eipascope

Bulletin
No. 2005/1

In this issue >>

Institut Européen d'Administration Publique
European Institute of Public Administration

www.eipa.nl

EIPA's Headquarters Maastricht (NL)

European Documentation Centre

Alexis de Tocqueville Prize

About EIPASCOPE

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

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

Institutional information is given on members of the Board of Governors as well as on changes, including those relating to staff members, at EIPA Maastricht, Luxembourg, Barcelona and Milan.

The full text of current and back issues of EIPASCOPE is also available on line. It can be found at: http://www.eipa.nl

EIPASCOPE dans les grandes lignes

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

En dehors des articles, EIPASCOPE contient également des informations sur les activités organisées par l'IEAP et, plus particulièrement, ses séminaires et conférences ouverts qui sont accessibles à toute personne intéressée. Notre bulletin fournit aussi des renseignements sur les activités de l'IEAP qui sont réalisées dans le cadre d'un contrat (généralement avec les institutions de l'UE ou les administrations publiques des Etats membres) afin de donner un aperçu des domaines d'activité de l'IEAP et des possibilités qu'il offre pour la réalisation de programmes sur mesure adaptés aux besoins spécifiques de la partie contractuelle.

Il fournit également des informations institutionnelles sur les membres du Conseil d'administration ainsi que sur les mouvements de personnel à l'IEAP Maastricht, Luxembourg, Barcelone et Milan.

EIPASCOPE est aussi accessible en ligne et en texte intégral sur le site suivant: http://www.eipa.nl

Table of Contents

Foreword

Dear Readers,

We are pleased to present to you this newest edition of Eipascope with a fresh and more attractive cover design and layout which reflects EIPA's mission more clearly.

In addition to this issue of Eipascope you will find a separate catalogue, which will keep you better informed of EIPA's open conferences and seminars, for which any interested person can register.

We hope this issue meets your expectations for informative articles on policy and institutional developments, legal issues and administrative questions that shape the process of European integration.

These changes in design will also be extended to our website (www.eipa.nl) in the near future, so make sure you drop by and take a look.

We welcome any feedback from you.

Yours sincerely,

The Editorial Team

Ecole européenne d'administration

Par **Prof. Dr. Gérard DRUESNE**, Directeur général de l'IEAP

Au terme d'un peu plus de deux ans de négociations, les institutions et organes de l'Union européenne sont parvenus à un accord pour créer une "Ecole européenne d'administration" en vertu de deux décisions du 26 janvier 2005[1]. La première, émanant des institutions elles-mêmes[2], porte création formelle de l'Ecole, tandis que la seconde, signée des secrétaires généraux, concerne son organisation et son fonctionnement.

C'est une petite révolution dans le paysage de la formation administrative européenne car si les institutions – notamment la Commission – mettaient déjà en œuvre une politique ou à tout le moins des actions de formation de leur personnel, c'est la première fois dans l'histoire des Communautés et de l'Union européennes qu'une entité spécifique commune à l'ensemble des institutions – une "école" – est établie pour assurer la formation des fonctionnaires européens. Il faut naturellement y voir le prolongement d'une préoccupation qui figurait en bonne place dans la réforme Kinnock – du nom de l'ancien Vice-président de la Commission responsable du personnel et de la réforme administrative – du statut des fonctionnaires (règlement du Conseil du 22 mars 2004, applicable depuis le 1er mai 2004).

L'Ecole est un organisme interinstitutionnel commun, chargé de développer "certaines actions de perfectionnement professionnel dans l'optique du développement des ressources humaines et du déroulement de la carrière". Il lui appartient plus précisément d'organiser trois types d'actions de formation:

– des cours de management, pour les fonctionnaires et agents appelés à exercer des fonctions d'encadrement; les rapports du groupe de travail interinstitutionnel soulignent l'objectif d'améliorer le fonctionnement des administrations communautaires en facilitant le développement d'une nouvelle culture administrative;
– des cours d'entrée en service ("induction courses") pour les nouveaux membres du personnel, de manière à améliorer leur socialisation dans un esprit communautaire indépendamment de l'institution dans laquelle ils sont affectés;
– la formation expressément prévue par le statut des fonctionnaires – et donc obligatoire – comme condition du passage entre groupes de fonctions; il s'agit ici d'un élément majeur de la gestion des carrières individuelles, consistant en la mise place d'un système de "certification" de l'augmentation du niveau de compétences de l'agent du fait de la formation suivie, indispensable à la promotion du groupe de fonctions d'assistants vers celui des administrateurs.

Il est précisé que pour les cours de management et d'entrée en service, chacune des institutions peut organiser, en fonction de ses besoins spécifiques, des cours complémentaires, qui viendront s'ajouter à ceux offerts par l'Ecole. A cet égard le perfectionnement professionnel des agents est donc une activité partagée. En revanche l'Ecole jouit d'une véritable exclusivité pour la troisième catégorie d'actions: elle seule est habilitée en effet à organiser la formation liée au passage entre groupes de fonctions.

Sur le plan administratif, l'Ecole sera rattachée – au moins pendant les trois premières années – à un organe interinstitutionnel existant, créé en 2002, l'Office de sélection du personnel des Communautés européennes. C'est donc le conseil d'administration de l'Office qui exerce les fonctions du conseil d'administration de l'Ecole, et son directeur qui est le directeur de l'Ecole (un chef de l'Ecole – "head of the school" – étant cependant nommé par la Commission et placé sous l'autorité du directeur de l'Office). Cela signifie aussi que pendant la période de démarrage, le personnel de l'Ecole est affecté sur les emplois de l'Office, et que les recettes et dépenses sont intégrées dans le budget de l'Office. Le conseil d'administration devra, au plus tard le 15 février 2008, décider soit de mettre fin à ce rattachement administratif, soit de le prolonger pour une certaine période. Lorsque le rattachement aura pris fin, la dotation de l'Ecole, dont le montant total sera inscrit sur une ligne budgétaire particulière à l'intérieur de la section du budget de l'Union européenne afférente à la Commission, figurera en détail dans une annexe de cette section, et le tableau des effectifs de l'Ecole sera annexé à celui de la Commission.

Les objectifs poursuivis par la création de cette nouvelle Ecole sont évidemment de nature qualitative – intensifier et systématiser le perfectionnement professionnel des fonctionnaires européens – mais aussi d'ordre budgétaire : les notions d'économies d'échelle et de synergies au niveau des ressources humaines et financières reviennent régulièrement dans les rapports du groupe de travail comme dans les décisions elles-mêmes. En principe, et tout au moins dans la configuration initiale, toutes les ressources humaines allouées à l'Ecole proviennent de transferts de postes déjà existants dans les différentes institutions, de

sorte que la création de l'Ecole ne doit pas avoir pour effet d'augmenter l'effectif total des fonctionnaires européens. La décision des secrétaires généraux donne compétence au conseil d'administration pour fixer les modalités selon lesquelles, sur la base des besoins en matière de formation, chaque institution met à disposition de l'Ecole un nombre adéquat de "fonctionnaires orateurs" ("officials to serve as trainers"). Globalement, l'Ecole devrait avoir – tout au moins au début – un effectif de 18 fonctionnaires (quinze à Bruxelles et trois à Luxembourg), dont quatre constituant l'équipe de formation.

En tant que tel, l'IEAP ne peut que se réjouir d'une initiative qui vise à développer la formation administrative, même si elle ne bénéficie évidemment qu'aux seuls fonctionnaires des institutions européennes. On peut d'ailleurs espérer qu'à l'avenir, l'Union européenne apportera également son soutien aux actions de formation de fonctionnaires menées dans les Etats membres puisque le traité établissant une Constitution pour l'Europe, signé à Rome le 29 octobre 2004, ouvre une perspective intéressante à cet égard. L'article I-17 place en effet la coopération administrative parmi les domaines où l'Union dispose d'une compétence pour mener des actions d'appui, de coordination ou de complément, et l'article III-285 précise qu'elle peut notamment, en appui aux efforts des Etats membres pour améliorer leur capacité administrative à mettre en œuvre le droit de l'Union, soutenir des programmes de formation.

S'agissant de l'Ecole européenne d'administration, cependant, il nous paraît impératif qu'elle conçoive sa mission comme s'insérant dans cet ensemble beaucoup plus vaste que constituent les programmes et actions qui ont concouru jusqu'alors à la formation des fonctionnaires européens, organisés tant par les services internes des institutions elles-mêmes que par des organismes extérieurs à l'administration européenne. Dans tous les domaines de la construction communautaire, et plus encore depuis l'élargissement à dix nouveaux Etats membres au 1er mai 2004, on se plaît à juste titre à souligner que l'Europe est riche de sa diversité. C'est vrai aussi des administrations publiques, tant les traditions administratives sont différentes d'un pays à l'autre, qu'il s'agisse de la conception même du système de fonction publique ou de la place assignée au sein de l'appareil administratif à la formation des fonctionnaires, initiale ou continue. Il est donc très souhaitable qu'à côté du partage des activités, déjà évoqué, entre l'Ecole elle-même et les différentes institutions européennes, une large place soit aussi faite à des organismes de formation extérieurs, de manière à refléter cette diversité administrative, et que l'Ecole fonctionne donc autant que faire se peut en tant que noyau d'un réseau comprenant divers prestataires, sélectionnés par des procédures compétitives, c'est-à-dire par voie d'appels d'offres en raison de leur savoir-faire reconnu et leur expérience en matière de formation administrative.

Une telle vision semble avoir été retenue – même si on aurait préféré une formulation plus nette – dans la décision des secrétaires généraux, dont l'un des considérants souligne que "l'Ecole, comme tout autre organe de formation, doit tirer avantage d'une coopération au niveau européen sous forme de réseaux", et qui dispose dans son article 5 par. 4 que "l'Ecole peut entrer en coopération avec d'autres écoles d'administration, des instituts ou des universités œuvrant dans le même domaine".

Il faudra évidemment voir comment cette faculté sera mise en œuvre, et s'il y aura une véritable volonté politique de la nouvelle Ecole comme de l'ensemble des institutions européennes de réellement concevoir la formation des fonctionnaires européens en partenariat avec des organismes de formation extérieurs. Nul doute que ces derniers y seront attentifs, mais gageons que la plupart des gouvernements européens y prêteront également une attention particulière.

Pour sa part, l'IEAP est déjà largement impliqué dans la formation des fonctionnaires européens. En 2004, il a ainsi organisé pour le personnel de la Commission 48 séminaires, portant notamment sur les institutions et les procédures décisionnelles de l'Union européenne, les négociations européennes ou la comitologie, auxquels s'ajoutent 22 cours de management au titre du "Management Training Programme", dont l'Institut est responsable en tant que coordonnateur d'un consortium composé d'établissements de formation de sept Etats membres. Des activités de formation ont également commencé à être mises en œuvre l'année dernière au bénéfice du Secrétariat général du Conseil, à la fois sous la forme de séminaires sur l'intégration européenne et de conférences portant sur les différentes politiques européennes et les aspects juridiques.

Qu'il me soit donc permis, au vu de cet engagement déjà substantiel dans la formation des fonctionnaires de deux des plus importantes institutions européennes, qui correspond à un axe majeur de la stratégie de développement de l'IEAP, de confirmer son souhait et sa disponibilité pour participer pleinement et durablement aux activités de l'Ecole européenne d'administration.

NOTES

1 Journal officiel de l'Union européenne L 37 du 10 février 2005.

2 Parlement européen, Conseil, Commission, Cour de justice, Cour des comptes, Comité économique et social européen, Comité des régions, Médiateur européen. ::

The Committee of the Regions after 10 Years: Lessons from the Past and Challenges for the Future*

By **Thomas Christiansen** and **Pamela Lintner****, resp. Senior Lecturer and Research Assistant – EIPA Maastricht

This article reviews the past, present and future challenges facing the Committee of the Regions, 10 years after its creation. It looks first at the way in which politics inside the Committee have developed, in particular how internal divisions have been managed, prior to examining the relations between the Committee, the EU institutions and other actors on the national level. Based on these observations, the article then briefly assesses the effectiveness of the Committee's work, taking not only account of the opinions it has delivered, but also the wider impact its activity has had on the role of regions in the European Union. By way of conclusion the article then identifies some long-term trends in the institutional life of the Committee of the Regions, and against this background looks ahead towards the challenges the Committee faces after the enlargement of the European Union and the adoption of the Constitutional Treaty.

1. Introduction

The creation of the Committee of the Regions (CoR) in 1994, following the entry into force of the Maastricht Treaty, was a milestone for the representation of local and regional interests in the European Union (EU). On the one hand, almost a decade after the agreement on the Single European Act (SEA), it constituted the culmination of efforts by regional and local actors to be taken more seriously in the EU policy process. It was the SEA, with its economic and regulatory impact on regional and local authorities, that demonstrated the extent to which Europe mattered to subnational levels of government. On the other hand, it was a high-point in this long-standing quest by regions for direct access to the summit of EU decision-making. There were some expectations that this achievement would soon be followed by even bolder steps towards an institutionalisation of the 'third level', with the more utopian scenarios going as far as speculating that the CoR would eventually be transformed into a new legislative chamber, alongside the European Parliament (EP) and the Council.

The actual development of the CoR has been more modest, and some of the great expectations have not been met. Ten years on, the CoR is essentially still the same institution that was established by the Maastricht Treaty. However, it has established itself as a fixture in the institutional setting of the European Union, and as such has made its mark on the political life of the continent.

The Committee's 10th anniversary provides an opportunity to assess its performance so far, evaluate its current status and consider its future challenges and opportunities. This paper starts this overview by briefly looking at the way in which the CoR has organised itself internally, and in particular how it has managed to deal with the diversity of different interests that it has to bring together. A second section looks at the relations between the CoR and the other European institutions and actors, while also discussing its relationship with civil society in the EU. The subsequent section contains a brief assessment of the effectiveness of the Committee's work, both in terms of the opinions given on EU policies and in terms of its place in the constitutional politics of the Union. Finally, we look at the more long-term effect of the CoR's presence in the institutional architecture of the Union, beyond the impact of individual opinions and decisions. By way of conclusion, the implications for the Committee of the dual processes of constitutionalisation and of enlargement are discussed, providing the framework of opportunities and constraints in the coming years.

Throughout the paper the emphasis will be on raising issues and critical questions about the CoR at this particular juncture, seeking to develop an understanding of what has been accomplished, where more could be achieved, and what challenges remain to enhancing the legitimacy and effectiveness of the CoR within the politics of the European Union.

2. The Internal Politics of the Committee

The CoR represents a diversity of interests, and brings together a multitude of different actors from regional, local and intermediate levels of government. Both in terms of their origin and actual participation in the work of the Committee, there are different categories of members. The most obvious distinction is that between regional and local representatives. But even among the regional actors there are significant differences, such as between representatives of the more administrative regions and those that can be considered legislative. The latter distinction already indicates that competence rather than size is a key issue in uniting or dividing the members of the CoR around a particular issue. This is in fact one of the central and persistent dilemmas of the CoR: a diverse membership whose responses to proposals from the European Commission depend on the varying degrees to which these are felt to have an impact. To the degree to which the competences of regional and local authorities depend on the constitutional arrangements within each Member State, this diversity creates a set of national divisions, with groups of regions echoing the national interests of Member States. However, regions and localities have sought to overcome national lines of conflict in order to create transnational alliances, bringing together entities with similar interests from across the European Union. But even such transnational groupings still constitute sub-divisions within the CoR, preventing it from developing the kind of consensualism that was initially expected from it, given the discourse of a 'Europe of the Regions' that preceded its creation.

In addition to size and national- or competence-based differences, the CoR membership also divides along party political lines, and this is in fact a division that is becoming increasingly significant. Reflecting the growing politicisation of EU affairs more generally, the political groups in the CoR have become more significant in terms of the internal organisation of work, allocation of resources and preparation of opinions, something that is also reflected in the recent decision to change the seating arrangements in the plenary session. At least procedurally the party political division of the CoR has turned out to be more significant than the many other divisions that cut across its membership. We will return to the issues arising from this in the following section.

Finally, one can also discuss the relationship between elected members and the Secretariat-General of the CoR. Part of the benefit of institutionalisation has of course been the creation of a permanent staff of the CoR, financed out of the EU budget and serving the interests of its members. The Secretariat-General of the Committee is a valuable resource, not only in terms of the logistics of Commission and plenary meetings, but also in terms of the research support and the drafting of opinions. Just as with the Secretariats of the European Parliament and the Council of Ministers, much of the responsibility for continuity and effective representation rests on the shoulders of the officials working for the Secretariat-General.

However, given the frequent controversies that have surrounded the appointment of senior staff in the Secretariat, this has also been an area that has caused difficulties for the CoR. In terms of overall administrative support, there are clear limits to what is on offer for the Committee – a situation that in turn raises questions about the decision taken early on to disengage the administration of the CoR from that of the Economic and Social Committee (something which raises questions about the wisdom of the CoR's decision to embark on an expansive strategy given the subjects it covers).

3. The Committee's Relationship with other European Institutions, the Member States and Civil Society

The European Commission has been a long-standing ally of regions and localities having a role in the EU policy process, and this strong link between the regional level and the Commission was strengthened with the creation of the CoR. From the beginning, the Commission was present in CoR plenary sessions. Based on a cooperation protocol between the CoR and the Commission, the Committee has emphasised its desire to further promote dialogue between its own high-level representatives and those of the Commission, and to actively involve and invite Commission members to CoR meetings.

Reflecting the growing politicisation of EU affairs more generally, the political groups in the CoR have become more significant in terms of the internal organisation of work, allocation of resources and preparation of opinions.

The Commission's interest in regional and local representatives arises from its desire to achieve better application of its policies, to gain first-hand information and to spread its ideas. In its White Paper on European Governance, the Commission encourages the CoR to "play a more proactive role in examining policy, for example through the preparation of exploratory reports in advance of Commission proposals."

Thus the CoR not only appeals to the Commission with its opinions and other statements, but is also actively encouraged by the Commission to come up with proposals, reports and policy advice. Despite this information exchange between the Commission and the CoR, formal channels of communication and cooperation could still be improved. Such an

improvement would not only make the CoR less dependent on the goodwill of the Commission, but also – and perhaps mainly – improve transparency and make its work more open and accessible to the public. To provide a more fruitful input, the Commission and the CoR itself continue to stress the need for a better, more formal and more effective involvement of the Committee in preliminary consultations, the pre-proposal phase and in the design of long-term policy strategies which have an impact at the local or regional level.

The relationship between the CoR and Parliament has always been a rather ambiguous one: being potential allies and rivals at the same time. It is only in the last few years that better interaction between CoR Commissions and their respective EP Committees has taken place. In March 2002, for the first time since this possibility was opened up by the Treaty of Amsterdam, Parliament made use of its right to consult the CoR. A further strengthening of cooperation can be expected due to the new seating order reflecting the party political affiliation of CoR members. On the one hand, this change may facilitate better lobbying with Members of the European Parliament (MEPs) through the political party groups, but on the other hand such a seating order also carries the risk of CoR opinions being taken less seriously by the Commission and Council who may come to regard the CoR as a pale imitation of the EP.

EC-CE

The CoR's relationship with the Council is clearly the weakest one. As an advisory body the CoR already gives its opinion on Commission proposals and there seems to be little purpose in the Council consulting the CoR again subsequently. Neither does the Council issue official reports on whether or not it has taken CoR opinions into account. And even according to the Constitutional Treaty, the presence of regions with legislative capacities in the Council will continue to depend on individual Member States and their internal structure.

Recently the CoR has made greater efforts to involve other institutions and relevant associations in its seminars and events – in particular the leading European local and regional associations... In response to the Commission's Working Paper on "ongoing and systematic dialogue with local-government associations", the regions themselves generally thought that the CoR should (only) have a complementary and auxiliary function to such associations, rather than the principal role that had been proposed by the Commission. In this sensitive field of inter-regional cooperation, a greater systematisation of the permanent dialogues between the Commission and the single associations could lead to the rather paradoxical outcome of competition between the regions and the CoR, with the latter claiming that it is the only body to officially represent regional interests at the European level. In addition, while the conclusion of tripartite contracts with single regions to better ensure implementation of legislation and programmes with strong territorial impact is generally welcomed by the CoR, it also strongly advocates its own involvement. A vertical decentralisation, probably supplemented by horizontal interregional cooperation and partnerships with other local authorities and civil society, would allow for a more flexible and efficient approach to protect regional interests – but it might come at the expense of the central position that the CoR currently holds. In such a scenario, the CoR could end up serving as a platform for a variety of different actors, rather than being seen as an actor in its own right.

In the context of EU enlargement, the CoR has taken an important initiative by serving as a forum for discussions and cooperation between the regional and local authorities of the EU and the regional and local authorities of the new Member States and the Candidate Countries. To give one example, at the moment the CoR cooperates with national regions of Bulgaria, via the specially set up Joint Consultative Committee, discussing regional issues in the context of EU accession.

Generally, the CoR also sees itself as a channel for the flow of information to the wider public and seeks to maintain direct contact with citizens and civil society. However, the CoR itself remains a Brussels-based body and – along with the other European institutions – suffers from the problems associated with being distant from the Union's citizens. A broader, more structured and more systematic engagement of the CoR with individual regional and local authorities as well as with civil society organisations and the CoR itself might enhance participation of the wider public – something that could help to strengthen the legitimacy of the CoR in the policy process.

4. The Effectiveness of the Committee's Work

The CoR has to be consulted on all areas likely to have repercussions at local or regional level. That initially meant that its responsibilities were limited to five areas: economic and social cohesion, trans-European infrastructure networks, health, education and culture. The CoR itself may adopt an own-initiative opinion on any matter it considers appropriate and the three main institutions can consult it on any matter for which they deem its opinion and expertise to be of interest. Considering that according to estimates between 70 and 80 per cent of EU policies require implementation by regional and local authorities, the Union's interest in consulting the CoR to ensure coherent and better implementation should be obvious.

