der Versuch unternommen werden, gemeinsame Ansätze zur Behandlung dieser Probleme zu identifizieren. Das Seminar ist ferner darauf ausgerichtet, die Strukturen, die operationellen Verfahren und die Praktiken aufzuzeigen, die von den Verwaltungen der Teilnehmer bei der Anwendung des Dubliner Übereinkommens eingesetzt werden. Schließlich bietet das Seminar den Teilnehmern Gelegenheit, Kontakte zu Bediensteten zu knüpfen, die in den Verwaltungen anderer Mitgliedstaaten mit dem gleichen Aufgabengebiet befaßt sind.

Eine Teilnahme an dem Seminar ist nur für Bedienstete der Mitgliedstaaten der Europäischen Union möglich, die mit der Anwendung des Dubliner Übereinkommens befaßt sind. Die Ziele dieses Seminars sind.

Die Arbeitssprachen des Seminars sind Englisch, Französisch und Deutsch.

For more information and application forms, please contact:

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EIPA Staff News

* Newcomers at EIPA

– **Dr Timm Rentrop** (D) joined EIPA Maastricht on 9 November 1998 as Lecturer
– **Danielle Bossaert** (L) joined EIPA Maastricht on 2 February 1999 as Lecturer
– **Tomas Bern** (S) joined EIPA's Luxembourg Antenna on 1 March 1999 as Senior Lecturer

– **Nouveau Directeur du Centre européen de la Magistrature et des professions juridiques, Antenne de l'IEAP à Luxembourg**

L'IEAP est heureux d'annoncer la nomination de **Mme Gabriëlle Vonfelt** (F) à la tête de son Antenne Luxembourg, le Centre européen de la Magistrature et des professions juridiques. Mme Vonfelt succède à M. Christophe Soulard qui a présidé aux destinées du Centre pendant près de 7 ans et qui a réintégré à présent la magistrature française où il occupe la fonction de conseiller référendaire à la Cour de cassation à Paris.

Mme Vonfelt a pris ses fonctions au 1er décembre 1998. Avant d'occuper ce poste, elle a été pendant 12 ans Directeur du Centre de stage de l'Ecole Nationale de la Magistrature et Vice-président du T.G.I. de Strasbourg chargé du T.I. de Strasbourg, et Président du Tribunal pour la Navigation du Rhin. Elle est également membre du groupe de coopération franco-allemand du ministère de la Justice.

L'IEAP tient à remercier le ministère français des Affaires européennes et internationales auprès du ministère de la Justice et, en particulier, le Garde des Sceaux et Ministre de la Justice, Mme Elisabeth Guigou, d'avoir accepté de détacher Mme Vonfelt auprès du Centre européen de la Magistrature et des professions juridiques dans le cadre d'une mise à disposition.

– ***New Director of the European Centre for Judges and Lawyers, EIPA's Luxembourg Antenna***

*EIPA is pleased to announce the appointment of **Mrs Gabriëlle Vonfelt** (F) as head of its Luxembourg Antenna, the European Centre for Judges and Lawyers. Mrs Vonfelt is replacing Mr Christophe Soulard who was in charge of the Centre for almost seven years and who has now returned to the French magistracy as a conseiller referendaire (auxiliary judge) at the Court of Appeal in Paris.*

Mrs Vonfelt took up her post on 1 December 1998. Prior to this, she was the Director of the training centre of the National Institute for Lawyers and Vice-president of the Tribunal de Grande Instance (District Court) in Strasbourg for 12 years; responsible for the Tribunal d' Instance (magistrates court dealing with civil matters) in Strasbourg; and President of the Commission of Enquiry into Navigation of the Rhine. She is also a member of the Franco-German cooperation group of the Ministry of Justice.

EIPA would like to thank the French Ministry of European and International Affairs as well as the Ministry of Justice and, in particular, the French Minister of Justice, Mrs Elizabeth Guigou, for having agreed to the secondment of Mrs Vonfelt to the European Centre for Judges and Lawyers.

Photograph taken on the occasion of the 10th anniversary of the series of seminars organised by EIPA for the German Länder, *held in Maastricht on 11 February 1999.*
On the front row from left to right: Dr Günther F. Schäfer, Professor of Public Policy at EIPA; Dr Rembert Behrendt, Former State Secretary within the Ministry of Economic Affairs, Technology and European Affairs of Sachsen-Anhalt; Prof. Dr Siegfried Magiera, Rector of the German Hochschule für Verwaltungswissenschaften *in Speyer; and Mrs Schäfer.*

Please note that the text of the speeches delivered at this event will be published in the forthcoming issue of the Newsletter of the Regions in the European Union.

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Editorial Team: Dr Sanoussi Bilal, Veerle Deckmyn, Dr Torbjörn Larsson, Claude Rongione,
Typeset and layout by the Publications Department, EIPA.
Photo by Ms Henny Snijder, EIPA
Printed by Atlanta, Belgium.

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