To assess the impact of CoR opinions systematically would require looking into each single case in which the CoR was consulted and then checking retrospectively the original proposal against the amendments contained in the legislative act. And even then one cannot be certain whether an amendment was due to the CoR's opinion, or whether the Commission, Council or EP changed the original wording due to requests from elsewhere. For the time being, the Commission adopts a report twice a year giving substantive replies, setting out the reasons why it intends to follow the CoR's recommendations or why it does not feel itself in a position to follow them. The Commission report covers all opinions delivered by the CoR, whether these were mandatory, voluntary or the CoR's own initiative.

Brussels, 17 November 2004 – 10th Anniversary of the Committee of Regions.

Even if few of the opinions actually lead to substantive changes, the ones which the Commission takes most account of are – unsurprisingly – in the CoR's main field of expertise: regional policy and the Structural Funds. Impact is also attributed to opinions on economy and employment. Generally it seems that the Commission does follow the CoR in areas where one can expect the CoR to actually possess additional and substantive expertise – as is the case with the Structural Funds, small and medium-sized undertakings, and transport affecting local and regional authorities. In other areas where the Commission has started programmes with regional impact, for example with the involvement of local and regional authorities in setting up Territorial Employment Pacts, the Commission also attaches importance to the CoR's opinion.

One can only speculate about the degree to which the *quality* of the CoR's opinions influences the Commission's follow-up. But it can be assumed that the CoR Commissions do draw up better and more substantive reports in their core areas, while having difficulty providing special knowledge in the more technical fields of agriculture and the environment and the general area of culture. These are also the fields where the CoR's opinions do not very often result in amendments. In part, one may attribute these weaknesses to the limited access CoR members have to administrative and scientific support, which was discussed in the previous section. However, it may also reflect the preferences of CoR members, who might pay greater attention to the issues affecting the regions and localities they represent.

In terms of possible judicial review of the institutional reaction to CoR opinions, the fact remains that – despite repeated requests to change this situation – the Committee does not (yet) possess a privileged standing before the European Court of Justice (ECJ). Such a right to access the ECJ would allow the CoR to protect its prerogatives. If and when the Constitutional Treaty comes into force, however, consultation of the CoR, in areas where the Treaty provides for it, will become a directly enforceable formal and legal requirement. The CoR would have the right to bring in an action of annulment against a legislative act which had been adopted without it being consulted.

These prospective changes do not at all make the CoR's opinions binding. But what might happen in the future is that the CoR could indicate in its opinions whether it considers the principle of subsidiarity to have been taken into account or not: Even though the CoR has formally not been involved in the so-called 'early warning procedure' to protect the application of the principle of subsidiarity, it might use its right to issue an opinion as a *de facto* 'early warning'. The Committee could do that by threatening in the text of the opinion to bring an action of annulment should the act be adopted without amendment and taking subsidiarity into account. In this way the CoR's future *ex-post* control powers could boost the 'legal weight' of its opinions in areas where consultation is obligatory. (This state of affairs is comparable to the EP's right of scrutiny regarding the adoption of draft implementing measures in comitology procedures: EP resolutions are not at all binding, but are regarded as important because they may contain an announcement to make use of its right to claim judicial review).

These gains, however, fell some way short of the more far-reaching demands advanced in the course of the last round of Treaty reform. In particular, the CoR was not given an active involvement in the legislative procedure itself, as had been demanded by the RegLeg group. While such an involvement of a second direct representative body might enhance the democratic legitimacy of the decision-making process one could also expect that the full participation of the CoR as a sort of 'second chamber' would also lead to a more complicated and cumbersome decision-making process, and thus imply significant efficiency costs for the EU. It would also be contrary to the very aims of the

Constitutional Convention and the subsequent Intergovernmental Conference (IGC) to clarify, simplify and rationalise the policy process and the institutional arrangements.

Thus, discussion shows that the CoR not only seeks to influence the normal policy process through its opinions, but that it has also had ambitions to effect the Treaty reform process, in order to change the legal foundations of its work. The CoR does normally issue opinions in the run-up to Intergovernmental Conferences, but here the impact is even more doubtful (and difficult to measure) than in the legislative procedure. Insofar as region-friendly changes are introduced in the course of Treaty revisions, this has generally been attributed to the domestic power of regions from certain Member States, where their support is required for ratification.

The most recent instance of Treaty change was novel in the sense that the Convention method invited other actors beyond national governments, and civil society more generally, to participate in the debate about the 'future of Europe'. The CoR, which also had representatives at the Convention, did respond to the invitation to participate in this debate. Here, as elsewhere, it was crucial for the Committee to rely on alliances with other actors, be they regional and local government associations, the European Parliament or, through the Contact Group, leading members of the Convention.

The ultimate outcome of these efforts by the CoR to play a role in the constitutional politics of the Union is difficult to assess, not only for the reasons described above. There is also disagreement among CoR members about the best way of interpreting the result: for some the achievement of the long-standing aspiration of a right of access to the ECJ is a successful outcome of CoR lobbying on this issue, and this also seems to be the official line from the CoR. For others, though, the failure to be recognised as an EU institution and to achieve an active legislative role is a sign of the continuing weakness of the CoR. The group of regions with legislative powers (the so-called RegLeg Group) is in this camp, and they have been explicit in their frustration with the limitations of the CoR. Thus, the constitutionalisation process also demonstrates the internal divisions among its members, and divergent expectations of what the CoR should do and develop into are apparent.

The constitutionalisation process also demonstrates the internal divisions among its members, and divergent expectations of what the CoR should do and develop into are apparent.

5. The Committee after 10 Years: Long-term trends and developments

Beyond the issue of an immediate and direct impact of the CoR on the legislative process and on Treaty revision, the CoR can claim to have contributed to the integration process more generally. It can be argued that it does make a valuable contribution in a number of ways. First, independent of what subsequently happens to the opinions it issues, the CoR provides an open and public forum for deliberation among a variety of actors. Such regular debate and deliberations can have long-term benefits in terms of the search for better understanding among these different actors, the development of common perspectives on policy issues and the search for solutions to problems, whether these are already on the agenda or not. To be sure, the CoR is not the only such forum in the EU, but there are also not that many fora in which elected politicians from the domestic domain are forced to confront the different cultures, traditions and perspectives of other Member States. The long-term effect to be expected from this regular interaction is a shared perspective on EU matters, which might help to find solutions to policy problems in the future, even if there is disagreement in the present.

A second effect, related to these observations, is the potential for the CoR to act as a generator or catalyst for horizontal networking among regional and local actors. The Committee does bring together representatives from different national domains who – without the presence of the CoR – might not have the chance, or even see the need, to discuss EU policies with one another. While the CoR was founded on the back of an existing advisory committee to the Commission, and thanks in a large part to the foundations laid by transnational associations such as the Assembly of European Regions (AER) and the Council of European Municipalities and Regions (CEMR), it has also since its establishment facilitated further networking among the various actors: either directly through meetings in the chamber or more generally through the focus it has provided for discussions among regional and local representatives about the institutional arrangements in the EU. In the same vein, the idea of horizontal networking also implies that the CoR has been a meeting place for regions to share ideas, experiences and problems, and to engage in a long-term process of policy-learning.

A third long-term effect of the CoR can be seen in the symbolic strengthening of the regional idea. To a large extent, the establishment of the Committee was a symbolic act, placing regions and localities on the map of an institutionalised Europe, even if its powers did not at all match the discourse about a 'Europe of the Regions' which was so powerful in the early to mid-1990s. This symbolic empowerment of regions and sub-national government was no small thing: it did indicate a departure in the thinking about Europe from a monolithic institutional structure in Brussels, towards a more decentralised, multi-level governance system.

The symbolic strengthening of regions at the European level in turn has had an impact on the domestic standing of regions. In most Member States, the existence of the CoR has legitimated the European aspirations of regions and localities, and has further accelerated the trend towards establishing dedicated representative offices in Brussels. But also within domestic systems, which witness continuous struggles about the allocation of powers across different levels, the CoR has, on the whole, strengthened the case of those who have wanted to see more powers given to the

regional level.

However, the issue of the impact of CoR on domestic structures is a tricky one, given the diverse nature of CoR members and of domestic constitutional arrangements in the Member States. At least as far as the RegLeg group members are concerned, there is some concern about the impact of the CoR domestically – clearly there is a limit to how useful an association with local government representatives can be for the authority of Prime Ministers of the bigger German *Länder*. At worst, there could be the concern that such 'company' might compromise the domestic role of the stronger regions, use up valuable time, expertise and other resources to the detriment of domestic bargaining, and thus ultimately weaken rather than strengthen their standing within the national system.

In fact, there has been some disappointment with the work of CoR among the 'stronger' regions who are – perhaps ironically – precisely those political actors that have fought hardest for its establishment and like to see themselves as its founders. The CoR is bound to represent all forms of local and regional authorities, with the inevitable dilution of the high ambitions of its vanguard that comes with such broad membership. Thus, if the CoR is not strengthened further, there is a danger that it may lose the support of its strongest members, as these will look for other ways to represent their particular interests. The CoR has also several times expressed its position that it does not want to sub-divide itself into local, regional, or any other divisions, thereby frustrating the minority of regions with legislative powers among its members. In response, there is a growing tendency of these regions to look for other ways of representing their interests and influencing the European decision-making process.

Brussels, 17 November 2004 – 10th Anniversary of the Committee of Regions.

6. *Future Perspectives and Challenges*

Ten years after the creation of the CoR by the Maastricht Treaty the local and regional level is explicitly recognised in the Constitutional Treaty. The new Treaty explicitly calls for the Union to respect regional and local self-government and obliges the Commission to take the regional dimension of its legislative proposals into account. Demonstrating the strengthened status of the CoR, its current President, Peter Straub, also attended the official signing of the Constitutional Treaty in Rome on 29 October 2004.

The Constitutional Treaty does not alter the nature of the European Union fundamentally: it is a revised Treaty rather than a constitution in the traditional sense of the concept. In the present context it needs to be recognized that the CoR failed in its attempt to be elevated to the formal status of an EU institution and thus remains merely a body with consultative status alongside the ESC. Nor does the involvement of the sub-national level in the subsidiarity test (i.e. in assessing whether a certain policy area should be the subject of legislation at the European or at the national level), make the regional level in itself an actor in the allocation of legislative powers. By contrast, the CoR is not to be involved in the early warning system which national parliaments can use to ensure the application of the subsidiarity principle during the drafting stage of a Commission proposal (*ex ante* political scrutiny).

The significant gain for the CoR under the Constitutional Treaty would be its role in monitoring the application of the principle of subsidiarity. This principle is in the Treaty and, for the first time, defined to take into account the regional level. Furthermore, in order to ensure that the principle of subsidiarity is respected and its own prerogatives are being protected, the CoR will be given the explicit right to take action against the relevant Community bodies.

Recent proposals from the Commission on the consultation of regional and local authority associations place the CoR in the position of intermediary between these associations and EU institutions. The key development with regard to regional associations is the organisation of constitutional regions, or regions with legislative powers. It seems clear that the RegLeg regions aim more and more to protect their interests in the new Europe outside the CoR.

Finally, the CoR, like other bodies in the EU, will have to confront the impact of enlargement, both in terms of what that means for EU policies, and for its own identity. With respect to the former, there are likely to be problems given the distributional conflicts that are looming over the next multi-annual financial settlement. These may pitch the old against. the new, and the economically richer regions against the weaker ones. In other words, the greater and more diverse membership of the CoR is likely to make it yet more difficult for members to reach agreement. Enlargement also means that the CoR itself has to adapt to a greater membership, with the associated logistical and political problems... The fact that most countries in Central and Eastern Europe have rather centralised systems could also further strengthen the existing majority in the CoR, and might discourage the stronger regions from seeing the Committee as an instrument for protecting their interests.

By way of conclusion, we can therefore note that the CoR has come a very long way since its inception: there has been a gradual increase in powers, culminating in the provisions agreed (though not yet ratified) in the Constitutional Treaty, and a growing membership. But long-standing problems such as internal divisions and the lack of cohesion when it comes to passing opinions persist and may even be mounting. At the same time, the new members should also

be expected to inject new ideas and fresh momentum into the Committee's debates. However, at this point it is still premature to speculate on the impact of enlargement on the CoR, given that the participation of representatives from the new Member States is still quite a recent phenomenon. This, like many of the other issues raised in this paper, will remain on the CoR agenda for some time to come, and will provide material for discussions beyond the 10th anniversary of the Committee.

NOTES

* Paper presented at the meeting of the CONST Commission of the Committee of the Regions at Maastricht, 2 December 2004.

** We are grateful for valuable comments received on an earlier draft from Edward Best, Christian Engel and Gracia Vara Arribas. The responsibility for the content of the paper lies with the authors. ::

RELATED ACTIVITIES AT EIPA

13-15 June 2005, Maastricht		
Comités et comitologie dans le processus politique de la Communauté européenne	0510003	€ 850
Ausschüsse und Komitologie im Entscheidungsprozess der Europäischen Gemeinschaft	0510002	€ 850
26-28 September 2005, Milan		
L'Unione Europea: Le Istituzioni e I meccanismi decisionali	0510601	€ 650
17-18 October 2005, Maastricht		
Advanced Seminar on Comitology	0510004	€ 700
22-23 November 2005, Maastricht		
Seminar: Comitology in the Area of Financial Services	0510005	€ 700

For further information and registration forms, please contact:
Mrs Belinda Vetter,
Tel.: +31 43 3296 382
Fax: +31 43 3296 296
E-mail: b.vetter@eipa-nl.com
Website: http://www.eipa.nl

Open Activities May 2005

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

6 May 2005		
0570101	Seminar: Le prestazioni specialistiche per pazienti non ricoverati, l'appropriatezza prescrittiva e il problema delle liste d'attesa	Milan
9-13 May 2005		
	Tutorial Droit européen pour non-juristes:	
0532001	jour 1: Le système juridique de l'UE, et ses actes juridiques	Maastricht
0532002	jour 2: Principes Fondamentaux et Procédures de la CJCE	Maastricht
0532003	jour 3: Libre Circulation des Biens	Maastricht
0532004	jour 4: Droits de Séjour et Permis de Travail	Maastricht
0532005	jour 5: Libre Prestation des Services & Protection des Consommateurs	Maastricht
9-13 May 2005		
0530701	Seminar: Der politische Entscheidungs- und Umsetzungsprozess in der Europäischen Union und seine Bedeutung für die Bundesländer, for German Länder Officials	Maastricht, Brussels
12-13 May 2005		
0532602	Seminar: Competition Policy in the Electricity Industry	Maastricht
19-20 May 2005		
0532601	Seminar: Antitrust Modernisation: First Anniversary Assessment	Maastricht
23 May 2005		
	Diritto europeo per non giuristi:	
0532301	1o giorno: Il sistema giuridico dell'UE ed i suoi atti	Milan (CEFASS)
0532302	2o giorno: La Corte di Giustizia: principi fondamentali e procedure	Milan (CEFASS)
0532303	3o giorno: La libera circolazione dei beni	Milan (CEFASS)
0532304	4o giorno: Libertà di Soggiorno/Lavoro	Milan (CEFASS)
0532305	5o giorno: La libera circolazione dei servizi e la tutela del consumatore	Milan (CEFASS)
23-24 May 2005		
0530202	Seminar: Appraisal, Monitoring and Impact Assessment Techniques of Structural Funds	Maastricht
26-27 May 2005		
0510201	Seminar: Who's Afraid of European Information?	Maastricht

The European Parliament's Right of Scrutiny over Commission Implementing Acts: A Real Parliamentary Control?

By **Pamela Lintner** and **Beatrice Vaccari,** resp. Research Assistant and Senior Lecturer – EIPA Maastricht*

Some 300 legislative acts are adopted every year by the European Parliament and the Council, or by the Council alone. Based on these acts, the European Commission adopts around 3,000 implementing acts each year, after consulting one of the 250 so-called 'Comitology committees' made up of representatives of the Member States. Only about 0.2% of these delegated acts are referred back to the Council because of non-agreement between the Commission and the Committee. Since the entry into force of the second Comitology decision in 1999, Parliament also has a right of scrutiny over such acts, but it has used this right in order to question the Commission's proposals in only three cases. This paper asks whether this right of scrutiny is an appropriate way of controlling delegated rule-making. It starts with a short historical overview of Parliament's role, before describing the current legal regulation of Parliament's involvement in comitology procedures. It then looks in detail at the three cases in which Parliament has to date adopted a 'Resolution'. Finally, a general assessment is made of parliamentarian control over implementing powers, with a view to contributing to the present discussion about an adequate system of delegated rule-making under the Constitutional Treaty.

1. A Brief History of Parliament's Involvement in the 'Comitology' System

The institutional position of the European Parliament with regard to delegated rule-making is fundamentally ambiguous. On the one hand, it is a legislator together with the Council and thus claims to control the Commission in the exercise of its implementing powers. On the other hand, as a supranational institution, the Parliament shares aims and interests which are closer to those of the Commission, and thus has a more oppositional relationship with the Council.

The comitology system was not provided for anywhere in the Treaty.[1] It emerged out of a practical need and for pragmatic reasons. The establishment and management of a common market requires the ability quickly to adopt and amend specific technical regulations. The Council had neither the necessary structure nor an appropriate institutional character to do this itself, but did not want to delegate implementing decision-making powers without retaining some sort of control. The Commission, on the other hand, did not possess all the necessary information and resources to keep abreast of developments and requirements in the fields to be regulated. Comitology was the perfect solution to satisfy both. The Council was not responsible for details, but was still in control via these 'mini-councils' in the committees. The Commission acquired the power to partly implement what it initially presents as a proposal in the legislative process. With the introduction of Article 202(3)[2] by the Single European Act, these implementing committees acquired an explicit legal basis in the Treaty. This paragraph formed the legal base for the first 'comitology' decision[3] adopted in 1987, and retrospectively legitimised the existence of these committees by establishing that the Council could impose certain requirements in respect of the exercise of the Commission's implementing powers.

The current procedures governing the work of the

committees are laid down in the second Comitology Decision - Council Decision 1999/468.[4] Under the advisory procedure, the Commission must take utmost account of the views of the committee. Under the management procedure, the committee, acting by qualified majority, gives an opinion; unless there is a negative opinion, the Commission may adopt the act. Under the regulatory procedure, the committee, acting by qualified majority, gives an opinion; the Commission may only adopt the act if there is a positive opinion.

The Parliament did not fundamentally oppose the emergence of the comitology system. In a Resolution of 1968 it recognised the additional value that these committees would give to the executive decision-making process.[5] However, from the beginning the Parliament demanded that the committee procedures should not endanger the institutional balance of the Community, and should have a mere advisory role.[6]

The Parliament did express concerns regarding the lack of transparency of those committees and the impossibility of carrying out democratic supervision. These complaints failed to be heeded by the Commission, however, until Parliament exercised its budgetary powers and refused to release part of the funds intended to finance committee meetings in the early 1980s. In the following years Parliament was guaranteed information rights through inter-institutional agreements.[7]

With the 1999 Comitology Decision, the 'underground work' of the committees became more transparent and open to supervision on a legally-binding basis. Article 7(3) of the Comitology Decision entitles Parliament in the areas governed by co-decision to receive all the documents related to each committee meeting at the same time as the Member State delegations.[8] A bilateral agreement on procedures for implementing the Decision[9] provides for practical arrangements on document transmission to the EP.[10]

However, Parliament's right to *control* the Commission in the exercise of the powers delegated to it has still not been extended, even though the introduction of codecision has meant that Parliament became a full co-legislator on an equal footing with the Council in the adoption of essential elements, including the empowering provision for the Commission's implementing tasks, in the basic acts. Through the participation of Member States' delegations in the committees, the Council exercises direct influence and control in the process of drafting and adopting an implementing measure. In the management and the regulatory procedure, in the absence of approval by the committee, the Council may even adopt the implementing act itself.

The Parliament does not have the same powers.[11] It has the right to be informed on a regular basis about all committee proceedings, and an "*ultra vires* Council information right" only under the regulatory procedure. Under Article 5, the Commission is required to submit a proposal of the implementing measures to the Council and to inform Parliament if a regulatory committee has given a non-favourable opinion or no opinion. In this case Parliament shall inform the Council if it considers that the Commission exceeded its powers when submitting a proposal.[12] Parliament can exercise this right in addition to its right under Article 8, exercised in an earlier stage of the implementing rulemaking process, to indicate if it considers that the Commission has exceeded the implementing powers provided for in a basic instrument adopted by codecision.

2. *General Observations on Parliament's Right of Scrutiny*

Implementing Powers and the Need for Parliamentary Control

Judgements as to whether a Commission implementing act remains within the powers formally delegated in the basic act can only be made by distinguishing between matters of a legislative and implementing nature. In so far as the content of delegated legislation is pre-defined and determined by the parent act, no problems should arise because the executive legislator (the Commission) has to act within the political will of the democratically-elected legislators (i.e. the Council and EP). But it is difficult or even impossible to assess the extent of the permissible delegation of law-making without some sort of substantive hierarchy of norms, established and assessed by legal acts and not only by formal criteria.

Contrary to most national Constitutions, the Community Treaty does not give any indications of what has to be regulated by the legislator(s) following legislative procedures and what can be delegated to the Commission. Article 211 only stipulates that 'implementing powers' shall be conferred on the Commission. The European Court of Justice (ECJ) has not defined the implementing powers, but what was to be regulated at legislative level: namely 'the essential elements'.[13]

The Parliament did express concerns regarding the lack of transparency of those committees and the impossibility of carrying out democratic supervision.

On the basis of case law, it can be concluded that the concept of implementation is generally given a wide interpretation, especially in the field of agriculture.[14] It is not only the wording of the enabling provision that one has to look at, but the whole system of the relevant market, the regulated issue in question when assessing the scope of empowerment.[15] This lack of a general definition of executive and legislative measures does not make it easy for Parliament to indicate whether the Commission in a certain case acted within or beyond the delegated powers. In the end the ECJ is the only competent institution to decide if the Commission acts within its duties and powers, possibly at Parliament's instigation.

Moreover, Parliament's own interests are not uniform. Depending on the procedure to be followed and on what content is to be considered as non-essential, the EP's interest in control is different. As the Parliament itself stated in its 1984 Report, it is not interested in regulating or calling

back issues on mere technicalities: 'The technical adaptation committee system is contrary to the spirit of this provision to the Treaty system and to the general principle common to the laws of the Member States that the legislator must not interfere with the exercise of delegated power.'

Parliament's right of scrutiny appears to have considerably different implications under each of the three comitology procedures. Matters dealt with under the management procedure are normally those with budgetary implications or of a more technical administrative nature (such as research, education and cultural programmes) with less leeway for the Commission. They are therefore generally of less interest to Parliament for control purposes. Another reason why Parliament might not even have an interest in having the *'ultra vires* Council information right' under Article 5 for drafts submitted to a management committee, is that most of the measures regulated under this procedure are agricultural matters for which basic acts are not adopted under Article 251 and Parliament does not have the same rights anyway.

Article 8 of the Comitology Decision

> 'If the European Parliament indicates, in a Resolution setting out the grounds on which it is based, that draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic instrument adopted under Article 251 of the Treaty, would exceed the implementing powers provided for in the basic instrument, the Commission shall re-examine the draft measures. Taking the Resolution into account and within the time-limits of the procedure under way the Commission may submit a new draft measure to the committee, continue with the procedure or submit a proposal to the European Parliament and the Council on the basis of the Treaty (…).'

A Resolution based on Article 8 is in no way legally binding for the Commission, but it does have a legal effect insofar as it requires the Commission at least to re-examine the draft measure, taking the resolution into account. Whatever effect this 'taking into account might ultimately have, after the Commission informs Parliament of the action it intends to take thereon, the Commission can continue with the procedure as if Parliament had not expressed its opinion at all.

The inter-institutional agreement implementing the Comitology Decision[16] lays down a period of one month for Parliament in which the plenary has to adopt such a resolution, beginning on the date of receipt of the final draft of the implementing measure. The draft implementing measures are first presented at the committee meeting and, if they are substantially modified during the meeting, are resubmitted later.[17]

Rule 81 of Parliament's Rules of Procedure[18]

Rule 81 – Implementing provisions

1. When the Commission forwards a draft implementing measure to Parliament, the President shall refer the document in question to the committee responsible for the act from which the implementing provisions derive.
2. On a proposal from the committee responsible, Parliament may, within one month – or three months for financial services measures – of the date of receipt of the draft implementing measure, adopt a resolution objecting to the draft measure, in particular if it exceeds the implementing powers provided for in the basic instrument. Where there is no part-session before the deadline expires, or in cases where urgent action is required, the right of response shall be deemed to have been delegated to the committee responsible. This shall take the form of a letter from the committee chairman to the Member of the Commission responsible, and shall be brought to the attention of all Members of Parliament. If Parliament objects to the measure, the President shall request the Commission to withdraw or amend the measure or submit a proposal under the appropriate legislative procedure.

Simultaneously with the introduction of the *ultra vires* right in the second Comitology Decision, Parliament reworded the rule on implementing provisions in its own Rules of Procedure in June 1999. In contrast with the Comitology Decision, Rule 81 provides for an objection to draft implementing measures also on grounds other than the Commission's exceeding its implementing powers. Before May 2004 the EP's rules of procedure did not mention any aspects at all of the Commission's executive powers to which Parliament should or could object. Parliament wanted to be free to object on any grounds and for any reasons whatever, formally as well as substantively. Therefore Parliament adopted a Resolution[19] explaining that it will not refrain from objecting to the Commission's (draft) implementing measures based on Rule 88 (now Rule 81) because of the newly acquired *ultra vires* right introduced in the Comitology Decision. This Resolution is annexed to the inter-institutional agreement dealing with Parliament's information and scrutiny right given by the Comitology Decision: 'this agreement is without prejudice to its right to adopt any resolution on any subject, notably when it objects to the *contents* of a draft implementing measure; this agreement is also without prejudice to its right to object to implementing measures referred to the Council following an unsuccessful committee procedure pursuant to Rule 88 of Parliament's Rules of Procedure' (emphasis added).

Obviously, such a Resolution based only on Parliament's internal rules of procedure does not entail any obligation for the Commission, not even an obligation to re-examine the draft measure in the light of the Resolution. It is a simple political statement requesting the Commission to react in a certain way but without having any legally binding effect whatsoever. Conversely, this does as will be seen of course not prevent the Commission from actually sharing Parliament's opinion.

3. *Parliament's Exercise of its Right of Scrutiny: the three Resolutions*

Since the 1999 Comitology Decision, Parliament has adopted three Resolutions based on Article 8 of the Comitology Decision and/or Rule 81 of its rules of procedure with regard to three different draft implementing measures proposed by the Commission:

- Safe harbour privacy principles in 2000
- Cosmetics tested on animals in 2002
- Passenger name records (PNR) in 2004

Table 1

Comparison of Article 8 of the Comitology Decision and Rule 81 of the EP's Rules of Procedure

	Article 8 of the Comitology Decision	Rule 81 of the EP's rules of procedure
scope of application	draft implementing measures submitted pursuant to a basic act adopted under codecision	all draft implementing measures
timeframe	within 1 month after submission of the final draft measure to the EP: only then is the Commission allowed to adopt the implementing measure	whenever: it is in the EP's own interest to adopt it as soon as possible without prejudice to the time of adoption of the implementing measure
content	"*ultra vires* indication": the Commission exceeding its implementing powers, as provided for in the basic act	general objection to the draft implementing measure, including content
effect	Commission has to re-examine the draft measure "taking the Resolution into account" and inform Parliament accordingly	request to the Commission, no legally binding effect

a) Safe harbour privacy principles

The basic act and the Commission's powers

The EU data protection Directive[20] protects the rights of individuals with regard to the processing of personal data and ensures the free movement of personal data without restriction within the EU. Article 25 of this Directive stipulates that the transfer of data outside the EU is only allowable if an adequate level of data protection is secured in the recipient country. Article 25(6) empowers the Commission, following a management procedure, to lay down in a Decision that a third country actually does ensure an adequate level of protection. On the basis of this article, the Commission adopted its Safe Harbour Decision[21] setting out a number of principles with which US organisations must comply if they want to receive personal data from the EU. The Commission confirms an adequate level of protection for personal data transferred from the Community to organisations in the US as long as these so-called 'safe harbour' principles are fulfilled.

The EP Resolution[22]

Pursuant to Article 8 of the Comitology Decision and its own Rules of Procedure, Parliament used its power of scrutiny for the first time in its Safe Harbour Resolution in July 2000. In this Resolution, Parliament contests the adequacy of the level of protection given to personal data in the US, even if the safe harbour privacy principles are implemented by the receiving US organisation. It points out that 'such principles and the relevant explanations' could be considered adequate protection only if substantive changes are made. Parliament in particular proposes changes concerning the lack of an individual's right of appeal and compensation for the loss sustained through a violation of the safe harbour principles.

With regard to the Commission's powers, Parliament merely states that it is within the Commission's competence to 'ensure, on behalf of the citizens of the Union and its Member States that "adequate" protection exists in third countries'. Even though Parliament bases its Resolution on its Rules of Procedure as well as on Article 8 of the Council Comitology Decision, nowhere does the Resolution actually mention that the Commission would act *ultra vires* by adopting the Safe Harbour Decision. Nor does Parliament refer to any of the possible requests anticipated – to withdraw, amend or submit a legislative proposal. It calls on the Commission to 'closely monitor the operation of the safe harbour system'. Parliament in the end asks for implementation of the Decision without making any amendments or making this conditional on introduction of the proposed changes.

The Commission: 'taking into account'

The Commission adopted the Safe Harbour Decision on 26 July 2000 despite Parliament's objections. It was a year later that the Commission introduced Recital 12 justifying its position in the light of Parliament's resolution:[23]

> 'The Commission re-examined the draft decision in the light of that resolution and concluded that, although the European Parliament expressed the view that certain improvements needed to be made to the save harbour principles and related FAQs before it could be considered to provide adequate protection, it did not establish that the Commission would exceed its powers in adopting the decision.'

Analysis and criticism

In its first *ultra vires* resolution, Parliament in a rather incoherent way expresses concerns, gives its opinion and proposes changes to the substance of a decision the implementation of which it calls on the Commission to monitor closely. It does not actually indicate that the Commission would exceed its powers by adopting its implementing measure. Even if one argues that the

Resolution is at variance with the draft, Parliament definitely does not raise any objections to an *ultra vires* action within the meaning of Article 8 of the Comitology Decision.

One could argue that Parliament itself acted *ultra vires* by not limiting its objections to the question of whether the Commission acted *ultra vires*. Following this position, the Commission could have argued that this Resolution is not to be considered to be such under Article 8 of the Comitology Decision, but only under Rule 81, thereby stating that it does not result in an obligation of the Commission to re-examine the draft measure.

Nevertheless some arguments could be found to suggest that the Commission did actually exceed its powers under the basic act: Article 25(6) of the Data Protection Directive only empowers the Commission to find that a third country ensures an adequate level of protection within the meaning of Article 25(2). It could be argued that, by confirming that the US provided an adequate level of protection, the Commission did not adhere to the assessment criteria as provided for in this Paragraph (2) and thereby exceeded its competences. This argument holds water especially as Paragraph 2 refers to the *rules of law in force* in the third country, whereas the safe harbour principles are not law but only non-binding principles with which US companies must comply if they want to receive data. Parliament actually addresses this problem in its Resolution on PNR (see below) where it indicates that the Commission might exceed its competences as regards substance because it declared rules, which had not been proven to be binding, adequate under Article 25(6) of the Data Protection Directive.

The Commission subsequently fulfilled its obligations under Parliament's resolution and more, by introducing Recital 12 in its Safe Harbour Directive. As the Commission is not called upon to give a statement to explain the extent to which it has taken account of Parliament's resolution and as the inter-institutional agreement only obliges the Commission to inform Parliament beforehand of what it intends to do (i.e. submit a new draft, continue the procedure or submit a legislative proposal), the reason for amending the legislative act by including Recital 12 almost a year after adopting it can hardly have been a legal one. Nor can the issue of transparency explain the Commission's action. The added value and interpretative guideline of this recital is thus rather questionable.

b) Cosmetics tested on animals

The basic act and the Commission's powers

The Council Directive relating to the marketing and sale of cosmetic products[24] provided for a ban on the marketing of cosmetics containing ingredients tested on animals. The original date for entry into force of this ban was 1 January 1998, but the Commission was empowered to postpone the date of implementation for the Member States 'if there has been insufficient progress in developing satisfactory methods to replace animal testing (...)'. Pursuant to this provision, the Commission, following a regulatory procedure, adopted Directive 97/18[25] and replaced the date of the ban in the basic act until after 30 June 2000. In this implementing Directive the Commission also empowered itself again to postpone the date of entering into force of the ban.[26]

In spring 2000 the Commission presented two different legislative instruments to amend the Council Directive. On the one hand, it came up with a *legislative proposal*[27] to amend the Council Directive in order to solve once and for all the issue of experiments on animals in the cosmetics sector. On the other hand, the Commission exercised its *implementing powers* to amend the basic Directive by postponing the ban for a second and, as it said, the last time to 30 June 2002.[28] The reason for postponing the ban for only two more years was that the Commission expected alternative testing methods to become available within that period and the amended basic Directive to be adopted by then. However, the amendment of the Cosmetics Directive proved to be more difficult than the Commission had anticipated: Council and Parliament could not agree on a new regulation for animal tests for cosmetic products until 30 June 2002 thus allowing the ban on the marketing of animal tested cosmetics to enter into force.

After the legislative proposal had already been dealt with by the Conciliation Committee, the Commission presented a new draft implementing measure in September with the intention of again postponing the ban retroactively from 1 July 2002 until 31 December 2002. The latter date was defended by the Commission on the grounds that this implementing measure should only provide for an interim period until the Conciliation Committee came to agree on the amendment of the basic Directive.[29]

Nevertheless some arguments could be found to suggest that the Commission did actually exceed its powers under the basic act: Article 25(6) of the Data Protection Directive only empowers the Commission to find that a third country ensures an adequate level of protection within the meaning of Article 25(2).

The EP Resolution[30]

In its Resolution on the postponement of the ban, Parliament states that regardless of the legality of the second 'self-empowerment', the Commission had now in any case exceeded its powers by postponing the date of entering into force of the ban for a third time. Parliament argues that the Commission itself explicitly stated in Recital 10 of its implementing Directive that it would postpone the ban for the last time. It therefore holds the view that the Commission exhausted the implementing powers conferred on it by

adopting the second postponement. Furthermore it points out that any postponement would now be retroactive as the ban had already entered into force. Parliament therefore called on the Commission to withdraw its draft implementing Decision and on the Member States not to vote in favour of the draft measure in the regulatory committee.

The Commission: 'taking into account'

The Commission was under no obligation to react at all to this resolution, not even to re-examine the draft measure or to address the Parliament with a formal answer as would be the case for a Resolution adopted pursuant to the Comitology Decision. However the Resolution was taken into account in its substance: The Commission in the end did not adopt its draft implementing measure providing for a third postponement of the ban. After the negative echo from the Parliament, the draft measure was discussed at the Committee meeting on the 30 September 2000. At this meeting no formal opinion was delivered nor voted on and the treatment of the draft measure was postponed.[31] At that time, the amendment of the basic act in the legislative procedure with the same aim to regulate the testing of cosmetic products was already discussed in the Conciliation Committee. A compromise could be found and a joint text could be agreed on in the Conciliation Committee in December 2002 and the newly amended Council Directive on animal tests entered into force in February 2003[32] so that the adoption of an implementing act became superfluous anyway.

In the Comitology Report for the year 2002[33] this Resolution is not mentioned in the horizontal part under the heading "EP's right of scrutiny" as would be the case if the Resolution was to be considered such pursuant to the Comitology Decision. Although it is mentioned in the Reports Annex, being considered worthy of mention as an individual file of institutional importance.

Analysis and criticism

This is the only Resolution to date which states clearly, simply and without objecting to the political content of the draft implementing measure, that the Commission exceeded its powers under the basic act. Yet it is also the one which actually does NOT refer to Article 8 of the Comitology Decision, but only to Rule 81 of the Rules of Procedure.

The right of scrutiny only applies to joint acts or acts for which the last amendment has been adopted under the co-decision procedure. 'The Commission's services are, however, invited to go beyond this legal obligation and forward to the Parliament also the draft measures implementing basic instruments which, although adopted on different legal basis before the entry into force of the Maastricht and/or Amsterdam Treaty, would nowadays come under the co-decision procedure. This was precisely the case with the Animal Testing Directive.'[34] The Cosmetics Directive was originally adopted under the consultation procedure. The 6th amendment[35] before the draft implementing measure had been adopted under the co-operation procedure. It was actually only the most recent amendment (the 7th) that has been adopted pursuant to Article 95 of the EC Treaty and thus under the co-decision procedure. Therefore Parliament could not base its Resolution on Article 8 but only on its own rules of procedure.

In this special case of proposing an implementing measure as a 'quick-fix short-term solution' for having an interim regulation until the Conciliation Committee found a compromise on the adoption of the legislative proposal to amend the same basic act on which the implementing measure is based,[36] it is questionable whether it was necessary for the Commission to present an implementing act, even only for an interim period, as the issue was in the hands of the legislators anyway. The fact that the Commission still proposed an implementing measure after the time of empowerment might be seen as an attempt to see whether Parliament would finally tolerate this third postponement – obviously without any legal basis – only for this interim period. The fact that Parliament adopted a resolution even though it was not legally binding at all, showed the Commission that Parliament takes the issue really 'seriously' and it might be seen as an 'early warning' of further and more rigorous legal action to be taken. As will be seen, Parliament did actually do so in the case of PNR by bringing an action for annulment.

The fact that Parliament adopted a resolution even though it was not legally binding at all, showed the Commission that Parliament takes the issue really 'seriously' and it might be seen as an 'early warning' of further and more rigorous legal action to be taken. The Parliament did actually bring an action for annulment.

c) Passenger Name Records (PNR)

The basic act and the Commission's powers

The third Commission implementing act which prompted Parliament to adopt an *ultra vires* Resolution was again based on the Data Protection Directive. The adoption of Commission Decision on PNR[37] in May 2004 is a response to the unilateral US decision on Aviation and Transportation Security adopted in the aftermath of the events of 11 September 2001. This US decision requires airline companies to provide certain public US institutions with direct access to or transfer of data concerning passengers and crew flying to, from or in the US. As these US requirements potentially conflict with Community and Member State legislation on data protection, especially the EC Data Protection Directive, the EU tried to agree on a compromise

solution with the US in finding a balance between the citizens' (fundamental) right[38] of privacy and the need to exchange personal data in order to fight terrorism. After some commitments or 'undertakings' made by the US, the Commission finally gave the 'green light' to the transfer of PNR files of European citizens to US public authorities by indicating that the data on air passengers transferred to the US authorities would enjoy the 'adequate protection' required under the EU's Data Protection Directive (= 'adequacy finding').

The Commission adopted this implementing Decision using the powers given to it under Article 25(6) of the Council Data Protection Directive. The safe harbour principle did not apply to the transfer of data regarding European airline passengers to US public institutions because such data is only available to companies under the jurisdiction of certain public bodies that control the fairness of commercial practices. As European airlines do not fall under the jurisdiction of such US bodies, a special adequacy finding decision for PNR had to be adopted.[39] Furthermore the Commission decided that it was also necessary to have an international agreement, as an implementing act based on Article 25 of the Data Protection Directive would not allow for a comprehensive and full regulation of the matter. For that reason a bilateral international agreement between the EU and the US complements the 'adequacy finding' decision and deals with certain legal problems not addressed by the latter.[40] The Council authorised the Commission to negotiate such an agreement which was then adopted by the Council in accordance with Article 300(3) of the Community Treaty.[41] This Article regulates the procedure for adopting international agreements and generally provides only for consultation with Parliament. Derogating from this principle, Article 300(3) provides for the assent of Parliament if, for example, an international agreement entails the amendment of a basic act adopted under the codecision procedure. The Council based both its instruments – the decision to conclude an international agreement as well as the Data Protection Directive itself – on Article 95, the legal basis for Internal Market instruments.[42]

European Parliament, Brussels – The Spaak and Spinelli Buildings.

© EU Parliament.

The EP Resolution[43]

In its Resolution adopted on 31 March 2004 Parliament opposed this Commission draft measure.[44] On the one hand Parliament argues that the Commission was acting without a legal basis permitting the use of PNR commercial data for public purposes, and states on the other hand that the level of data protection in the US is not adequate.

With regard to the first argument, Parliament holds that [at this stage] there is no legal basis in the EU permitting the use of PNR commercial data for public-security purposes. It expressly underlines the Member States competence for protecting individuals as regards PNR data as long as the Union does not act. As regards substance, Parliament considers the Commission to have exceeded the executive powers conferred on it because of the non-binding nature of the undertakings made by the US. Parliament does not expressly complain that the Commission is exceeding its implementing powers given to it by Article 25 of the Data Protection Directive. What it states is that the draft decision is a measure merely designed to implement the Data Protection Directive and as such it may not result in a lowering of the data protection standards. Parliament held back from determining whether the draft decision actually is of such nature; it only states that 'its effect, however might be a lowering.'

Referring to one of the possibilities provided for in Article 8 of the Comitology Decision, Parliament calls on the Commission to withdraw the draft decision. Without referring to the existing international agreement which was ultimately adopted, Parliament calls on the Commission to provide for an international agreement in compliance with the fundamental rights and some of the principles stipulated by Parliament. Parliament considered that, if such an agreement were to be adopted, the Commission could legitimately submit a new adequacy-finding decision. Furthermore Parliament reserved the right to take the matter to the Court of Justice if the Commission went ahead.

The Commission: 'taking into account'

The Commission Decision entered into force despite Parliament's Resolution, as did the international agreement, despite Parliament's request for the Court's opinion. The Commission thereby considered 'that adoption of the decision and consequent signing of the agreement with the US was for passengers and for the protection of their data much better than leaving the question in a complete legal void which was the only alternative. The Commission satisfied the requirement to inform Parliament on what it intended to do by providing oral explanations on 29 March and 19 April by Commissioner Bolkenstein as regards the Commission's draft decision. Written explanations were further given in a letter from President Prodi to President Cox.'[45]

Analysis and criticism

In this Resolution, Parliament clearly expresses objections and gives reasons why the Commission exceeded its implementing powers with regard to the formal basis and substance of the Commission's draft decision. By saying that – at this stage – there is no legal basis in the EU for permitting the use of PNR commercial data for public-security purposes, Parliament indirectly rejects the Data Protection Directive as a legitimate legal basis for adopting

the PNR Decision. On the other hand, by calling on the Commission to submit to Parliament a new adequacy-finding decision, Parliament in fact asks for a new implementing act (based on the Data Protection Directive) adopted in combination with a sound international agreement.

Parliament does not give a comprehensive explanation as to why it considers the fact that the draft decision, which is based on 'undertakings the binding nature of which is far from proven,' makes the PNR Decision an *ultra vires* act. It most likely addresses the fact that Article 25(2) of the Data Protection Directive empowers the Commission to assess the adequacy of the level of protection in the third country, particularly in the light of the 'rules of law in force'. This would be an argument that Parliament could have brought forward previously when adopting the safe harbour resolution, as those principles are also of a non-binding nature (see above).

Even though an international agreement was already part of the legal framework regulating the transfer of PNR, and although Parliament asked for a new adequacy finding, thereby acknowledging that the Data Protection Directive could serve as a legal basis, it took the matter to Court. On 25 June 2004 Parliament decided to bring in an action for annulment under Article 230 of the Community Treaty for both the Commission Decision on PNR and the Council Decision which concluded the international agreement.[46]

The question of whether Parliament should have been asked for its assent under Article 300(3) in view of the international agreement amending the Data Protection Directive is different, but of course related to the question of whether the Commission exceeded its competences given by this Council Directive. Assuming that the Commission was basically empowered to adopt the PNR agreement on the basis of Article 25 of the Data Protection Directive, Parliament seems to indicate that the Commission exceeded this empowerment by toning the basic act down. Generally the Commission is only empowered to legislate within the general principles and aims as provided for in the basic act. With regard to interference with fundamental rights of privacy in this case, the Court has decided in a case about agricultural subsidies that such interference does not necessarily have to be regarded as an 'essential element' and can therefore be dealt with at implementing level even if not explicitly provided for in the basic act.[47]

This distinction between mere execution and (political) rulemaking at implementing level can, of course, never be a sharp and clear one ex ante.

4. Conclusions

Comparing the Parliament's *ultra vires* control given to it by the Comitology Decision with the possibility of adopting a Resolution on implementing acts under its own rules of procedure, we conclude that there is no crucial difference in the end. Both can be seen as a mere 'institutionalised threat' to bring an action for annulment. Also a Resolution adopted under the Comitology Decision does not prevent the Commission from going ahead, nor does it enhance the democratic legitimacy of delegated rulemaking.

On the basis of the three individual analyses, moreover, we argue that this *ultra vires* control is actually not designed so that it can be used effectively. It conflicts with Parliament's political nature, while the current implementing system at European level does not allow for effective scrutiny. The main problem is the lack of a systematic distinction between implementing acts with a possible political impact and those of a mere executive nature. For the latter, the right of scrutiny as it stands, with only an *ex post* juridical control, should be enough.

Moreover, since Parliament has *locus standi* as a fully privileged actor under the Article 230 procedure, and can thus bring an action not only to defend its own prerogatives but also in the name of the citizens, judicial review can be regarded sufficient for mere technical measures. For Commission acts adopted under 'political discretionary power', however, a new way of parliamentarian control and a system of cooperation and coordination with the Council has to be found.

Ultra vires control and democratic legitimacy

In a system of division of powers, the legislative is normally called on to exercise its *political* control over the executive. Parliamentarian control usually means political control, but Article 8 of the Comitology Decision provides for *legal* control. It is designed to make the Commission aware that it is exceeding its powers in the adoption of a particular implementing act, but the EP, reflecting its political nature, has used it as a medium to make political statements. Parliament was not satisfied with the Commission's 'policy' content in the case of the data protection decisions and therefore adopted a Resolution. In both cases, the PNR and the Safe Harbour Decision, Parliament took the view that the rights of citizens to data protection and privacy were not sufficiently protected in the political issue of finding a balance between the fight against terrorism and the protection of peoples right's to confidentiality.

The mere giving of an opinion by Parliament in the exercise of Article 8 is not sufficient to enhance democratic legitimacy of the comitology system. Some would say that it does not give any additional value at all, since the Parliament already had the right to bring an action of annulment under Article 230. Yet, this right of *ultra vires* scrutiny, exercised correctly, could give Parliament quite a strong legal say in the early stage of drafting the Commission's implementing measures. As seen in the Resolution on the ban on animal testing, the use of Article 8 as an 'institutionalized threat' to bring an action for annulment may make the *ultra vires* right, which in itself is powerless, a quite effective right legally.

Parliament's internal organisation and the processing of implementing drafts

Nowadays Parliament does receive all the documents required to exercise its control over the comitology system as established by the Comitology Decision and the related inter-institutional agreements. Yet the internal organisation of Parliament as a political institution is hardly compatible with the legal-administrative comitology system. Parliament cannot properly control the comitology procedures because of internal difficulties in processing and assessing all the information received. Before adopting a resolution in plenary, as Parliament is required to do at the latest one month after receiving the final draft implementing measure, all the EP committees directly and indirectly involved in the domain should give their opinion on it. It might even happen that the decision in plenary has to be taken within a few day as the EP normally only has one plenary session a month. Parliament is simply overloaded.

Another reason for Parliament's incapacity to exercise its right of scrutiny properly might be found in the lack of a homogenous party system at European level. At national level, information about 'hot issues' at administrative level are passed on via the political parties, thereby giving the overruled opposition the chance to bring the discussion to Parliament. At European level the political parties have different 'souls' and the interpretation of an issue quite often differs according to the internal national positions.

Distinction between the technical and political impact of implementing measures

Under the current system, there is no distinction between technical delegated acts and those with a possible political impact. Parliament cannot effectively apply *ultra vires* scrutiny under the current system on the one hand due to inter- and intra-institutional organisations but also because of a lack of any sort of institutionalised warning system to indicate which acts might possibly have a political impact and which ones merely change proportions of certain ingredients due to technical progress. At the moment it is either the legislators regulating themselves or delegating to the Commission under the Comitology procedures under which Parliament cannot legally influence or review the measure at all and also Council can only get heed of the measure again with quite some difficulty.

For simple technical measures a merely *formal* legal scrutiny can be considered sufficient in a working system of overall checks and balances being democratically accountable via judicial review anyway. But for political implementing measures, measures of legislative discretion a necessity of a legitimising democratic supervision – while deciding control – has to be developed.

This distinction between mere execution and (political) rulemaking at implementing level can, of course, never be a sharp and clear one ex ante. But the best possible distinction seems to be better than none at all. This guarantees effective political supervision in delicate delegated fields and a fast and adequate implementation in technical delegated fields using comitology as a mainly advisory procedure (as proposed in the new Commission proposal).

Two proposals are currently on the table which would change the present situation.

The Commission's Proposal

The Commission has presented a Proposal[48] to modify Council Decision 1999/468/CE under which Parliament would be given full equality with the Council in the supervision of measures to implement acts adopted by codecision. However, in this proposal both supervisory bodies can ultimately be overridden by the Commission. Thus even though Parliament is placed on an equal footing with the Council, both of them are 'placed down' to the current parliamentary level. Article 8 would be deleted, so that no parliamentary supervision for acts adopted under the advisory procedure would apply at all. There would no longer be a difference between the advisory and the regulatory procedure with regard to the Commission's possibility to adopt the act in the end, even against the opinion of the Committee and objections by Council and Parliament. The added value of the regulatory procedure would be to serve as a bargaining forum, allowing the legislators to give their (political) opinions. The Commission is thereby made aware of the opposing views, legally and politically, and is given the option of adapting its position to avoid subsequent claims and litigation under Article 230.

The added value of the regulatory procedure would be to serve as a bargaining forum, allowing the legislators to give their (political) opinions.

This approach is perfectly coherent with the notion of a separation of powers, inasmuch as the legislative power should not participate in but only supervise executive rulemaking, and the Commission has responsibility for the execution of EC laws. The tenuous supervision granted to the legislators would also be democratically and politically acceptable as long as only executive tasks are delegated and do not entail any political impact, thus guaranteeing the predictability and accountability of the executive (the principle of legality). In this perspective, indeed, it would appear that the 'problem' of the current 1999 Decision is not so much that Parliament is granted too few supervisory powers but that the Council is granted excessive participation in the adoption of merely technical implementing acts.

Implementing Acts under the Treaty establishing a Constitution for Europe

The Constitutional Treaty introduces an explicit distinction between legislative and non-legislative acts, even though this is not entirely clear. On the one hand, these are to be distinguished by the nature of the *procedures* by which they are adopted: legislative acts are in principle adopted by the

Parliament and Council on the basis of a Commission proposal, whereas non-legislative acts are adopted either as delegated regulations (mainly by the Commission), implementing acts (mainly by the Commission at European level) or specific cases (mainly by the Council). On the other hand, they are distinguished in terms of the *instruments* involved: legislative acts will be European laws or framework laws; non-legislative acts will take the form of European Regulations and Decisions. These new Regulations, moreover, can either be directly applicable or require transposition into national measures (and thus have the legal form of either the present Regulations or Directives).

Despite these complications, however, a new and potentially very valuable distinction concerning the future of comitology is proposed. On the one hand, Article I-36 provides that 'European laws and framework laws may delegate to the Commission the power to adopt delegated European regulations to supplement or amend certain non-essential elements of the law or framework law'. The conditions to be laid down in the future for this form of delegation suggest an equality between the Parliament and the Council, either of which may 'decide to revoke the delegation' and have the right to state a binding objection to the proposed delegated regulation. On the other hand, Article I-37 stipulates that 'implementing acts' may be adopted at European level where uniformity is required. In these cases 'mechanisms for control by Member States' will be agreed.

If this new classification helps to distinguish 'delegated legislation' with *political* impact from 'delegated execution' regulating *technical* issues, this could make it possible to improve the balance in rule-making for implementation between democratic accountability, on the one hand, and effectiveness in terms of flexibility, on the other.

NOTES

* The authors are thankful for the comments received from Edward Best and Thomas Christiansen.

1 For general information see: Pedler/Schäfer: Shaping European law and Policy. EIPA, 1996.

2 This states that the Council may 'confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament.'

3 Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, 87/373/EEC.

4 Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, 1999/468/EC. If not otherwise indicated in this text "Comitology Decision" always refers to this second one.

5 Résolution relative aux procédures communautaires d´exécution du droit communautaire dérivé. OJ 1968 C 108/37. Based on the Legal Affairs Committee Report EP Doc. 115/68 of 30 September 1968.

6 In its Resolution A3-310/90 Parliament recalls its internal guidelines to systematically delete in first reading any provisions in the basic act for the regulatory procedure.

7 For details see: The History of Comitology, in Shaping European Law and Policy, Pedler/Schäfer. EIPA, 1996.

8 Article 4 of the Standard Rules of Procedure. OJ 2001 C 38/3.

9 Information is provided by an electronic transmission of these documents via the Secretary General of the Commission to a central service of Parliament. Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 2000 L 256/19.

10 On this basis the Secretariats-General of Parliament and the Commission adopted an administrative agreement dated 14 December 2001, which lays down minimum standards with regard to the types of documents and their structure. Unpublished, but referred to in the Reports on the working of committees in 2001 (COM(2002)733) and 2002 (COM(2003)530).

11 The main argument in favour of the different roles Council and EP play in the participation of the comitology procedures is that the Council itself delegates to the Commission not (only) in the name of its legislative but –mainly- his executive powers. As an MEP stated in the Sitting of Tuesday, 5 February 2002 "(…) Due to its executive powers, Article 202 grants it [the Council] a specific role in drawing up implementing measures. The same does not apply to the European Parliament, which has only a legislative role in applying the Treaties, and must not therefore be involved in everything."

12 This is not necessarily the same draft measure submitted to the regulatory committee: see Case *C-152/98 Pharos v. Commission.*

13 I.a.: Cases *C-25/70 Köster, C-240/90 Germany, T-64 Frucht-Compagnie v Council.*

14 The ECJ has so far been reluctant to give the Commission such wide powers in other fields. Case *C-14/01 Molkerei Niemann v. Bezirksregierung Hannover.*

15 The Court has constantly held that the Commission might have implicit implementing powers. See: Tuerk

16 Inter-institutional agreement on procedures for implementing Council Decision 1999/468/EC, OJ 2000 L 256/19.

17 Reports on the working of committees in 2000 (COM(2001)783), 2001 (COM(2002)733) and 2002 (COM(2003)530).

18 Rules of Procedure of the European Parliament 16th edition, July 2004.

19 ANNEX XII to the EP's Rules of Procedure, 16th edition. Extract form the European Parliament resolution on the agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

20 Directive 95/46/EC of European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281/31.

21 Commission Decision 520/2000/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the Safe Harbour Principles and related Frequently Asked Questions issued by the US Department of Commerce, OJ 2000 L 215/7.

22 A5-0177/2000,European Parliament resolution on the Draft Commission Decision on the adequacy of the protection provided by the Safe Harbour Privacy Principles and related frequently asked questions issued by the US Department of Commerce (C5-0280/2000 – 2000/2144(COS)) of 5 July 2000, OJ 2001 C 121/152.

23 Corrigendum, OJ 2000 L 115/14 (2000/520/EC). This

Corrigendum was published only one day after Parliament's Resolution had been published in the OJ. This might explain why the Commission in the Corrigendum states that Parliament's Resolution has not yet been published in the OJ.

[24] Directive 76/768/EEC on the approximation of laws of the Member States relating to cosmetic products. OJ L 151, 23/06/1993, p. 32.

[25] Commission Directive 97/18/EC of 17 April 1997 postponing the date after which animal tests are prohibited for ingredients or combinations of ingredients of cosmetic products. OJ L 114, 01/05/1997, p. 43.

[26] By submission of a draft implementing measure until 1 January 2000, see Article 2 Directive 97/18.

[27] COM(2000)189 final, amended proposal COM(2001) 687 final.

[28] Commission Directive 2000/41/EC of 19 June 2000 postponing for a second time the date after which animal tests are prohibited for ingredients of combinations of ingredients of cosmetic products. OJ 2000 L 145/25.

[29] See: Debates of Parliament, Sitting of Tuesday, 24.September 2002, Speech by Mrs. Wallström.

[30] P5_TA(2002)0435 of 24. September 2002, European Parliament resolution on the postponement of the ban on the marketing of cosmetics tested on animals, OJ 2003 C 273E/126.

[31] Information from the Commission in August 2004.

[32] After the approval of the joint text, Directive 2003/15 amending Directive 76/768 was adopted on 27 February 2003 containing a prohibition of animal testing on finished cosmetic products. This new Directive expressly states that Article 4 (1) (i) of Directive 76/768 is deleted as of 1 of July 2002 which means that Council Directive 93/35 allowing for the ban and possible postponements was superseded retrospectively in the interest of legal certainty.

[33] COM(2003) 530 final.

[34] Information from the Commission in August 2004.

[35] Council Directive 93/35/EEC of 14 June 1993 amending for the sixth time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products, OJ L 151, 23.6.1993, p.32.

[36] Notably this EP resolution on a Commission draft implementing measure is mentioned in the prelex database listing the decision-making process of the amendment to the basic Directive 76/768,http://europa.eu.int/prelex/detail_dossier_real.cfm?CL= en& DosId=155818, referring to Bulletin EU 9-2002 (Internal Market (5/24):1.3.29 where the Commission (mistakenly?) states that "Parliament calls on the Commission to withdraw its proposal for a seventh amendment to Directive 76/768/EEC (…)".

[37] Commission Decision of 14-5-2004 on the adequate protection of personal data contained in the Passenger Name Records of air passengers transferred to the United States' Bureau of Customs and Border Protection. C(2004) 1914.

[38] Article 8(2) of the European Convention for the Protection of Human Rights. Enshrined in EC law, in particular by Article 286. Whereas in the US the protection of privacy is not regarded as a fundamental right.

[39] See Pérez Asinari/ Poullet: The Airline Passenger Data Disclosure Case and the EU-US Debate, University of Namur, 2003, http://www.crid.be.

[40] Namely to consent access ("pull") by US law enforcement authorities to PNR databases situated on Community territory, and to impose an obligation on air carriers to process PRN data as required by US law enforcement authorities.

[41] Council Decision of 17.May 2004 on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection, 2004/496/EC, OJ 2004 L 183/83.

[42] Another theoretically possible way of entering into an international agreement with the US to regulate the transfer of passengers' personal data, would have been under Articles 24 or 38 TEU in order to implement the objective of "preventing and combating crime, organised or otherwise, in particular terrorism (…)" of Article 29 TEU. For EP's powers of scrutiny over CFSP/ESDP decision-making see: G. Bono: European Security and Defence policy and the challenges of democratic accountability. (DRAFT paper, March 2002).

[43] P5_TA-PROV(2004)0245. At its plenary session on 31.March 2004 Parliament voted by 229 votes to 202, with 19 abstentions. The PSE backed the resolution, but some PSE national delegations (including UK Labour Party) joined the PPE in opposing the Resolution.

[44] Draft Commission decision noting the adequate level of protection provided for personal data contained in the Passenger Name Records (PNRs) transferred to the US Bureau of Customs and Border Protection (2004/2011(INI)) (C5-0124/2004).

[45] Letter from President Prodi to President Cox on the draft agreement between the EC and the USA on the transfer of passenger data, D (2004)3398.

[46] Case C-317/04 and C-318/04. See also: Note from the Council legal service 11876/04 dated 6 August 2004. In view of this appeal under Article 230 the request for the Court's opinion under Article 300 (6) from 21 April became null and void.

[47] Case C-294/95 Germany v. Commission.

[48] COM (2004) 324 final. Proposal for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission. ::

RELATED ACTIVITIES AT EIPA

27-29 June 2005, Maastricht or Brussels
Seminar: How Can Member States Efficiently Influence Community Decision-Making: A Practical Guide for Preparing a Winning Strategy
0510801 € 850

26-28 September 2005, Milan
L'Unione Europea: Le Istituzioni e I meccanismi decisionali
0510601 € 650

17-18 October 2005, Maastricht
Advanced Seminar on Comitology
0510004 € 700

22-23 November 2005, Maastricht
Seminar: Comitology in the Area of Financial Services
0510005 € 700

For further information and registration forms, please contact:
Mrs Belinda Vetter,
Tel.: +31 43 3296 382
Fax: +31 43 3296 296
E-mail: b.vetter@eipa-nl.com
Website: http://www.eipa.nl

Open Activities June 2005

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

2-3 June 2005		
0530001	Seminar: EU Banking and Financial Law: a New Strategy?	Maastricht
6-10 June 2005		
	Tutorial EU Recht für Nichtjuristen:	
0532401	1. Tag: EU Rechtsystem und seine Rechtsakte	Maastricht
0532402	2. Tag: Grundrechte und Gerichtsverfahren	Maastricht
0532403	3. Tag: Freier Warenverkehr	Maastricht
0532404	4. Tag: Niederlassungs-/Wohn- und Arbeitserlaubnis	Maastricht
0532405	5. Tag: Niederlassungs-/Wohn- und Arbeitserlaubnis	Maastricht
6-7 June 2005		
0530801	Public Procurement – Legal Seminar: The Legislative Package and Recent Case Law of the European Court of Justice	Maastricht
9-10 June 2005		
0530901	Seminar: Environmental Liability	Maastricht
9-10 June 2005		
0550001	Seminar: Annual Seminar on European Food Law / Séminaire annuel sur le droit alimentaire européen	Luxembourg
13-14 June 2005		
0565002	Seminar: La nueva Contratación Pública Europea: ¿Cómo nos afecta?	Barcelona
13-14 June 2005		
0520101	Seminar: Communications in the New Europe	Maastricht
13-15 June 2005		
0510003	Séminaire: Comités et comitologie dans le processus politique de la Communauté européenne	Maastricht
13-15 June 2005		
0510002	Seminar: Ausschüsse und Komitologie im Entscheidungsprozess der Europäischen Gemeinschaft	Maastricht
16-17 June 2005		
0512202	Seminar: Understanding Decision-Making in the European Union: Principles, Procedures and Practice	Maastricht
16-17 June 2005		
0555001	Seminar: The European Competition Network	Luxembourg
16-17 June 2005		
0531202	Advanced State Aid Seminar and Maastricht Forum on State Aid	Maastricht
20-21 June 2005		
0551401	Seminar: Europeanisation of Private International Law	Luxembourg
20-21 June 2005		
0530203	Seminar: Financial Management of EU Structural Funds	Maastricht
20-22 June 2005		
0510902	Seminar: Surviving European Negotiations: Techniques to Manage Procedures, Communication and Compromises in EU Negotiations	Maastricht
23-24 June 2005		
0511402	Seminar: You and European Negotiations: Techniques to Manage People, Your Personality and Culture in EU Negotiations	Maastricht
27-28 June 2005		
0511701	Seminar: How to Communicate EU Environmental Policy: Information and Communication Strategies of National and Regional Administration	Maastricht
27-29 June 2005		
0510801	Seminar: How Can Member States Efficiently Influence Community Decision-Making: A Practical Guide for Preparing a Winning Strategy	Maastricht or Brussels
30 June-1 July 2005		
0510501	Seminar: EU Policy Coordination: Managing EU Dossiers at the Regional Level	Maastricht

Un organe judiciaire pour l'Union européenne: Eurojust (1999-2004)

Par **Dr Michel Mangenot**, Expert national détaché – IEAP Maastricht

Cet article revient sur le processus de décision qui a donné naissance à Eurojust, nouvel organe de coopération judiciaire (en matière pénale) de l'Union européenne. Si Eurojust a été officiellement annoncé par le Conseil européen de Tampere en octobre 1999, l'idée remonte en fait à la création d'Europol. Ce projet ayant "réussi", à la différence de celui de Procureur, on compte de nombreuses revendications de paternité. Issu de réflexions développées au sein du Secrétariat général du Conseil, il a été porté par les quatre Présidences portugaise, française, suédoise et belge. La proposition de création d'un Procureur en charge de la protection des intérêts financiers communautaires, qui a été présentée par la Commission fin septembre 2000 dans le cadre de la Conférence intergouvernementale, a eu pour effet de mettre en concurrence les deux projets, pourtant de philosophie différente. Après un premier accord sur une Unité provisoire baptisée Pro-Eurojust, la décision finale intervient le 6 décembre 2001, selon le cadrage de Tampere mais dans une conjoncture transformée par le 11 septembre. Déjà introduit dans le traité de Nice, Eurojust est, depuis la Convention, consacré par le traité constitutionnel.

Eurojust est le nouvel organe de l'Union européenne pour le renforcement de la coopération judiciaire. Issu d'une décision du Conseil du 28 février 2002, doté de la personnalité juridique, son siège est, depuis décembre 2002, à La Haye. Son objectif est d'améliorer la coordination entre procureurs et enquêteurs nationaux travaillant sur des dossiers de criminalité transfrontalière grave et de leur prêter son concours en vue de renforcer leur efficacité. Eurojust joue un rôle à deux niveaux, opérationnel et stratégique, en matière de coordination judiciaire multilatérale. Ce nouvel organe offre aux autorités chargées des enquêtes et des poursuites la possibilité d'échanger des informations concrètes sur des procédures en cours. Sur le plan stratégique, il peut engager des actions sur des domaines de criminalité créant une difficulté aux praticiens en raison de leur complexité ou de la nécessité de coordination et d'expertise légale.

Dans cet article, nous nous intéressons aux logiques d'élaboration d'Eurojust au sein de l'espace judiciaire pénal européen. Cette création apparaît comme la dernière étape d'un processus de coopération institutionnelle judiciaire entamé dans le cadre du Troisième pilier de l'Union européenne en novembre 1993 avec la mise en œuvre du traité de Maastricht. Ces étapes sont les suivantes: création des magistrats de liaison (1996)[1], Réseau judiciaire européen (1998)[2] et Eurojust. A ce jour, et au vu des travaux de la Convention, ce projet apparaît, pour plusieurs années encore, comme le plus "intégré" en matière de coopération judiciaire pénale. Ajouté au traité CE dès Nice (février 2001), il est inscrit dans la Constitution signée le 29 octobre 2004 à Rome (article III-273).

À la différence par exemple du projet du Procureur européen, ce projet a abouti. Cette réussite lui vaut de nombreuses revendications de paternité. Ainsi trouvera-t-on aussi bien une revendication française, allemande mais aussi belge. Après un retour sur les origines d'Eurojust, nous présenterons ici les cinq étapes ou moments de sa création.

I. Le pendant d'Europol

Si le terme d'Eurojust a vraisemblablement été inventé au moment de la préparation du Conseil européen de Tampere de 1999, l'idée d'Eurojust remonte à l'annonce de la création d'un "FBI européen" par Helmut Kohl en 1991 et à la création d'Europol par le traité de Maastricht en 1992. C'est dès cette période que naît cette idée d'une agence européenne comme l'équivalent d'Europol dans le domaine judiciaire dans des réflexions en particulier de Wolfgang Schomburg, ancien procureur et alors secrétaire d'Etat à la Justice au Land de Berlin.

Une initiative a été tentée dès le lendemain même de la mise en œuvre du traité de Maastricht, le 2 novembre 1993. Le ministre belge de la Justice propose alors un action commune établissant un "Centre pour l'information l'étude et l'échange dans le domaine de la coopération judiciaire", dénommé CIREJUD. Le modèle était celui fourni par des structures qui existaient déjà dans le domaine

de l'asile et de l'immigration: CIREA (Centre pour l'information, l'étude et l'échange dans le domaine de l'asile) et CIREFI (Centre pour l'information, l'étude et l'échange dans le domaine de l'immigration). Mais cette proposition aboutit finalement en 1998 à un réseau de points de contact, appelé Réseau judiciaire européen (RJE).

II. L'annonce à Tampere

Au moment de la mise en œuvre du traité d'Amsterdam en mai 1999 intervient la Présidence finlandaise. Celle-ci décide d'organiser le premier Conseil européen entièrement consacré aux questions de Justice et d'Affaires intérieures pour octobre 1999. Dans ce cadre, le Secrétariat général du Conseil[3] bénéficie d'une grande confiance de la Présidence finlandaise. Au sein de la Direction générale Justice et Affaires intérieures, créée dès 1995 au Secrétariat, le directeur Gilles de Kerchove et son chef de division "Coopération judiciaire" Hans Nilsson, réunissent une petite équipe pour tester leurs idées sur une Unité de coopération judiciaire. Cette idée avait déjà été avancée fin 1996 à la suite des recommandations irlandaises sur la lutte contre la criminalité organisée. Le terme d'Eurojust, en référence explicite à Europol, apparaît alors dans ces discussions informelles. Se noue ici un réseau de relations professionnelles et personnelles au sein en particulier du Groupe de travail "Coopération judiciaire pénale" mis en place en 1997. En plus d'investissements universitaires, on retrouve ce réseau engagé dans la publication d'ouvrages aux Presses de l'Université de Bruxelles.

Ici la conjoncture est spécifique puisqu'un Conseil européen ne rassemble pas les ministres de la Justice. A lieu ainsi une réunion informelle des ministres de la Justice et de l'Intérieur à Turku, en Finlande, en septembre 1999, un mois avant le sommet de Tampere. Il s'agit d'une consultation des ministres "sectoriels" pour préparer le Conseil européen. Cette réunion informelle des ministres aboutit à la première officialisation politique d'Eurojust puisque la ministre allemande de la Justice reprit à son compte la proposition, avant le soutien d'Elisabeth Guigou, ministre française. C'est bien, pour la mise sur l'agenda d'Eurojust, à une imposition par le haut à laquelle on a assisté. L'appui franco-allemand permet l'inscription d'un projet développé au sein du Secrétariat général du Conseil dans les conclusions de Tampere.

L'appui franco-allemand permet l'inscription d'un projet développé au sein du Secrétariat général du Conseil dans les conclusions de Tampere.

III. Deux propositions concurrentes

Dans une deuxième étape, le projet prend forme avec l'annonce officielle de propositions, deux en l'occurrence ici. C'est le rôle des Présidences qui est ici déterminant. Le cadrage imposé par les chefs d'Etat et de gouvernement à Tampere est extrêmement précis au niveau formel puisqu'il précise que le Conseil devra adopter l'instrument légal nécessaire avant la fin de 2001. Il détermine rapidement une prise en charge du dossier par les Présidences jusqu'au délai imparti: dans l'ordre Portugal, France, Suède et Belgique. Il revient bien à la Présidence portugaise de mener et de coordonner les travaux préparatoires à une initiative conjointe. Elle choisit une formule ouverte de mise à la discussion d'une série d'options. Dès le 4 février 2000, elle soumet au Comité de l'article 36 (organe chargé de la coordination de la coopération judiciaire et policière, qui fait suite au Comité K4) des scénarios concernant la détermination des compétences *ratione materiae* d'Eurojust et la définition de ses pouvoirs. C'est sur cette base qu'est proposé un questionnaire aux ministres de la Justice les 3 et 4 mars 2000, lors d'une réunion informelle à Lisbonne.

Il faut attendre la Présidence française début juillet pour qu'un texte soit mûr et qu'il soit déposé au Conseil le 20 juillet 2000[4]. Publié au Journal officiel le 24 août, il est signé des quatre Présidences[5]. Cette initiative prévoit l'institution d'une Unité de coordination judiciaire "Eurojust", composée d'un membre national par État membre, ayant la qualité de procureur, de magistrat ou d'officier de police, pour des formes de criminalité affectant deux ou plusieurs États membres et nécessitant une action coordonnée des autorités judiciaires. Elle prévoit qu'Eurojust pourra demander (de façon non contraignante) à un État membre d'entreprendre une enquête ou des poursuites dans un cas précis, ou à plusieurs États membres de coordonner leurs activités d'enquête et de poursuite. Si l'État membre refuse d'entreprendre l'enquête, il devra motiver sa décision. Enfin ce texte précise qu'Eurojust disposera de la personnalité juridique et sera dirigé par un président, assisté de deux vice-présidents, tous les trois choisis par le Conseil parmi les membres nationaux.

Mais ce texte des quatre Présidences, préparé depuis des mois, est court-circuité par une proposition allemande déposée un mois auparavant et sans concertation avec les quatre Présidences. Le 19 juin en effet, dans l'urgence, l'Allemagne officialise une proposition propre sur Eurojust (publiée le 19 juillet)[6], se trouvant logiquement dans les conditions de pouvoir réclamer un certain droit d'initiative, voire de paternité. A l'initiative du coordinateur allemand du Comité de l'Article 36, ce texte prévoit que chaque État membre devra désigner un ou plusieurs magistrats, procureurs ou officiers de police qui constitueront l'unité Eurojust et qui seront dénommés "fonctionnaires de liaison". Il s'agit ainsi d'une sorte de regroupement des magistrats de liaison dans un simple but d'informer sur l'état des procédures et de contribuer à la coordination des enquêtes mais sans structure propre, puisque c'est le Secrétariat général du Conseil qui est prévu pour assurer les moyens matériels ainsi que les ressources humaines (interprètes, traducteurs, personnel auxiliaire…) d'Eurojust.

Si la filiation avec les réflexions de Schomburg est claire (partisan d'un simple centre de documentation), l'initiative vise surtout à imposer sa propre définition à un texte initial et à définir un cadre *ad minima* à la discussion. La réaction du Secrétariat général et des quatre Présidences est vive. Mais il reste en définitive sur la table du Conseil deux initiatives divergentes. Le projet des quatre Présidences

apparaît déjà lui-même comme un compromis: il s'agit ici d'un premier compromis à quatre, avant celui à quinze. En effet, les membres belges souhaitaient dans la pré-négociation un instrument plus ambitieux, pour éviter avant tout le modèle dual d'Europol. On voit bien ici comment Europol, après avoir servi de déclencheur à la création d'Eurojust, joue maintenant comme contre-modèle institutionnel.

La véritable négociation commence ainsi début octobre 2000 sous Présidence française sur la base de deux textes très différents au niveau de leur philosophie. Un sous-groupe autonome est alors constitué au sein du groupe de travail "Coopération judiciaire pénale", marquant ainsi la spécificité d'Eurojust et son caractère institutionnel plus "noble". L'enjeu est la base de négociation: la stratégie française est ici de n'avoir progressivement qu'un seul texte, celui des quatre Présidences.

La DG Justice et Affaires intérieures de la Commission est passablement absente de cette négociation: plus récente, d'une composition strictement administrative et ne disposant alors que de peu d'expertise en matière judiciaire, elle n'a pas fait de proposition formelle en matière pénale avant septembre 2001. Elle s'investit par ailleurs prioritairement dans les domaines communautarisés, c'est-à-dire l'asile et l'immigration (ainsi que la coopération civile).

IV. Le projet divergent de la Commission et de l'OLAF: un Procureur pour la protection des intérêts financiers communautaires

La Commission n'a pas toutefois été totalement absente du processus de décision. Mais dans la création d'Eurojust, elle ne joue qu'un rôle indirect et à son corps défendant avec sa proposition, le 29 septembre 2000, de création d'un Procureur européen. Cette initiative, portée par la Commissaire en charge du budget, du contrôle financier et de la lutte antifraude, Michaele Schreyer, vise à assurer une protection des intérêts financiers de la Communauté. Cette proposition est à interpréter de façon spécifique dans la perspective de la lutte contre la fraude au sein d'un système de relations entre la Commissaire au budget, l'Office européen de lutte antifraude, l'OLAF[7], et le Parlement européen (et sa commission du contrôle budgétaire, la COCOBU).

La Commission est en effet dans une logique très différente de la coopération judiciaire pénale, étant sous l'influence du Parlement européen qui vote le budget de l'OLAF; et c'est le Parlement qui est à l'origine de l'idée de Procureur dès 1996. L'OLAF est aussi particulièrement intéressé par la perspective du Procureur pour donner des suites autres qu'administratives à ses enquêtes, enquêtes que la COCOBU suit de façon attentive. Cette proposition s'inscrit par ailleurs dans le prolongement direct des études sur le *Corpus Juris*.

Eurojust – La Haye

Parce que la proposition de la Commission d'un Procureur européen prend corps au moment de la Conférence intergouvernementale chargée de la réforme du traité d'Amsterdam, elle a pour effet de durcir considérablement l'opposition entre les deux projets. Dans cette concurrence, Eurojust apparaît comme la seule initiative sérieuse de coopération judiciaire. Le projet de Procureur de la Commission sert alors d'opportunité à la Présidence française, maîtresse des négociations jusqu'à Nice, pour proposer Eurojust comme réponse structurelle à la Commission dans le cadre de la CIG et ainsi l'inscrire dans le nouveau traité. Dans ce cadre, la Présidence française rédige des propositions d'articles (30 et 31) qui entendent consacrer l'équilibre entre coopérations judiciaire et policière en insérant un nouveau point 2 (Eurojust) au sein de l'article 31 comme pendant du point 2 de l'article 30 (Europol).

C'est du côté de la Commission que l'initiative française a provoqué une vive inquiétude, la référence explicite à la protection des intérêts financiers communautaires (PIF) retenant son attention. Cette mention n'apparaîtra pas dans le traité lui-même mais seulement dans la décision Eurojust.

Parce que la proposition de la Commission d'un Procureur européen prend corps au moment de la Conférence intergouvernementale chargée de la réforme du traité d'Amsterdam, elle a pour effet de durcir considérablement l'opposition entre les deux projets.

Mais toute la Commission n'a pas été "réservée" sur Eurojust, ainsi sa DG Justice et Affaires intérieures, avec à sa tête le Commissaire Vitorino, s'est montrée beaucoup plus ouverte. Dans une communication du 22 novembre 2000[8], elle a réagi à l'ensemble du projet et proposé de faire entrer Eurojust dans les schémas communautaires. Seule la présence d'un délégué de la Commission sera refusée par les Etats membres.

On retrouve par ailleurs ces mêmes clivages au Parlement européen entre deux de ses deux Commissions parlementaires: la COCOBU et la Commission des libertés et des droits des citoyens, de la justice et des affaires intérieures. Si la première, comme défenseur du Procureur, s'est

montrée très réservée sur Eurojust, cela n'a pas été le cas de la seconde qui donna la position du Parlement dans son rapport du 27 avril 2001[9]. Sa seule recommandation concerne la place des policiers comme membres nationaux d'Eurojust.

V. Décisions

Reste une dernière étape à envisager: celle de la décision. Cette décision se joue en deux temps: les négociations de l'Unité provisoire baptisée Pro-Eurojust (achevées en décembre 2000) et, dans un second temps, les négociations sur la décision finale qui intervient le 6 décembre 2001.

Une autre particularité des négociations d'Eurojust est qu'une partie des premiers débats a porté en fait sur une expérimentation et la mise en place d'une Unité provisoire préfigurant l'institution finale. Là encore l'origine de cette idée revient au Secrétariat général du Conseil mettant en avant le modèle d'Europol qui avait ouvert dès 1994 une Unité antidrogue avant sa mise en place définitive en 1999. Cette "recette" institutionnelle permet aussi de proposer une réponse astucieuse ainsi qu'une porte de sortie à la proposition concurrente de l'Allemagne. Mais l'idée centrale est de conforter Eurojust et de le rendre inéluctable ainsi que d'orienter les négociations sur l'Unité définitive.

Ce projet n'étant pas considéré comme risqué par les Etats membres, les négociations avancent très vite. Lors d'une réunion informelle tenue à Marseille à la fin de juillet 2000, les ministres de la Justice donnent leur aval politique à Pro-Eurojust. Les négociations se déroulent ensuite dans le cadre du Comité à haut niveau de l'article 36 (ne rassemblant pas que des hauts fonctionnaires de la Justice, mais aussi de l'Intérieur). La décision est adoptée par le Conseil JAI du 14 décembre 2000 lors du Sommet de Nice. Elle est directement applicable à tous les Etats membres. La seule opposition est venue de la Commission (DG JAI) estimant qu'il n'y avait pas d'urgence et que cette solution transitoire ne devait pas durer. Cette position a été relayée par le rapporteur du projet au Parlement. La conséquence immédiate est l'arrivée, le 1er mars 2001, au sein du Secrétariat général du Conseil, de quinze magistrats formant Pro-Eurojust. Jusqu'à l'adoption de l'instrument définitif, l'Unité est présidée par le représentant national de l'Etat qui exerce la présidence de l'Union européenne (c'est alors M. Bjorn Blomqvist). Le climat est enthousiaste, presque euphorique, et peut se résumer à l'idée: "Maintenant, nous avons créé quelque chose".

Alors que l'Unité provisoire est mise en place, il convient enfin de négocier la décision finale. Il reste deux Présidences suivant l'échéancier de Tampere: celle de la Suède et celle de la Belgique. La négociation reprend au sein du groupe de travail du Conseil (Coopération judiciaire pénale) réuni en session restreinte Eurojust. La montée en puissance se manifeste avec la nomination, par la Suède, d'un président de groupe spécifique pour Eurojust. Si la Présidence française a servi essentiellement à faire le tour du texte, à identifier les points à discuter, il n'y avait, au moment de Nice, un consensus que sur les missions générales, les compétences et la structure (Membre national et Collège). Les négociations commencent alors avec la Présidence suédoise sur des questions plus techniques, principalement la protection des données et les structures (comme l'audit et le directeur administratif).

C'est à la Présidence belge qu'il revient de clore la négociation. Ici le processus d'élévation du profil du Président du groupe Eurojust se poursuit: son représentant, qui a suivi toutes les négociations, préside désormais à la fois le Groupe Eurojust et le Comité à haut niveau de l'article 36 (CATS). Pour arriver à une décision d'ici la fin de sa présidence, celui-ci prévoit pas moins de 13 jours de réunion, c'est-à-dire davantage que l'ensemble des trois Présidences précédentes pour toute la coopération pénale. Il joue aussi de sa position de président du CATS pour mettre les membres du groupe devant leurs responsabilités.

Dans cette configuration, le 11 septembre rend certaines querelles sur Eurojust assez dérisoires, d'autant que l'agenda est vite chargé par d'autres projets: le mandat d'arrêt européen et la définition du terrorisme à l'ordre du jour du Conseil exceptionnel du 20 septembre, puis du Conseil européen spécial du 21 septembre. Ces deux derniers projets, ainsi qu'Eurojust, se trouveront tous adoptés au Conseil JAI du 6 décembre 2001. Le 11 décembre 2001, ironie du sort, hasard de calendrier ou volonté de revanche, la Commission publie son *Livre vert sur le Procureur européen*[10].

La décision officielle de création d'Eurojust est intervenue le 28 février 2002 et a été publiée au JOCE le 6 mars, date de son entrée en vigueur. Hébergé comme Pro-Eurojust au Secrétariat général du Conseil, Eurojust s'est installé le 10 décembre 2002 à La Haye dans le même bâtiment que la nouvelle Cour Pénale Internationale (CPI). L'inauguration officielle eut lieu le 29 avril 2003. Le choix de La Haye – en raison de la présence d'Europol – entériné au Conseil européen de Laeken en décembre 2001, a été définitivement confirmé par une décision du 13 décembre 2003, en marge du Conseil européen de Bruxelles[11]. Eurojust a enfin signé des protocoles d'accord le 14 avril 2003 avec l'OLAF, puis le 9 juin 2004 avec Europol.

Conclusion

Le *Livre vert* de la Commission provoqua une seconde mise en concurrence entre le projet de Procureur et Eurojust au sein de la Convention, puis de la nouvelle CIG qui suivit. Cette nouvelle négociation, après Nice, tourna à l'avantage d'Eurojust. Le compromis trouvé par le Præsidium a été de maintenir la possibilité de créer le Procureur à la tête d'un Parquet, mais "à partir d'Eurojust" et à l'unanimité, ce qui ruine ses chances. C'est cette formulation qui vient d'être inscrite (article III-274) dans la Constitution adoptée par le Conseil européen du 18 juin 2004 et signée à Rome le 29 octobre 2004. Ce texte final consacre dans le même temps Eurojust par son nouvel article III-273. Mais il prévoit de renvoyer à une future loi la définition définitive d'Eurojust et le Conseil européen des 4-5 novembre 2004, qui a lancé le programme pluriannuel dit *Programme de La Haye,* a fixé au 1er janvier 2008 au plus tard l'adoption, sur proposition de la Commission, d'une telle loi.

NOTES

1 Action commune du 22 avril 1996 (*JOCE*, 27 avril 1996).

2 Action commune du 29 juin 1998 (*JOCE*, 7 juillet 1998).

3 Sur cette organisation nous nous permettons de renvoyer à : Mangenot (Michel), "Une Chancellerie du Prince. Le Secrétariat général du Conseil dans le processus de décision bruxellois", *Politique européenne*, n°11, automne 2003. Nous avons fait partie, de mars à septembre 2003, d'une équipe de recherche sur l'espace judiciaire pénal européen constituée à l'Université Robert Schuman (Strasbourg) pour la Mission "Droit et Justice" (Paris).

4 Document du Conseil 10356/00 EUROJUST 7 et 10357/00 EUROJUST 8. Il faut noter que le rédacteur d'origine de ce texte est le Secrétariat général du Conseil.

5 Initiative de la République portugaise, de la République française, du Royaume de Suède et du Royaume de Belgique en vue de l'adoption de la décision du Conseil instituant Eurojust afin de renforcer la lutte contre les formes graves de criminalité organisée [*Journal officiel* C 243 du 24/08/2000].

6 Initiative de la République fédérale d'Allemagne en vue de l'adoption d'une décision du Conseil relative à la création d'une unité "Eurojust" [*Journal officiel* C 206 du 19.07.2000].

7 Créé sous le nom d'Unité de coordination de la lutte antifraude (UCLAF) au sein du Secrétariat général de la Commission, l'OLAF a reçu le 1er juin 1999 un statut d'indépendance pour effectuer les enquêtes antifraude internes (tous les organes et institutions de l'Union européenne) et externes (tous les destinataires ou les débiteurs des fonds communautaires).

8 Communication de la Commission concernant la création d'Eurojust [COM(2000)746 final – Non publié au *Journal officiel*], 22 novembre 2000.

9 Rapport sur l'initiative de la République portugaise, de la République française, du Royaume de Suède et du Royaume de Belgique en vue de l'adoption d'une décision du Conseil instituant Eurojust afin de renforcer la lutte contre les formes graves de criminalité organisée, ainsi que sur l'initiative de la République fédérale d'Allemagne en vue de l'adoption d'une décision du Conseil relative à la création d'une unité "Eurojust", 27 avril 2001, PE 302.224.

10 Commission européenne, *Livre vert sur la création d'un procureur européen pour assurer la protection pénale des intérêts financiers communautaires*, Bruxelles, 11/12/2001 (COM (2001)7515 final. 100 pages.

11 Décision des représentants des Etats membres réunis au niveau des chefs d'Etat et de gouvernement, 13 décembre 2003, JO du 3 février 2004. ::

European Public Administration Network (EUPAN)

more details at: http://www.eupan.org

EPAN is an informal network of Directors-General responsible for Public Administrations in the EU Member States. The network consists of 4 working groups:

- HUMAN RESOURCES MANAGEMENT GROUP
- INNOVATIVE PUBLIC SERVICES GROUP
- E-GOVERNMENT WORKING GROUP
- BETTER REGULATION WORKING GROUP

Here you will find current projects, events, introductions, articles, dossiers and informative links on public administration subjects. You will also find introductory information about the projects. Our carefully-selected list of links provides access to many other sources of information. Subscribe to our monthly newsletter and we will keep you informed about EUPAN activities, events and projects.

Quality Management on the European Agenda[1]

By **Patrick Staes** and **Nick Thijs***

Quality thinking is rising in the public sector in many Member States. Does Europe have a strategy? Is this coincidence or are these individual initiatives, and are those involved at least learning from one another? The setting up of the Common Assessment Framework (CAF) provided an initial impetus for a common European reference framework. Did CAF play this role by the end of 2003? What role will EIPA play in the future in this field?

Introduction

Quality thinking has undergone an entire evolution, from the mere inspection of products to an integral part of the organisation strategy. Its rise in the private sector was followed by a similar emergence in the public sector. This trend has been evident in many Anglo-Saxon countries and in Western Europe for a number of years now. In recent times, the same tendency has been felt in Eastern Europe. Does Europe have a strategy? Is this coincidence or are these individual initiatives, and are those involved at least learning from one another?

The setting up of the Common Assessment Framework (CAF) provided an initial impetus for a common European reference framework. "The main purpose of the CAF is to provide a fairly simple, free and easy to use framework which is suitable for self-assessment of public sector organisations across Europe and which would also allow for the sharing of best practices and benchmarking activities."[2] In the second part of this article we will look at the CAF and the application of the CAF as a European quality tool in more detail.

An important trend in quality thinking and the exchange of best practices within the public sector was set in motion by the organisation of quality conferences specifically intended for the public sector. These conferences will be dealt with briefly in the third part.

Finally, in part four, we highlight the European strategy in the field of quality management and the role played therein by the European Institute of Public Administration (EIPA).

1. Quality in Europe

The history of quality thinking has its roots in post-war industrialisation and the rise of mass production. Although the emphasis with respect to quality inspection and control was originally related to output and had a strong product focus, attention gradually shifted from the process and the guarantee of quality during the course of this process to Total Quality Management (TQM) and a greater focus was placed on the user and the effects that the products and services had on that user. Satisfaction became a key concept.[3]

From the late 1980s and particularly the early 1990s, TQM became a feature of the public sector. Initially, the quality movement was based on users' charters (1991 'Citizens Charter' in the UK, 1992 '*Charte des services publics*' in France and in 1993 '*het Handvest van de Gebruiker*' [the Users' Charter] in Belgium, later followed by a number of other countries).[4] In the late 1990s, many quality models and techniques (EFQM, ISO,...) and subsequently the Common Assessment Framework (CAF) found their way into the public sector. In recent times, public sector quality improvements have appeared on the agenda of Eastern European countries. The new EU Member States in particular are very active in promoting quality tools.[5]

In the first half of 2002, a survey was carried out under the Spanish presidency of the EU to map out the most important programmes and initiatives regarding quality and quality management being pursued at the time in the various Member States.[6] A number of conclusions can be drawn from this survey with respect to the structures put in place to get to grips with stimulating, promoting and supporting quality management. In addition, conclusions were also drawn regarding the application of quality models and tools.

It is striking that most if not all Member States are conducting a number or even a large number of quality initiatives relating to various forms of service provision. The focus within these initiatives is often geared to the relationship with the user/customer (one-stop shops, e-government), innovation, quality of life improvement for citizens, use of modern management techniques, simplification of administrative procedures and regulations and achieving higher standards of service provision. The actions taken are often directed towards an administration that works efficiently and has a result and customer-oriented focus and which is transparent and accessible to users/customers. Most of these actions have been put in place as part of a wider policy with a view to reforming and modernising government services.

Most Member States have specific organisation units (at central, regional and local level) which are responsible for

the promotion of quality initiatives for the public sector.

In addition, the various Member States have organisations that support the public sector in setting up quality initiatives. These may range from private market parties (training organisations, consultants) across professional associations for quality management and universities to training institutes within the public sector.

The use of quality models and techniques to achieve improvements in the public sector has taken root in all Member States. A commonly used model is the EFQM model. In some Member States, e.g. United Kingdom and Spain, it is by far the most prevalent and used model. In other countries (Belgium and Italy) the Common Assessment Framework has made great strides in recent years. Furthermore, international quality standards such as ISO have been applied in numerous Member States for a wide range on activities. Some countries have their own model such as the Swedish Institute Quality Model (SIQ) or the *Instituut voor Nederlandse Kwaliteit* [Dutch Quality Institute] (INK model).

By offering a framework such as CAF as a guiding principle for organisation management, principles of proper management find their way into many administrations and many different countries.

In addition, charters are used in the various Member States as tools to improve the relationship between citizens/users and government administrations by laying down quality standards for service provision. In some Member States (Finland, France, the Netherlands, Spain, United Kingdom and Sweden), a national quality prize exists to reward excellent and quality government organisations. User satisfaction with service provision is being measured by means of customer satisfaction assessments and systems for registering complaints and suggestions have been put in place in the various Member States. Channels and forums usually exist (conferences, websites, newsletters) to exchange best practices. A real policy geared towards the use of benchmarking is only evident in a few Member States (the Netherlands[7], Portugal and particularly the United Kingdom[8]).

2. *The CAF as a European quality tool*

2.1 The CAF

Following years of informal consultations, there was an increasing need within the European Union for a more intensive and formal response in order to optimise cooperation with respect to the modernisation of government services. This led in November 1998 during the Austrian EU Presidency to a ministerial declaration containing "the general principles concerning the improvement of the quality of services provided to citizens". The possibility of developing a European Quality Award for the public sector was discussed in the framework of the informal meetings of the Directors General of the Public Administration of the EU Member States. The idea as such was dismissed in view of the fact that the diversity of cultures and visions of "quality" in the public sector in EU countries would not allow for direct competition, but an alternative idea came up and was finally accepted: the establishment of a common European quality framework that could be used across the public sector as a tool for organisational self-assessment. As a consequence of this, it was decided that a Common Assessment Framework (CAF) – as it was later called – should be jointly developed under the aegis of the Innovative Public Services Group (IPSG), an informal working group of national experts set up by the Directors General in order to promote exchanges and cooperation where it concerned innovative ways of modernizing government and public service delivery in EU Member States. The basic design of the CAF was then developed in 1998 and 1999 on the basis of joint analysis undertaken by the EFQM, the Speyer Academy (which organises the Speyer Quality Award for the public sector in the German-speaking European countries) and EIPA and the first version of the CAF was presented during the First Quality Conference for Public Administration in the EU in Lisbon in May 2000[9].

A first wave of CAF applications was evaluated during the Belgian Presidency in the second semester of 2001. A number of recommendations on improving the model were formulated: further simplification of the model, elaboration of guidelines, adjustment of the scoring panels and the creation of a glossary. The new CAF 2002 was presented at the 2nd European Quality Conference in Copenhagen in October 2002.

The CAF has four main purposes:

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

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

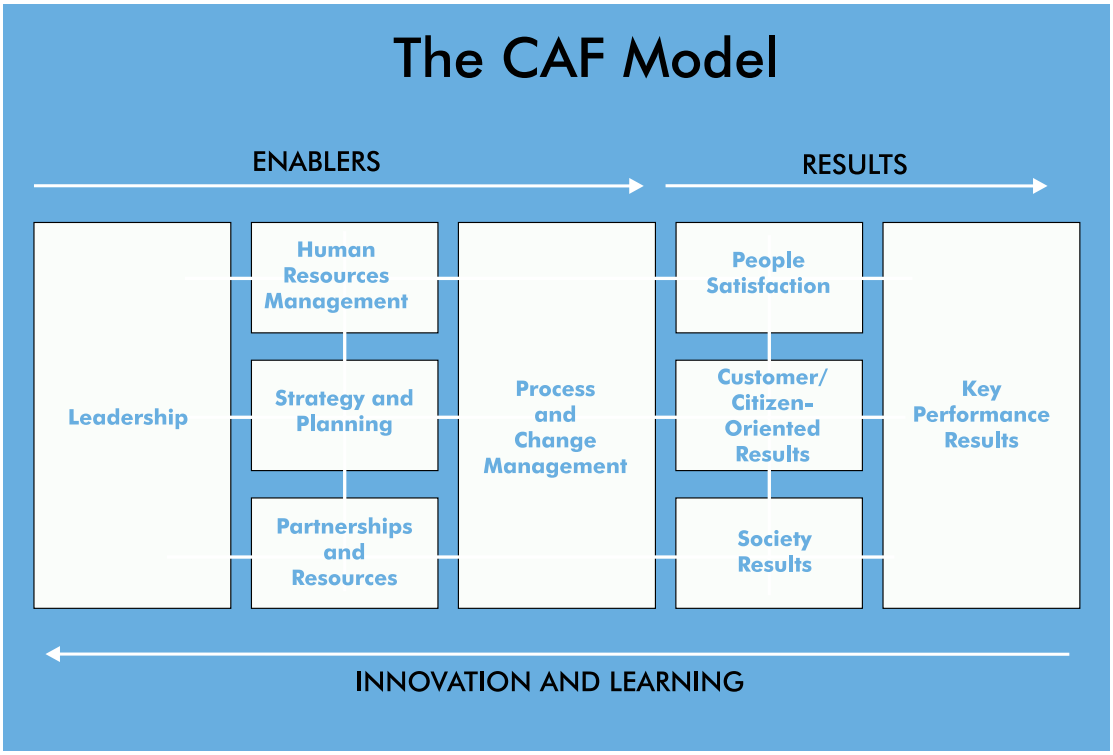
The CAF constitutes a blueprint of the organisation. It is a representation of all aspects that must be present in the proper management of an organisation in order to achieve satisfactory results. All these elements are translated into nine criteria and further operationalised and given concrete form in 27 subcriteria. On the basis of these subcriteria, a self-assessment group from within the organisation evaluates that organisation.

Using the CAF provides an organisation with a powerful

framework to initiate a process of continuous improvement.

The CAF provides:

– an assessment based on evidence against a set of criteria which has become widely accepted across Europe
– a means to focus improvement activity where it is most needed and to identify progress and outstanding levels of achievement;
– a means to achieve consistency of direction and consensus on what needs to be done to improve an organisation;
– a link between goals and supportive strategies and processes;
– opportunities to promote and share good practice within different areas of an organisation and with other



The list of subcriteria is as follows:

ENABLERS

Criterion 1. Leadership

Subcriterion 1.1.	Give a direction to the organisation: develop and communicate a clear vision, mission and values
Subcriterion 1.2.	Develop and implement a system for managing the organisation
Subcriterion 1.3.	Motivate and support the people in the organisation and act as a role model
Subcriterion 1.4.	Manage the relations with politicians and other stakeholders

Criterion 2. Strategy and planning

Subcriterion 2.1.	Gather information relating to present and future needs of stakeholders
Subcriterion 2.2	Develop, review and update strategy and planning
Subcriterion 2.3	Implement strategy and planning in the whole organisation

Criterion 3. Human Resources Management

Subcriterion 3.1.	Plan, manage and improve human resources with regard to strategy and planning
Subcriterion 3.2.	Identify, develop and use competencies of the employees aligning individual, team and organisational targets and goals
Subcriterion 3.3.	Involve employees by developing dialogue and empowerment

Criterion 4. Partnerships and Resources

Subcriterion 4.1.	Develops and implements key partnership relations
Subcriterion 4.2.	Develops and implements partnerships with the customer/citizen
Subcriterion 4.3.	Manages knowledge
Subcriterion 4.4.	Manages finances
Subcriterion 4.5.	Manages technology
Subcriterion 4.6.	Manages buildings and assets

Criterion 5. Process and Change Management

Subcriterion 5.1.	Identifies, designs, manages and improves processes
Subcriterion 5.2.	Develops and delivers services and products by involving the customer/citizen
Subcriterion 5.3.	Plans and manages modernisation and innovation

RESULTS

Criterion 6. Customer/Citizen-oriented Results

Subcriterion 6.1. Results of customer/citizen satisfaction measurements
Subcriterion 6.2. Indicators of customer/citizen- oriented measurements

Criterion 7. People Satisfaction

Subcriterion 7.1. Results of people satisfaction and motivation measurements
Subcriterion 7.2. Indicators of people results

Subcriterion 8. Society Results

Subcriterion 8.1. Results of societal performance
Subcriterion 8.2. Results of environmental performance

Criterion 9. Key Performance Results

Subcriterion 9.1. Goal Achievement
Subcriterion 9.2. Financial performance

organisations;
- a means of measuring progress over time through periodic self-assessment;
- a means to create enthusiasm among employees by involving them in the improvement process;
- a means to integrate various quality initiatives into normal business operations.

To summarise, self-assessment against the CAF model offers the organisation an opportunity to learn more about itself.

Compared to a fully developed Total Quality Management model, the CAF is a "light" model, especially suited to gaining an initial impression of how the organisation performs. It is assumed that any organisation that intends to go further will select one of the more detailed models (such as the Speyer or EFQM models). The CAF has the advantage of being compatible with these models and may therefore be a first step for an organisation wishing to go further with quality management.

The CAF[10] is in the public domain and free of charge. Organisations are free to use the model as they wish.

2.2 An analysis of the European applications

During the Italian presidency of the European Union in the second semester of 2003, EIPA[11] carried out an investigation into the application of the CAF in both the existing and the new Member States.[12] In this chapter we will reflect on the conclusions of this survey. During the Luxembourg Presidency this year, a new survey is being undertaken. It will be interesting to compare the results of the new study with the results that will be presented in this article and to see what progress has been made in two years. We hope to present the results of the new survey in one of the future editions of *Eipascope*.

2.2.1. *Assistance and support by the Member States*

At the end of 2003, there was no single country in which the CAF was imposed as an obligatory tool for the improvement of quality in the public sector, neither at government level nor at the level of a specific sector or activity. However, there were several examples that did attract our interest. For instance, the administration of the Brussels-Capital region decided to apply the CAF throughout its entire administration. The same decision was taken in Turku, the second largest city in Finland.

When we examine this table more closely, the position of the Netherlands and the UK is interesting. Both countries have shown little interest in the CAF, because the INK and the EFQM model, respectively, are being promoted strongly in those countries.

Offering official support for the CAF model is one thing, providing active support by the deployment of both human and financial means is another. When it comes to making means available for active support, three large groups of countries may be distinguished.

In the first place, there is a group of countries that, until then, had invested little in the active support of the CAF model. This group includes Ireland, Luxembourg, Malta, the Netherlands, Norway, Romania, Slovenia, Spain and the United Kingdom. The common link between these countries is that no specific means to support the CAF have

Table 1: CAF support in the Member States

Group 1	No official support for the CAF	Ireland, Luxembourg, Malta, the Netherlands, Romania, United Kingdom
Group 2	CAF is recommended as a tool (in addition to others)	Czech Republic, Denmark, Finland, Greece, Poland, Spain, Norway, Sweden
Group 3	CAF is recommended and supported by actions	Austria, Estonia, Germany, Hungary, Italy, Portugal, Slovakia, Slovenia
Group 4	CAF is recommended as an important quality improvement tool and supported by actions	Belgium
Group 5	The use of CAF is obligatory	

been provided. Even so, the model is promoted strongly in some of these countries, e.g. Estonia and Slovenia.

A second group of countries (Austria, Czech Republic, Denmark, Greece, Poland, Portugal and Sweden) provides both financial and human means of support, although these means are limited.

Finally, there is a third group (Belgium, Germany, Hungary, Italy and Slovakia) where means are provided and where actions and initiatives to support the CAF were developed and put into place.

The activities set up and efforts made to support the CAF range from the distribution of information folders, producing documentation material and manuals, providing information sessions and training, to organising quality conferences, quality prizes and the setting up of data banks for the exchange of best practices.[13]

With the exception of a number of countries (Czech Republic, Ireland, Malta and the United Kingdom), the promotion and support of the CAF were assigned to a specific organisation or organisation division. Irrespective of the extent of centralisation or decentralisation of the political systems, this task was allocated in all countries to the central ministry or agency responsible for public service. By way of exception, Germany assigned this task to the University of Speyer.[14]

2.2.2. *The spread of the model*

By the end of 2003, the CAF model was applied widely in various countries. More than 500 organisations or organisation divisions in 19 countries had applied the model since it came into being in the period 1999-2000. Furthermore, there are probably still more applications of which the central administrations are not yet aware. The model had been translated into 15 different languages.

2.2.3. *An assessment of the applications*

The organisations that had applied the CAF model were questioned about its application (the context and the reasons for doing so, the course of the application process and finally the experiences with the model).[17] We will explain each of these elements in brief, after we have first provided general information and the key figures concerning the organisations.

General Information

The organisations who participated in the survey were spread across the various regions of the government landscape. The division of the respondents among the various management levels is indicated in figure 1. In addition, the organisations originated from sectors ranging from the police and the judiciary, across welfare and social sector organisations and education, to living environment, economy and organisations charged with coordination or policy functions.

Another interesting aspect is the organisation size. The spread of very small organisations to very large organisations is striking, although we must conclude that there is a very large middle group. Almost three-quarters of the organisations applied the CAF to the entire organisation, the others only applied it to part of the organisation.

Context and Cause

The survey shows that the CAF is used regularly when organisational changes are being made or when the organisation is setting up a quality policy or a performance assessment system. Even so, the majority indicated that they had applied the CAF model in a context where the

Table 2: Spread of the CAF model in the various countries

No applications	The Netherlands
1 to 5	Czech Republic, Greece, Ireland, Malta, Romania, Spain, United Kingdom
6 to 10	/
11 to 25	Denmark, Estonia, Hungary, Poland, Slovakia, Slovenia, Sweden
26 to 50	Austria, Germany, Finland
More than 50	Belgium, Italy, Norway

Table 3: Extent according to sector and authority level

Education and schools	Italy, Norway, Portugal
Police	Belgium, Germany, Hungary
Health and welfare institutions	Austria, Norway
Agencies or administrations with direct service provision[15]	Belgium, Italy, Slovakia, Sweden
Core ministries, core administrations[16]	Belgium, Hungary, Ireland
Local government	Norway, Finland, Czech Republic, Hungary, Slovenia

organisation was not subject to modernisation or changes. Half (51%) had no experience with quality models or techniques prior to applying the CAF model.

Organisations that had experience mentioned the use of ISO and quality systems and quality management systems, quality circles, the Balanced Scorecard, EFQM, and customer and personnel satisfaction assessments. Sixty per cent of the organisations had no specific quality service or a separate team that was involved with quality management.

The respondents were also asked to indicate the reasons for using the CAF and to place these reasons in order of importance (ranking). The top 7 answers are indicated in table 5.

This table shows that the CAF is used mainly as a measuring device to subject the organisation to a quick scan in order to identify a number of strong and weak points, which will then serve as a launching pad for a number of improvement projects. Furthermore, it is interesting to note that participation in a quality prize or quality conference is often a reason to apply the CAF. As has already been shown by past experience,[18] such initiatives are interesting to organisations in order to make themselves known. These prizes and conferences have already set a trend in motion in a number of countries. We will deal briefly with these conferences and prizes below.

A final point that we wish to deal with here is the conclusion that almost 50% of the organisations that applied the CAF model had previous experience with another model. The CAF model is being promoted as a user-friendly model, as a step to other models. The survey does not reveal why many of the organisations take this step.

The decision to apply the CAF model is taken almost everywhere by the upper management or the management team. This is not only a logical, but certainly an important step, too. After all, the management must play a leading role during the entire process not only in setting up the improvement actions but also after they have been put in place.

Figure 1: Division of respondents among authority levels

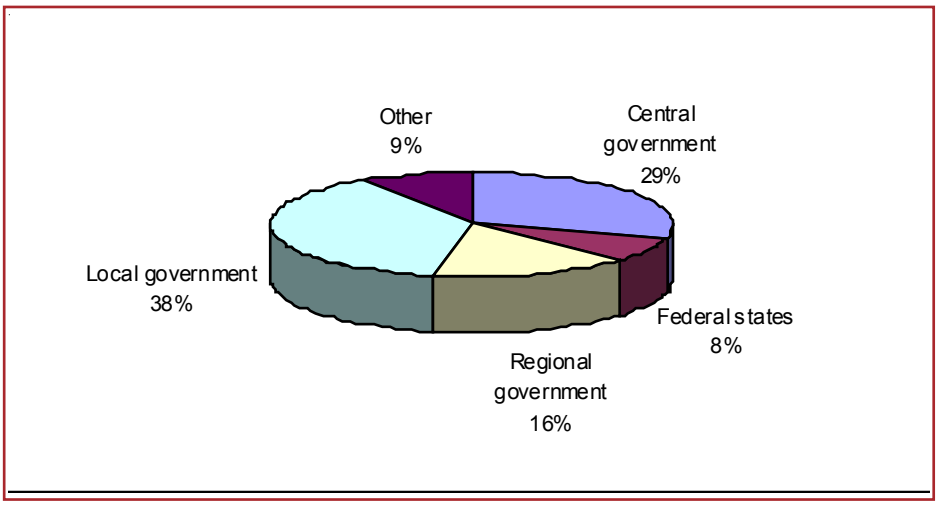


Table 4: Respondents according to organisation size	
Number of employees	**Number of organisations (%)**
< 10	2
10-50	14
51-100	16
101-250	23
250-1000	26
1001-5000	15
> 5000	4

Table 5: Reasons for applying the CAF	
Ranking	**Reasons**
1.	Identifying strong and weak points
2.	Quick scan of the organisation
3.	Input for improvement projects
4.	Participation in quality prize or conference
5.	Exchange of insights into the organisation
5.	Increasing quality material awareness
6.	Because the upper management wanted it
7.	Increasing the quality consciousness of employees

Application process

The application of the CAF model takes place by means of a self-assessment performed by the organisation. For this purpose, a self-assessment group (SAG) is put together. This group performs an assessment of the organisation using the CAF model criteria.

The size of the SAG is shown in table 6. Guidelines are often issued that this group must be representative of the organisation and certainly not too large, as this only impedes discussion and decision making. Most SAG's comprise between 8 and 10 people. This size is also evident

from table 6, in which 48% of the organisations indicate that their SAG consisted of 5 to 10 employees. It is often difficult for large organisations to put together a SAG which is representative of the entire organisation *and* which is also limited in size. For this reason, several groups are often set up. The second section of table 6 shows that more than half (56%) of the organisations indicate that the SAG was made up of less than 10% of the total number of staff. Nevertheless, more than one-third indicate that their SAG was made up of between 10 and 25% of the total number of staff.

Table 6: Size of the self-assessment group

# members SAG	%	SAG/Org. (%)	# (%)
< 5	10	< 10	56
5-10	48	10–25	36
10-20	29	> 25	8
> 20	13		

The organisations indicate that these SAGs are mainly made up of middle-management staff, but that the upper management and experts are often included in the group. Staff assistants and young employees often have less chance of being included in the SAG. Even so, it can be very meaningful to include young people in the SAG. Another line of approach and an increasing amount of involvement can have a positive effect.

Of the organisations questioned, only 46% said they had informed all staff that such a self-assessment would take place. Twenty per cent communicated purely with the management. The word "assessment" in an organisation is in itself sufficient to summon up resistance. People often think that they will be assessed and if there is also a lack of proper communication, this assessment takes on an even more covert and clandestine character. It is therefore advisable to provide sufficient transparency regarding the self-assessment in order to overcome a great deal of resistance and negative feelings.

During the preparation of the self-assessment, 58% of the organisations requested external support (particularly from external consultants). This support related mainly to providing a better insight into the model and the terminology used. Of the remaining 42% that had no external support, 43% subsequently concluded that it would have been better to have had support, while the other 57% did not consider the lack of support to be a problem. Performing self-assessment is no easy task, as the methods and terms involved are new and strange to many people. An introduction or a training session in which a better insight is gained into the model and the operation is therefore to be recommended.

During the actual self-assessment, 35% had external support. Of the 65% that had no support, 42% subsequently thought it would have been more meaningful during the self-assessment to have had some form of support. The terminology and the scoring system are considered to be two of the difficulties experienced during the self-assessment. An additional factor is that an extra effort is often required of the members of the SAG on top of their daily duties. A third difficulty is that often, no culture exists to exchange information and solutions within the organisation.

Experiences and results

Most of the organisations indicate that a clear identification of the strengths and weaknesses of the organisation is the most important added value of the self-assessment. This strength/weakness analysis can be used as a basis to set up targeted improvement actions. In addition, matters such as an increased awareness of organisational problems, a better insight into the total functioning of the organisation and the exchange of ideas in this respect appear to be important aspects.

The organisations indicate that the CAF can serve to identify improvement projects, but are these projects actually launched? Of those asked, 62% stated that the result of the self-assessment had led to improvement actions. These improvement actions can mean that a new impetus is given to the current change process and that a contribution to the process of strategic planning of the organisation is made. Individual, separate improvement initiatives or a complete improvement plan can be drawn up. Drawing up such an improvement plan is one thing, communication is another. The table below shows to which target group the results of the self-assessment were communicated.

Table 7: Communication of the self-assessment results

All staff members	58%
Management only	40%
Improvement team	29%
Politicians	19%
External consultants	10%
Other government organisations	10%
Customers/users/citizens	8%

In answer to the question of why no improvement plans were drawn up, "other priorities" and "lack of time" where high on the list. Furthermore, the fact that organisations only participated in a prize or a conference was also frequently mentioned. In addition to the criterion of streamlining the internal operation of the organisation, the desire to raise the external reputation of the organisation appeared to be important. Nevertheless, 82% indicate that they will use the CAF again in the future. With regard to the period in which a repeat of the assessment must take place, there is a difference of opinion: 37% state that they wish to do so annually, 38% are planning to do so once every two years and 11% are considering once every three years. It is

difficult to determine an ideal moment. It is clear that a repeat is necessary, but having said that, it is advisable to leave time for a proper performance of the improvement projects.

2.2.2.4 Areas for improvement in the model and its implementation

The conclusions and recommendations of this survey were presented at the 1st European CAF Users Event which took place in November 2003 in Rome. About 150 people participated in different workshops, where CAF good practices were presented and discussed. It was agreed that it was too soon to adapt the CAF 2002 and that more applications were needed first. The CAF expert group, composed of the national CAF correspondents, was put in charge of the follow-up to the CAF, together with the CAF Resource Centre (RC) established at EIPA. Following an audit of this CAF RC during the Irish Presidency in 2004, more resources were provided. A CAF action plan for the years 2005-2006 was approved by the Directors General.

In March 2005 the CAF expert group decided to start on the revision of the model and to present the new CAF 2006 at the 4th European Quality Conference in September 2006 in Tampere, Finland. The revision will not be as fundamental as the second one, but discussions will be held on the role of the examples, the scoring system and the guidelines.

3. European quality conferences

The organisation of European quality conferences has resulted in a certain trend and continuity in European quality policy. At the initiative of European public service ministers, a European conference concerning quality in government services was organised in May 2000. Within the context of this conference concerning the quality of public services held under the Portuguese presidency and with a view to learning from one another, the 15 Member States of the European Union presented their best administrative practices. Following the first conference in Lisbon, the second European conference concerning quality in public services was held in Copenhagen in October 2002.[19] The third European conference took place under the Dutch presidency of the EU from 15 to 17 September 2004 in Rotterdam[20] and the preparations for the fourth conference in Tampere, Finland, in 2006 are already underway.

These European conferences have inspired a number of countries to organise national conferences. For instance, Belgium organised its own quality conferences in 2001 and 2003 and the third Belgian conference in 2005 is already at the planning stage.

4. The role of EIPA at European level

In May 2001, a decision was taken to set up a CAF support centre within EIPA. In 2002, it was decided to evaluate the centre during the Irish presidency of the European Union in the first half of 2004.

4.1 The assessment of the CAF support centre

In early 2004, the various countries that make up the International Public Services Group (IPSG) relating to quality management in the public sector and other relevant parties were questioned about the operation of the CAF support centre at EIPA.

The following recommendations were formulated. The CAF support centre will remain within EIPA, which will provide financial and material support. In addition, the support centre must generate its own operational budget by organising education and training. The growth potential of the support system is acknowledged. For this reason, the centre must develop into a CAF reference centre for the Member States. In order to effect this intended growth and objective, a long-term strategic vision must be developed and the centre's operational programme must be distilled into detailed project plans. In addition, the CAF network with the various partners, including EIPA, CAF correspondents in the members states and research institutions, must be reinforced.

4.2 The new vision of EIPA regarding its role as a support centre for the CAF

As a result of the conclusions of the investigation, EIPA has realigned and reformulated its strategic objectives with regard to the CAF support centre. The CAF support centre intends:

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

Of course, it must be clear that the CAF RC will never be able to play this role if it is not fully supported by the Member States (MS) involved in using CAF. At the time of writing, an intensive collaboration between the RC and the MS is growing. Since September 2004, the CAF RC has intervened in five national or regional Quality Conferences, presided over two meetings of the CAF Expert Group and reported at three meetings of the Innovative Public Services Group (IPSG), the expert group of the Directors General. The national CAF correspondents are trying to gather more information on the number of CAF applications in their countries and to stimulate their organisations to go online and fill in the questionnaire for the new CAF survey.

Conclusions

Many of the initiatives launched in the various European countries relating to quality management may be termed individual, *ad hoc* initiatives of the countries themselves. However, we have observed a growing tendency, both in Eastern and Western European countries, towards a common language and a common reference framework.

Quality tools such as the CAF model may serve as a framework for this language. By offering such a framework as a guiding principle for organisation management, principles of proper management find their way into many administrations and many different countries.

The quality conferences, both at national and international level, are a suitable tool to discuss problems, challenges and solutions within various organisations using the same language (within a national and transnational context). They are also a tool to boost effectiveness in the public sector on a permanent basis.

Maastricht or BrusselsSupport, in all its facets, appears to be enormously important. A decision has already been taken at European level to expand the European CAF support centre as a reference in this respect. Furthermore, it is vital that this support can be organised at an operational level within the various countries.

NOTES

* Nick Thijs is research assistant at the Public Management Instituteat the Katholieke Universiteit van Leuven, Belgium. Patrick Staes is Senior Counsellor in Public Management at the Belgian Federal Public Service 'Personnel and Organisation'. He is currently Seconded National Expert at the European Institute of Public Administration in Maastricht, where he is responsible for the CAF Resource Centre.

1 This contribution is based on the article "Kwaliteitsmanagement op de Europese Agenda" [Quality Management on the European Agenda] published by Nick Thijs and Patrick Staes in the Vlaams Tijdschrift voor Overheids Management, Die Keure, Bruges,2004, No. 2, pp. 32-39.

2 Engel C., Common Assessment Framework: The state of affairs, Eipascope, 2002 (1), p.35.

3 Bouckaert G. & N. Thijs, Kwaliteit in de Overheid [Quality in Government], 2003, Ghent, Academia Press, pp.37-43.

4 Staes P & Legrand J.J., La charte de l'Utilisateur des Services Publics, Labor, 1998. 152 p.
Bouckaert G., "Charters as frameworks for awarding quality: the Belgian, British and French experience, Charters as frameworks for awarding quality: the Belgian, British and French experience, seminar on concepts and methods of quality awards in the public sector", Speyer, Germany, 1993, p.7.

5 Löffler E. & M.Vintar, The current quality agenda of East and West European public services, in Löffler E. & M. Vintar (eds.), "Improving the quality of East and West European public services", Ashgate, 2004, p.3.

6 IPSG, "Survey regarding quality activities in the public administrations of the European Union Member States", 2002, 95 p.

7 http://www.minbzk.nl/openbaar_bestuur/benchmarken

8 Public Sector Benchmarking Service: http://www.benchmarking.gov.uk.

9 Engel C., Common Assessment Framework: The state of affairs, Eipascope, 2002 (1), p.35

10 For more information on the CAF: www.eipa.nl and the CAF brochure, recently re-edited by EIPA.
Please contact the CAF RC Centre at EIPA:
Ann Stoffels: +31 43 329 63 17 or
Patrick Staes: +31 43 329 63 28

11 www.eipa.nl

12 EIPA, "Study for the Italian presidency on the use of the common assessment framework in the European public administrations", 2003, 92 p.

13 For information in Belgium visit www.publicquality.be, for general information visit www.eipa.nl

14 www.speyer.dhv.de

15 These relate to both national and regional level.

16 These relate to both national and regional level.

17 EIPA, "Study for the Italian presidency on the use of the common assessment framework in the European public administrations", 2003, 92 p.

18 Bouckaert G. & N. Thijs, CAF: Het evaluatie-instrument geëvalueerd [CAF: the assessment tool evaluated], Leuven, 2002, 56 p.
Van Dooren Wouter & S. Van de Walle, "Why do Belgian public agencies use the Common Assessment Framework", in Löffler E. & M. Vintar (eds.), "Improving the quality of East and West European public services", Ashgate, 2004, pp.157-171.

19 http://www.2qconference.org. ::

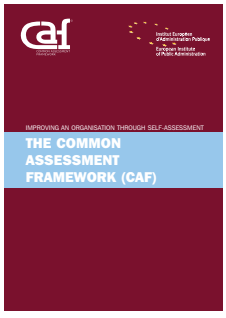
RELATED ACTIVITIES AT EIPA

1-2 June 2005, Luxembourg
2nd european CAF Event
organised by the Luxembourg Presidency and EIPA

9-11 November 2005, Maastricht
Seminar:
CAF Training Event: the Common Assessment Framework in Action
0520606 € 795

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

PUBLICATIONS



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

October 2002

Common Assessment Framework (CAF)

more details at: http://www.eipa.nl/CAF/CAFmenu.htm

The Common Assessment Framework (CAF) is a result of the cooperation among the EU Ministers responsible for Public Administration. On request from the Directors General of this field, the new version of the CAF has been developed by the Innovative Public Service Group.

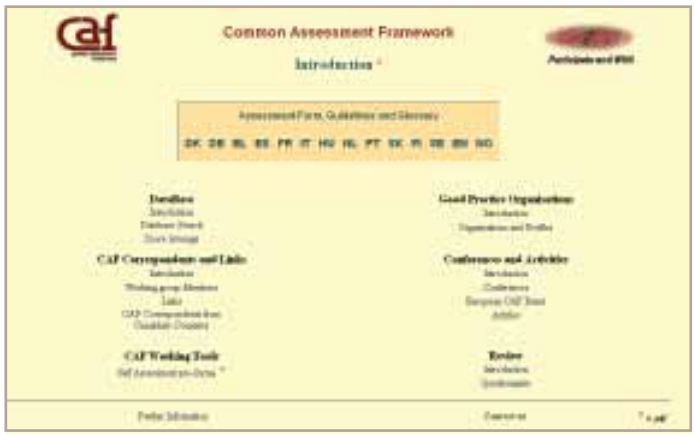
A pilot version of the CAF was presented in May 2000 during the First European Quality Conference for Public Administrations held in Lisbon. The present version is based on experience gained in implementing and using the first version of the CAF. The CAF is offered as a tool to assist public sector organisations across Europe to use quality* management techniques to improve performance.[1]

The CAF provides a simple, easy-to-use framework, which is suitable for a self-assessment of public sector organisations.

The CAF has four main purposes:

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

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



NOTE

[1] A definition of words marked by an asterisk may be found in the glossary.

The CAF in 2005: upcoming events

During the Luxembourg Presidency a new survey on the use of the CAF in Europe is being carried out. The study and its main conclusions will be presented at the **2nd European CAF Event** which will be organised by the Luxembourg Presidency in Luxembourg on 1-2 June 2005 and where approximately 150 users from all over Europe will discuss the future of the CAF.

On 9-11 November 2005, EIPA Maastricht is organising the **CAF Training Event: The Common Assessment Framework in Action**. Trainers and training/change managers working in the public sector and involved in quality management will be trained and prepared to implement the CAF in their own organisation and/or to help other organisations with the implementation of the CAF.

For more information, please contact EIPA's CAF Resource Centre:
Mr Patrick Staes, Project Manager, tel.: + 31 43 3296 328
Ms Ann Stoffels, Programme Organiser, tel.: + 31 43 3296 317
Fax: + 31 43 3296 296
E-mail: caf@eipa-nl.com
URL: www.eipa.nl à CAF

eEurope Awards for eGovernment – 2005

more details at: http://www.e-europeawards.org/

"Transforming public services"

Call for applications is now open!

An i2010 Event

What are the eEurope Awards?

The **eEurope Awards** recognise innovation in the areas of eGovernment and eHealth within Europe. The overall goal of the **Awards** is to promote best practice among the Member States of the European Union, candidate countries and the EFTA countries. This facilitates the sharing of experience and learning, in order to make Europe the most competitive knowledge-based economy by 2010. Following the highly successful eEurope Awards for eHealth – 2003 and 2004 and eGovernment – 2003 a fourth award is launched now.

Who can apply?

All public administrations in Europe[1] (national, regional, local, etc.) delivering eGovernment services, which have interesting lessons of good practice to share with others are encouraged to apply.

How to apply?

Applications should be submitted electronically via www.e-europeawards.org. Full information, guidelines and a helpdesk are available at the same site.

When to apply?

The call will remain open until 1st June 2005 (12:00 hours CET).

Objective

"Transforming public services" – The objective of this year's call is the identification and dissemination of good practices in transforming public services, with a focus on the following four themes:

- **The right environment:** creating the best environment to enable governments, businesses and citizens to benefit from transformations.
- **Government readiness:** transformation of the organisation and innovation in the back office.
- **Service use:** transformation and innovation in external facing services – driving use and participation.
- **Impact:** measuring the benefits to governments, businesses and citizens.

These applications should be in current use and supported by a public sector actor.

The **eEurope Awards for eGovernment – 2005** ceremony will take place during the plenary session of the Ministerial eGovernment Conference, in Manchester, UK, in November 2005. The applications selected will play a central role in the Conference proceedings. The most outstanding applications are awarded the prestigious eEurope Awards Trophy.

This is an opportunity for public sector organisations to showcase best practices and to receive European recognition for their innovations.

For news and updates

You can at all times register for the eEurope Awards news service via the eEurope Awards Helpdesk at www.e-europeawards.org. For more general information about the eEurope Awards, please visit the eEurope Awards website: www.e-europeawards.org or contact the eEurope Awards Helpdesk. For information about the Ministerial eGovernment Conference 2005 visit http://europa.eu.int/egovernment_research.

NOTE

[1] Submissions from EU Member States, the candidate countries, Iceland, Liechtenstein, Norway and Switzerland will be accepted.

Open Activities September 2005

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

8-9 September 2005		
0531102	Seminar: The Stability and Growth Pact (SGP): Theory and Practice	Maastricht
8-9 September 2005		
0532101	Seminar: Towards Improved Corporate Governance in the EU	Maastricht
13-14 September 2005		
0530206	Seminar: Financial Management of EU Structural Funds	Maastricht
15 September 2005		
	2005 Round Table: Sectoral Policies and European Territories: The Role of Local and Regional Actors in the New Europe of 25	Brussels
15-16 September 2005		
0524002	Seminar: Adapting to European Integration: How to Effectively Coordinate EU Policy-Making at Central Level	Maastricht
19-21 September 2005		
0510903	Seminar: Surviving in European Negotiations: Techniques to Manage Procedures, Communication and Compromises in EU Negotiations	Maastricht
21-23 September 2005		
0530802	Introductory and Practitioners Seminar: European Public Procurement Rules, Policy and Practice (on 20-09-05 prior to the seminar EIPA will provide a basic introduction to European Public Procurement for newcomers to procurement or non-procurement persons)	Maastricht
22-23 September 2005		
0513303	Seminar: The Presidency and the Competitiveness Council	Maastricht
26-27 September 2005		
0521601	Seminar: Successes, Paradoxes and Shortcomings: Experiences with Recent HRM-Reform in the Public Services	Maastricht
26-28 September 2005		
0510601	Seminar: L'Unione europea: Istituzioni e meccanismi decisionali	Milan
29-30 September 2005		
0533802	Seminar: The Future of Rural Development: Making It Simpler, More Coherent and Effective	Maastricht
29-30 September 2005		
0550501	Seminar: The EU Regime in the Field of Family Law and Succession	Luxembourg

National "Red Lines" Undermine European Budgetary Reform

By **Dr. Phedon Nicolaides**[1], Professor – EIPA Maastricht

The discussions among Member States on the budget of the European Union for the period 2007-2013 have reached an impasse. Member states want to keep as much as possible their receipts from the budget, while at the same time reducing their contributions. Naturally, this is not a solution that can apply simultaneously to all of them.

The member state which is in the most awkward position is the UK. For domestic political reasons, the UK government refuses to make concessions on an outdated and indefensible instrument of the EUs' budgetary arrangements, which is known as the UK "rebate".

The rebate was introduced in 1984 as compensation to the UK for not having a large agricultural sector and for trading extensively with non-EU countries. At that time, close to 80% of the EU's expenditure went to farming and about half of its revenue came from tariffs on imports of non-EU products. The UK, with its traditional links with the Commonwealth and North America, paid a disproportionately large amount into the EU budget and received a disproportionately small amount from Brussels.

Regardless of the fact that budgetary surpluses and deficits are partial and misleading indicators of the benefits and costs of EU membership, all Member States have drawn their "red lines" in the current negotiations on the Financial Framework for the period 2007 to 2013. The large net payers such as Germany, France, the Netherlands and Sweden and the UK demand a reduction in overall expenditure. Ironically, the UK also wants to maintain its rebate. Naturally, the net recipient counties do not want to lose their subsidies. Any way you see it, money to or from Brussels is important in domestic politics. Even the eurosceptic Polish farmers are reported to have softened their views after receiving subsidies from the EU's agricultural fund.

In the absence of any cohesive vision, the opposing claims will probably degenerate into coarse bargaining with the same results as in previous budgetary negotiations. In the end, any agreement on the 2007-2013 Framework will be a mixture of compromises without much logic.

There will be no long-term solution, unless the EU deals with the problems on the expenditure side of the budget. This is because EU spending is a patchwork of policies some of which have become obsolete. By contrast, on the revenue side, the contributions of the Member States are largely based on a reasonable principle: the size of their economies and therefore their relative wealth. Successive GATT rounds have also meant that tariffs now generate a very small proportion of EU revenue so they hardly skew payments by member state.

On the expenditure side, the UK Treasury published in March 2003 a paper that made a number of sensible proposals on how to rationalise EU spending. Eighty per cent of that spending goes to farming and structural projects mostly in poorer regions. The Treasury paper argued for concentration of structural expenditure in the most needy regions of the Union. It rightly asked, why recycle funds through Brussels.

The Commission proposals which are presently being negotiated also advocate similar concentration. But they have two grave flaws that undermine the logic of concentration. They grandfather all currently eligible regions and they make funding available to poor regions in relatively rich countries.

Regions such as Western Ireland have per capita incomes that far exceed the threshold of eligibility for regional funds, which stands at 75% of EU average income. Yet they will continue receiving EU financial support simply because they receive it today.

Other regions with per capita income below the threshold of 75% are located in relatively rich countries such as Belgium, Sweden or the UK all three of which have per capita at about 117% of EU average.

The EU should support those policies that make it more cohesive, more competitive and give it a more effective voice in the world.

The principle of cohesion, which is enshrined in the EU Treaty, suggests that structural funding should be allocated to Member States according to their need which translates into their ability to provide financial resources for the growth of their poor regions. The EU should support those Member States which do not have that ability. Solidarity would then mean support for poor regions in poor countries – not just poor regions irrespective of whether they are located in poor or rich countries. Rich Member States with poor regions can mobilise domestic resources for the development of their underdeveloped regions. As the Treasury paper asked, why recycle funds through Brussels?

The time has come to end both the UK rebate and recycled funding for farmers and regions of rich Member States.

On agriculture the UK views are well known. It prefers elimination or drastic reduction of subsidies to farmers. But this has implications for its rebate that need to be drawn out. When agricultural funding was mostly in the form of output subsidies – i.e. before the reforms introduced in 1992 – it did make sense to centralise support through the EU budget. Otherwise there would have been large distortions of competition.

Now, however, that funding is largely de-coupled from production and will be even more so in the future, there is hardly any justification for centralised funding. Member states can indeed give income supplements to their farmers without distorting competition. This means that most agricultural spending can and should be re-nationalised. It would reduce significantly overall EU expenditure and at the same time remove the need for the UK rebate.

The problem is that France opposes vehemently any reduction in agricultural spending. In fact, in October 2002, France and Germany pre-empted any meaningful EU reform by undertaking a commitment to maintain agricultural subsidies at their present level until 2013. At the same time, France wants the UK rebate to be phased out. This in itself is an untenable position.

The EU has a last chance to rationalise its budget before the next enlargement will make it virtually impossible. Both Bulgaria and Romania have relatively very large agricultural sectors and it is obvious where they will draw their red lines.

Despite the apparent intransigence of national positions, it is rather clear what kind of reform makes sense for the EU in the longer term. The EU should support those policies that make it more cohesive, more competitive and give it a more effective voice in the world: i.e. structural actions, research and development, external action and development aid.

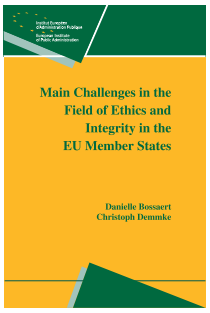
The time has come to end both the UK rebate and recycled funding for farmers and regions of rich Member States. Perhaps it may be possible for France to accept lower support of agriculture if the UK would give up its rebate. If that could happen it would rationalise the budget of the Union and would make the most significant contribution to streamlining EU policies.

NOTES

[1] The views expressed here are purely personal. ::

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

more details at: http://www.eipa.nl/Publications/Indexes/Books_2005.htm



Danielle Bossaert and Christoph Demmke
EIPA 2005/01, 270 pages, Only available in English, ISBN 90-6779-196-2, € 35.00

Ethics and integrity have become important issues in the practice and theory of politics, public administration, law and economics. The EU Member States but also many international organisations have become increasingly active in this area over the last years.

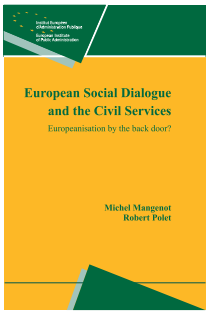
This book reflects the discussions that took place during the Irish and Dutch Team Presidency and among the 25 Member States in 2004. It offers a comprehensive overview and analysis of successes, challenges and difficulties in their fight against unethical behaviour, fraud and corruption.

Furthermore, new approaches in integrity policies are analysed, as well as the main existing (political and legal) instruments. Finally, practical proposals are put forward aimed at enhancing Member States' efforts to fight any form of unethical behaviour.

This publication is therefore of great relevance to policy makers, civil servants, personnel managers and academic researchers.

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

more details at: http://www.eipa.nl/Publications/Indexes/Books_2005.htm



Michel Mangenot and Robert Polet
EIPA 2004/09, 161 pages, Also available in French, ISBN 90-6779-195-4, € 27.00

Since 1993, the social partners, who are increasingly organised at European level, have been involved in the formulation of EU social policy via a structured dialogue. If they wish, their agreements are transformed into directives by the Council and thus become an autonomous source of Community law. As a result, collective bargaining can take the place of legislative work. Now that European case law has placed civil servants on an equal footing with workers within the meaning of the EC Treaty, public administrations are affected by this bargaining between social partners at European level while the Member States, as employing authorities, are not institutionally involved in this process. This book is the first to deal with this "public" dimension of the European social dialogue, analysing it as a specific way of Europeanising the civil service outside government channels.

European trade union organisations of civil service employees have already been organised for a long time and have put this problem on the political agenda. But the question of the representation of the Member States within the European interprofessional social dialogue now arises as public enterprises are represented (through CEEP) differently from private sector employers (UNICE).

Within the sectoral dialogue – the second mode of Community social dialogue – the setting up (in January 2004) of a local and regional government committee (the 29th Sector Committee) has rekindled the debate surrounding the central government level.

Who are the players involved? What are these European public-sector trade-union federations? What texts have already been adopted? What is their specific impact on the civil service? Where does the Commission fit into this? What should be the role of CEEP and the European network of Directors-General responsible for public administration (EUPAN) following the new Constitutional Treaty? What are the prospects for constructing a social dialogue for central administrations? These are some of the questions addressed in this book, which takes a historical, sociological and institutional perspective.

EuroMed Market

more details at: http://www.euromedmarket.org/

General Presentation of the Programme

The EuroMed Market Programme:
a 3-year programme with over 200 activities (information, training and networking) on 8 priority areas for industrial cooperation.

EuroMed Market Programme

Regional Programme for the Promotion of the Euro-Mediterranean Market Instruments and Mechanisms

The European Centre for the Regions (ECR), Antenna of the European Institute of Public Administration (EIPA) in Barcelona, was appointed by the EuropeAid Cooperation Office of the European Commission as the Programme Management Unit for the 'Regional Programme for the Promotion of the Euro-Mediterranean Market Instruments and Mechanisms' (EuroMed Market Programme) in the framework of the EU Euro-Mediterranean policy. This programme is funded by the EU MEDA Programme.

This regional programme of the European Commission (EC) for industrial co-operation, aimed at all 27 Euro-Mediterranean Partners (15 EU Member States + 12 Mediterranean Partners), with a duration of 3 years, falls under component 2 of the Barcelona Declaration of November 1995, pursuing the establishment of a Free-Trade Area by the year 2010 in the Mediterranean Region.

Within this regional programme, a series of 8 priority fields pertaining to the Single Market have been identified:

- Free Movement of Goods
- Customs, Taxation and Rules of Origin
- Public Procurement Financial Services
- Intellectual Property
- Rights Protection of Personal Data and e-Commerce
- Auditing and Accounting
- Competition Rules.

The programme will have two phases:

- The 1st phase "information", with a duration of 12 months, with 2 conferences and 8 workshops on the above mentioned issues, about the situation in the EU and in the Mediterranean Partners in these fields, and
- The 2nd phase "training and networking", over a period of 24 months, through study visits, targeted technical assistance, tailor-made training activities, training of trainers, twinning actions, setting up networks, and the 3rd closing conference.

These two phases are based on three major components:

- Information and exchange of experiences in order to promote in the Mediterranean Partners legislative action and a shared interpretation of the rules in force
- Training and targeted technical assistance
- Networking and co-operation among administrations of all countries involved.

The participants will be experts from public administrations in general and also from the private sector, from the 27 Euro-Mediterranean Partners.

Institutional News

Board of Governors

At its meeting of 15-16 December 2004 held in Maastricht, the Board of Governors approved the following appointments:

Greece
Ms Thalia KATSIOTI-FOTINOPOULOU, Director-General for Administrative Reform within the Ministry of Interior, Public Administration and Decentralisation, was appointed as substitute Board member for Greece.

Spain
Mr Francisco RAMOS FERNÁNDEZ-TORRECILLA, Director of the Instituto Nacional de Administración Pública (INAP) was appointed as full Board member and Ms María DE LA O ÁLVAREZ LÓPEZ, Director of the Centre for Institutional Cooperation within INAP, as substitute Board member.

Italy
Prof. Alberto BARZANÒ, President of the European Training Centre for Social Affairs and Public Health Care (CEFASS), was appointed as the second Italian representative on EIPA's Board of Governors.

Co-opted member
Mr Carlo D'ORTA, Director-General of the National Centre for IT in Public Administration (CNIPA) and former member of EIPA's Board of Governors (for two and a half years when he was Director-General of the Italian Civil Service) was appointed as co-opted member in a personal capacity.

Visitors at EIPA

Photo taken on the occasion of the visit to EIPA on 12 January 2005 of Dr Georges VOUTSINOS, Secretary-General of the Greek National Centre for Public Administration and Local Government, accompanied by Mrs Olga KAFETZOPOULOU, Director, Mrs Aimilia GARDICA, Scientific Collaborator, and Mr Elias PECHLIVANIDES, Director of the Administration Sector.

Dr Georges VOUTSINOS and EIPA's Director-General, Prof. Dr. Gérard DRUESNE.

Working session with EIPA's Director-General and members of EIPA's scientific staff.

Staff News

Barcelona

MANUEL DE ALMEIDA PEREIRA (PT) joined EIPA on 17 December 2004 as Senior Lecturer and Coordinator of the EuroMed Programme on Justice and Home Affairs.

In 1990, he obtained a law degree from the Universidade Portucalense Infante D. Henrique of Porto, Portugal, and a post-graduate degree in national defence from the Institute of National Defence of Lisbon, Portugal, in 1998. He was a high school teacher from 1985 to 1992, lecturing on public administration, economic legislation and law. From 1992 to 1999, he was a Lieutenant Legal Officer in the Portuguese armed forces, advising high-ranking military officials in the fields of criminal law, investigation, administrative law and disciplinary matters. From 1992 to 2002, he was a private lawyer at a law firm, acting as legal counsel and mediator in judicial proceedings regarding international law, consumer protection, trade law, administrative law, commercial and property law, and military and criminal law.

Since 2000 and before joining EIPA, he worked at several international organisations: at UNHCR (United Nations High Commissioner for Refugees) in 2002 where he held the position of Legal Protection Officer in East Timor; at UNMIK (United Nations Mission in Kosovo) in 2003 and 2004 where he was a Legal Officer in the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters; at the OSCE (Organisation for Security and Cooperation in Europe) he was a Legal Adviser in the Election Complaints and Appeals Commission; and at UNMISET (United Nations Mission in East Timor) in 2004, where he held the position of Legal Officer and Special Assistant to the Chief Justice of the Court of Appeal.

His fields of specialisation include commercial and property law, privatisation, criminal law, global terrorism and transnational organised crime, human rights and humanitarian law.

STÉPHANIE HOREL (F) joined EIPA on 15 November 2004 as a Lecturer at EIPA's Antenna in Barcelona where she is responsible for the coordination of the EuroMed Programme for the training of public administration.

She studied EU law at the University of Aix-Marseille III (F) and Exeter (UK). During her professional career she worked for the European Commission (Secretariat-General and DG Research) and for the Mundie e Advogados law firm in São Paulo, Brazil, as a lawyer. Before joining EIPA she worked at CNRS (Centre National de la Recherche Scientifique) in Paris where she was deputy to the head of the Partnership and Promotion of Research Department and in charge of European affairs.

Her fields of specialisation include intellectual property law, the European Research Area, Framework Programmes for Research and Technological Development, innovation policy, the MEDA Programme and EuroMed Policy.

ALEJANDRA MARTÍNEZ (E) joined EIPA on 17 December 2004 as an assistant to the Coordinator of the EuroMed Programme on Justice and Home Affairs, EIPA-ECR Barcelona.

She has a law degree from the University of Valencia (Spain) and received a Master's Degree in European and international law from the Université Catholique de Louvain-la-Neuve (UCL) in Belgium in 1997-1998.

During her professional career, she first worked at an international law firm in the field of commercial law in Toulouse. As of 1999, she worked at a consultancy firm in Brussels monitoring voluntary service projects financed by the Directorate General of Education and Culture of the European Commission. These projects involve non-formal education and intercultural learning targeted at young people (18 to 25).

Before joining EIPA she worked at the European Commission as a senior administrator (senior project manager) where she was responsible for the management of the Euro-Med Youth Programme within DG Education and Culture coming under the third chapter of the Barcelona Process (1995) on social, human and cultural affairs. The projects of this programme involve intercultural learning, non-formal education and the promotion of active citizenship through youth encounters, training courses and voluntary service.

Her fields of specialisation include international and European law, social and intercultural dialogue, non-formal education, public administration issues and Euro-Mediterranean cooperation.

Luxembourg

LORA BORISSOVA (BG) joined EIPA Luxembourg (European Centre for Judges and Lawyers) on 22 November 2004 as a Lecturer. She worked for EIPA before as an external expert in the framework of activities in Central and South East Europe.

She will be working as a legal expert on projects that Luxembourg is financing in certain candidate countries in Central, East and South East Europe. She has a law degree from the University of Nancy (France) and a Master's degree from the College of Europe – Natolin where she worked as an academic assistant for one year. Before joining EIPA, she was a researcher at the Institute of European Legal Studies "F. Dehousse" in Liège (Belgium). She has been a Jean Monnet adjunct instructor in European law at the American University in Bulgaria.

Her areas of expertise (looking at her academic record, teaching experience and publications) comprise: EU enlargement (association agreements and accession process, South East Europe); Justice and Home Affairs (judicial cooperation); Schengen and police cooperation, immigration, visas; Free movement of persons; Competition.

Milan

MARIANNE CAVAZZA ROSSI (I) joined EIPA Milan European Training Centre for Social Affairs and Public Health (CEFASS) on 17 January 2005 as a Lecturer. After a BA in Political Science at the University of Milano (I), she got first a M.Sc. in economics at the University of York (UK) and then a doctorate in economics at the Catholic University of Milano (I). Before joining EIPA, she worked in a private institute of research about health economics in Milano and then she moved to Health Care Agency of Regione Emilia-Romagna in Bologna (I); in both jobs she held the position of lecturer.

She teaches health economics and economic evaluation of health care programmes at the University of Milano – Bicocca.

Her fields of specialisation are: health economics, health policy, public health and health care organisation.

Forthcoming Publications

more details at:
http://www.eipa.nl/Publications/Indexes/Books_Forthcoming.htm

Die europäischen öffentlichen Dienste zwischen Tradition und Reform
Christoph Demmke
EIPA 2005/02, ca. 210 Seiten,
ISBN 90-6779-186-5, € 30,00
(Auch in Englisch erhältlich)

State Aid Policy in the European Community: A Guide for Practitioners
Phedon Nicolaides, Mihalis Kekelekis and Philip Buyskes
EIPA/Kluwer Law International
June 2005

New Publications

more details at:
http://www.eipa.nl/Publications/Indexes/Books_2005.htm

Main Challenges in the Field of Ethics and Integrity in the EU Member States
Danielle Bossaert and Christoph Demmke
EIPA 2005/01, 270 pages,
ISBN 90-6779-196-2, € 35,00
(Only available in English)

European Social Dialogue and Civil Services. Europeanisation by the back door?
Michel Mangenot and Robert Polet
EIPA 2004/09, 161 pages
ISBN 90-6779-195-4, € 27.00
(Also available in French)

Dialogue social européen et fonction publique. Une européanisation sans les Etats?
Michel Mangenot et Robert Polet
IEAP 2004/8, 161 pages
SBN 90-6779-194-6, € 27.00
(Disponible également en anglais)

Programme régional pour la promotion des instruments et mécanismes du Marché euro-méditerranéen (EuroMed Marché)
1ère phase (juin 2002-juin 2003)
VOLUME II : Etudes comparatives sur la situation dans les Partenaires méditerranéens au regard des 8 domaines prioritaires du programme
Sous la direction de Eduardo Sánchez Monjo
IEAP 2004/07, 273 pages, ISBN 90-6779-193-8,
gratuit

Programme régional pour la promotion des instruments et mécanismes du Marché euro-méditerranéen (EuroMed Marché)
1ère phase (juin 2002-juin 2003)
VOLUME I : Actes des activités réalisées pendant la 1ère phase
Sous la direction de Eduardo Sánchez Monjo
IEAP 2004/06, 552 pages, ISBN 90-6779-192-X,
gratuit

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

Regional Programme for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed Market)
1st Phase (June 2002-June 2003)
VOLUME I : Proceedings of the activities carried out during the 1st phase
Eduardo Sánchez Monjo (ed.)
EIPA 2004/04, 524 pages, ISBN 90-6779-190-3,
Free of charge

eGovernment in Europe's Regions: Approaches and Progress in IST Strategy, Organisation and Services, and the Role of Regional Actors
Alexander Heichlinger
EIPA 2004/03, 118 pages,
ISBN 90-6779-187-3, € 15.00
(Only available in English)

European Civil Services between Tradition and Reform
Christoph Demmke
EIPA 2004/01, 202 pages,
ISBN 90-6779-185-7, € 30.00
(German version is forthcoming)

Enlarging the Area of Freedom, Security and Justice
Conference Proceedings
Cláudia Faria (ed.)
EIPA 2004/C/01, 77 pages
ISBN 90-6779-189-X, € 21.00
(Mixed texts in English and French)

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

Recent Publications

more details at:
http://www.eipa.nl/Publications/Indexes/Books_2004.htm

Continuity and Change in the European Integration Process
Essays in honour of Günther F. Schäfer
(EIPA 1984-2003)
Christoph Demmke and Christian Engel
EIPA 2003/05, 273 pages: € 31.75
(Texts in English, French and German)

Guide de l'information sur l'Union européenne – 4e édition
Veerle Deckmyn
EIPA 2003/04, 77 pages: € 20.00
(Disponible également en anglais et en allemand)

Wegweiser EU-Information – 4. Auflage
Veerle Deckmyn
EIPA 2003/03, 79 pages: € 20.00
(Auch in Englisch und in Französisch erhältlich)

Guide to European Union Information – 4th Edition
Veerle Deckmyn
EIPA 2003/02, 75 pages: € 20.00
(Also available in French and German)

Civil Services in the Accession States: New Trends and the Impact of the Integration Process
Danielle Bossaert and Christoph Demmke
EIPA 2003/01, 107 pages: € 21.00
(Also available in German)

Il welfare in Europa
A cura di Maite Barea/Giancarlo Cesana
(Hanno collaborato Iris Bosa (sanità), Roger Hessel (pensioni), Carla Fornari (analisi statistica) e Lauretta Bolognesi (revisione editoriale))
Volume:
Società Editrice Fiorentina, 2003/06, 138 pagine, € 12.00

Versione informatica:
EIPA 2003/E/04, 116 pagine
Gratuito telecargo (http://www.eipa.nl)

La protection sociale en Europe
Sous la direction de Maite Barea et Giancarlo Cesana
(Ont collaboré Iris Bosa (soins de santé), Roger Hessel (retraites), Carla Fornari (analyse statistique))
IEAP 2003/E/03, 128 pages
Téléchargement gratuit (http://www.eipa.nl)

eGovernment in Europe: The State of Affairs
Christine Leitner
EIPA 2003/E/02, 63 pages:
- An electronic version can be found on line (http://www.eipa.nl)

The Case for eHealth
Denise Silber
EIPA 2003/E/01, 32 pages:
- An electronic version can be found on line (http://www.eipa.nl)
  for hardcopies, postage costs will be charged.

Beyond the Chapter: Enlargement Challenges for CFSP and ESDP
(Current European Issues)
Simon Duke
EIPA 2003/P/03, 111 pages: € 21.00
(Only available in English)

Quality Management Tools in CEE Candidate Countries: Current Practice, Needs and Expectations
(Current European Issues)
Christian Engel
EIPA 2003/P/02, 104 pages: € 21.00
(Only available in English)

Improving Policy Implementation in an Enlarged European Union: The Case of National Regulatory Authorities
(Current European Issues)
Phedon Nicolaides with Arjan Geveke and Anne-Mieke den Teuling
EIPA 2003/P/01, 117 pages: € 21.00
(Only available in English)

Editorial Team:

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

Dr. Christoph Demmke (D)
Associate Professor
Implementation of European environmental policy; comparative studies on public service reform

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

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

Denise Grew (UK)
Publications Department
Coordinator

Willem Huwaë (NL)
Publications Department
Design and layout

Institut Européen d'Administration Publique
European Institute of Public Administration

Printed:
Sapnu Sala Printing House, Lithuania

European Institute of Public Administration
P.O. Box 1229,
6201 BE Maastricht,
The Netherlands

Tel: +31 43 3296 222
Fax: +31 43 3296 296
Web site: http://www.eipa.nl